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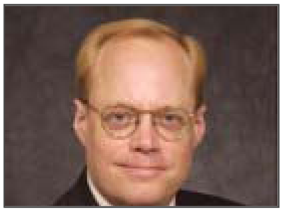

Robert W. Wood

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Tax Hater Amazon's Luxembourg Tax Deal Attacked As Illegal

Amazon made its bones avoiding taxes, and its tax history could bear on its current EU troubles. Amazon got bigger and more nimble than anyone else by betting on America's love of tax avoidance.By edging the competition with no sales tax, Amazon grew to become the poster child of sales tax enforcement battles nationwide. For more than a decade Amazon battled numerous states over whether it should start collecting sales tax from customers.

Brick and mortar retailers complained of tax evasion and of a playing field tilted toward Amazon. Eventually, Amazon quietly capitulated as its operations in numerous states got bigger and its attempts to avoid tax nexus were increasingly doomed. Today, Amazon collects sales tax in 23 states, with South Carolina scheduled to make it 24 in 2016. In all, 45 states and the District of Columbia impose sales tax. With sales tax battles ebbing, Amazon aimed for bigger tax deals, as the scuffle with EU regulators reveals.

But more criticism is being leveled at Luxembourg than at Amazon. Taxpayers will be taxpayers, after all. Luxembourg is charged with giving illegal tax breaks to Amazon. European Commission Chief Jean-Claude Juncker was Premier of Luxembourg (a position he held for 19 years) when the deals were inked. The Commission is now saying the 2003 tax deal constitutes illegal state aid.

Luxembourg denies the charge, and Amazon too suggests it was all perfectly proper. The EU has opened similar investigations over Apple's Irish deals, Fiat's deal with Luxembourg, and Starbucks deal with the Netherlands. Special perks for big employers are nothing new, and policing what it too much isn't precise. In Amazon's case, one of the key issues is likely to be transfer pricing, something that is inherently imprecise.

Yet no matter what the technicalities, Amazon and Luxembourg may both be embarrassed that Amazon's effective tax rate is reportedly a trifling 4-6%. Amazon claims it gets no improper tax treatment from Luxembourg, and pays all tax it owes. Yet unlike the criticism leveled at Apple and other companies with tax perks, Amazon's deal with Luxembourg could face an extra level of scrutiny. Some claim that Amazon's deal with Luxembourgian tax authorities place caps on the company's tax exposure no matter what its profits.

Transfer pricing involves the arguably artificial prices that one subsidiary of a corporate group can charge others for goods or services. Like a shell game, a good transfer pricing system manipulates exactly where a company group's profits will end up. It should not be surprising that most such arrangements place the profits where the taxes are lowest. And if reams of market data and computations support the deal, they are not illegal.

Like many other EU investigations, the Amazon-Luxembourg investigation may fizzle. It may be most embarrassing to Mr. Juncker himself, since his past role and current one now invite comparison. Mr. Juncker already survived a no confidence vote in Parliament. At his swearing in, he set targeting tax avoidance as one of his priorities. We'll see.

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