From the Editor:

How Much Does the Corporate Tax Rate Really Matter?

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Despite the government's need for additional revenue and the creaking sounds of age coming from the nation's individual income tax system, revenue-neutral corporate tax reform is the issue being pushed most strongly by the White House and many members of Congress. President Obama's focus on corporate taxation might be considered a bit odd, given that individual income taxes are 53 percent of federal revenues, compared with about 7 percent for corporate taxes. But Obama, and other critics of the current system, argue that the U.S. corporate rate is harming U.S. competitiveness and encouraging companies to locate jobs and profits offshore.

But is it really? The statutory U.S. tax rate is one of the highest in the world, but the effective tax rate is much lower because of foreign tax credits, depreciation, and other exemptions. In her analysis of the issue, Lee Sheppard finds that corporate tax managers aren't always motivated by the statutory corporate rate and that the smartest companies use management reporting rates (which are higher than statutory rates) when considering how to conduct business. A cut in the statutory rate or a repatriation holiday would only benefit companies that have engaged in poor corporate planning, leading to cash being frozen offshore, writes Sheppard. She argues that the U.S. statutory rate matters far less than the U.S. tax structure, which is based on worldwide taxation with a foreign tax credit. Sheppard is also critical of companies that seem to think they should not have to pay taxes to their home governments, even though business benefits from the services (and protection) government provides. She concludes that the trends toward globalization and tax minimization are not inevitable, but the product of political decisions that underprice labor, energy, and environmental hazards. (For her analysis, see p. 1105. For additional coverage of corporate tax reform, see p. 1123 and p. 1132.)

Even revenue-neutral corporate tax reform is a long shot in the current political climate. Businesses and Republicans seem unwilling to trade reduced tax expenditures for a lower corporate rate, and anything pushed by Obama is likely to meet fierce GOP resistance simply on principle. Those who argue that it is foolish to attempt corporate tax reform without tying it to a broader restructuring of the U.S. tax system are probably correct, but idealistic. If Congress can't even trim a few targeted tax provisions to reduce taxes on the broader U.S. business community, is it really likely that it can reform the entire tax code?

Federal Bar Section on Taxation Meeting

The Federal Bar Association Section on Taxation met in Washington recently, and *Tax Notes* has full coverage starting on p. 1146. Several IRS officials promised that guidance on the UTP initiative is coming, but they did not promise a date or that it would be comprehensive. In other meetings, the IRS discussed the economic substance doctrine (p. 1150), possible guidance on the FTC splitter rules (p. 1148), and the repair regs (p. 1160).

Law Review Articles You Might Have Missed

Last year Prof. Bridget Crawford, a frequent *Tax Notes* contributor, wrote an article highlighting several estate and gift tax articles that appeared in law reviews that practitioners and readers might have missed. It proved so popular that this year *Tax Notes* is offering multiple articles discussing significant law review work in all areas of tax law. The special section begins on p. 1189 with an introduction by Jasper Cummings Jr. Cummings writes that law review articles have become less significant over the last 40 years, but that gems remain. He welcomes any initiative to bring important works to the attention of readers. Crawford once again summarizes a series of estate and gift articles on p. 1195. She emphasizes that her list is not necessarily of the 10 best articles, but rather the 10 most likely to be noteworthy and thought-provoking. Prof. Kathryn Kennedy looks at articles from the field of employee benefits on p. 1198. In his summary of international tax law articles from 2010, Prof. Robert Green also gives tips on how to use SSRN to keep up with tax scholarship (p. 1203). Practitioners often ignore student-edited journals because of their infrequent publication dates, but technical tax articles still appear occasionally, according to Prof. Howard Abrams in his article highlighting partnership law review articles that practitioners shouldn't miss (p. 1206). The section closes with Prof. W. Eugene Seago's list of tax accounting articles with which readers should be familiar (p. 1210).

Voluntary Disclosure

The IRS recently finalized its second voluntary disclosure program. The VDP is designed to encourage recalcitrant holders of offshore accounts to come clean with the Service in exchange for lower penalties. While not quite as generous as the first voluntary program that ended in 2009, this second bite at the apple significantly reduces FBAR-related penalties for those who failed to file information returns on their offshore holdings. Steven Mopsick writes that there is little incentive for taxpayers sitting on the fence to wait to come forward. The increasingly aggressive probes by the IRS Criminal Investigation division mean that taxpayers are risking more than financial losses by trying to conceal offshore earnings and assets. The IRS deserves high marks for its handling of the first VDP, according to Mopsick (p. 1175). He hopes that the second program has achieved the proper balance between the need to administer an efficient and quick resolution process and maintaining a sense of fairness regarding how the program is carried out.

Although the penalties applicable under the second VDP differ from those under the first, there is one key similarity between the two programs, according to Allen Littman and Michael Nydegger (p. 1183). Both deny participating taxpayers any chance of claiming section 9100 relief, they write. This denial of relief is based on a flawed legal analysis, according to the authors, and they argue that it is also incompatible with the ''fair'' deal that each program claims to offer taxpayers. They conclude that few taxpayers would claim section 9100 relief and that it would not be a burden for the IRS to consider the facts and circumstances of those claims.

Commentary

The scope of section 104, which defines damages that can be excluded from income, is often debated, particularly over the issue of what constitutes physical injuries and physical sickness. A question exists about the treatment of post-traumatic stress disorder, writes Robert Wood (p. 1213). The disorder used to be confined mainly to former soldiers, but diagnoses are increasingly common among civilians. Wood argues that the tax issues surrounding post-traumatic stress disorder will only become more important in the future and that scientific data suggest that it is not a purely emotional or mental disorder. Wood concludes that damages for the disorder should be tax deductible, but that practitioners will have to be careful how they structure their arguments during IRS exams.

The Obama administration has tried to use the tax code to promote energy efficiency and alternative sources of fuel and power. Many of these carrots have made it into law over the last two years. The president's goal of increasing taxes on the oil and gas industry has not fared as well; Republicans and others in Congress have frequently denounced all attempts to limit the tax breaks available to the oil industry. Diana Furchtgott-Roth agrees with the opposition to Obama's proposed tax increases, arguing that with oil surging past $100 a barrel, now is not the time to scale back tax incentives for domestic production (p. 1219). Obama's tax changes would make the United States more dependent on foreign oil because they would encourage oil companies to search overseas for more deposits, she writes. Like many other conservatives, Furchtgott-Roth believes that the United States should be taking steps to end its dependence on foreign oil by increasing domestic production, not discouraging it. Although she is not necessarily in favor of a gasoline tax, she points out that it is a more efficient means of promoting energy conservation than increased taxes on domestic oil production. ■