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Big Data Comes to the Tax World

February 28, 2014
Tax Notes Today
Mindy Herzfeld

In 2011, the consulting firm McKinsey & Co. identified "big data" as the next frontier for innovation, competition, and productivity. Big data has since caught up with the tax world, which is not known for being on the forefront of information technology (IT) innovation, in the form of the OECD's recent release of the discussion draft on transfer pricing documentation on January 30. The discussion draft, prepared in fulfillment of Action 13 of the OECD base erosion and profit shifting effort, represents the OECD's and tax administrations' efforts to capture multinationals' big data and use it for their benefit.

BEPS Action Plan

Action 13 of the BEPS action plan 2013 TNT 140-51: Other Administrative Documents calls for a review of existing OECD transfer pricing documentation rules and the development of a template for country-by-country (CbC) reporting of income, taxes, and economic activity for tax administrations, with the goal of enhancing "transparency for tax administration, taking into account the compliance costs for business." In response to the mandate of Action 13, the discussion draft on transfer pricing documentation and country-by-country reporting includes a master file documentation template, which contains standardized information relevant for all multinational companies' group members, and a CbC reporting template. The OECD's discussion draft on transfer pricing documentation is intended to replace Chapter V of the current OECD transfer pricing guidelines in its entirety. Comments on the discussion draft were requested by February 23.

Master File

The master file requests information in the following broad categories: organizational structure, description of businesses along business line, information regarding the group's intangibles, intercompany financial activities, and financial and tax positions. Some of the information requested in the master file is purely quantitative and administrative, such as consolidated financial statements and lists of related party agreements. However, some of it is qualitative and analytical, and not comparable to anything being produced by multinational companies today, such as a request for "important drivers of business profit" by business line, and description of the group's "overall strategy" for the development, ownership, and exploitation of intangibles. In keeping with an overall focus on intangible assets and financing as conducive to base erosion and profit shifting, the master file template draft asks for specific and copious information about these two aspects of the group's businesses. Perhaps the most troubling and invasive request for multinationals is the item requesting the title and country of the principal office of each of the 25 most highly compensated employees in the business line. (Master file template: , p. 16).
In addition to the enormous amount of data requested by the master file template, CbC-specific information is requested. The CbC template includes 17 columns and asks for detailed information

regarding stated capital and accumulated earnings, total number of employees, tangible assets, and payments, including royalties, interest, and service fees.

Local File

In addition to the master file, there is also a local file documentation requirement. This list is also extensive and includes information requested by entity (not by country, as the name might imply). For this template, the categories of information requested include information on the local entity and controlled transactions. For U.S. multinationals used to filling out forms 5471 and 8858, the information requested regarding controlled transactions should not be too unfamiliar. However, the scope of the information requested is considerably broader than that requested by current U.S. tax forms, and includes a request to indicate the "most appropriate transfer pricing method with regard to the category of transaction and the reasons for choosing that method," the important assumptions made in applying the transfer pricing methodology, and the associated enterprise selected as the tested party. Also requested is annual local entity financial accounts, and information and allocation schedules showing how the financial data used in applying the transfer pricing method may be tied to the annual financial statements.

New Reporting Template

One positive of the new reporting template for many readers is that the OECD's suggested requirements for future transfer pricing documentation, if adopted in anywhere near their draft form, represent guaranteed full employment for tax professionals. From a broader perspective, the new documentation requirements issued as discussion drafts may be expected to affect multinational corporations in the following ways:
increased budget required for transfer pricing compliance;
costs to be incurred in reconciling the group's IT systems that may not have or currently compile information in the format being requested;
increased risk for tax disputes and additional expense for tax audits; and
increased risk of double taxation.

The discussion draft identifies, as one of the goals of the new transfer pricing reporting template, "providing tax administrations with more focused and useful information for transfer pricing risk assessments and audits." One of the initial complaints about the template is that the information request is so broad in scope that it is unlikely to lead to better risk assessment, but instead is more likely to leave tax administrations awash in a sea of information that they have no ability to wade through in a meaningful manner. While the discussion draft templates represent a deliberate attempt by OECD member states to force multinationals to disclose large amounts of data regarding their global businesses and profits allocations, whether tax administrators really have the tools to harness big data is a serious question. The information requested by the templates will be useful to tax administrations only if these organizations have the systems, tools, and personnel to wade through and derive meaning from large quantities of information, and government budgets are likely unequipped for a revamp to properly evaluate that information.

TCPI Conference

This concern was highlighted by Mike Williams, director, Business International Tax at HM Treasury, on a recent panel at the Tax Council Policy Institute (TCPI) in Washington. Williams indicated that he is "worried about the cost" to HMRC of receiving all this information and transmitting it.
At the TCPI conference, Robert Stack, Deputy Assistant Secretary (International Tax Affairs), U.S. Treasury, stated that the OECD has learned, even in the short time since the discussion draft template was released, that it would be challenging for companies to produce the level of information requested by the draft template and that "business has been thoughtful in helping" them understand this. For business, the concern is that rather than leading to better transfer pricing risk assessment on the part of tax administrators, the data being collected by multiple jurisdictions is likely to lead to more audits, because the data fails to provide tax agents with the tools to appropriately identify where risk lies.

The CbC reporting template, along with the information requested by the master file, potentially provides the data and the basis for an initial claim by a tax agent, for asserting that there should be additional tax paid in its particular jurisdiction. The OECD has repeatedly asserted that it will not be departing from the arm's-length standard for purposes of determining the appropriate allocation of revenues and profits among various jurisdictions. Nevertheless, as Raffaele Russo, head of the OECD's BEPS project, noted, in some countries, formulary apportionment is considered the right solution; some countries never committed to the arm's-length standard as an initial matter. Although the OECD for now is fully committed to the arm's-length standard, too rigid an application of the arm's-length policy would likely lead to its breaking, according to Russo; hence, there is a need to build sufficient flexibility into the rules to ensure that the principle is aligned with the way economic activities take place. As the panelists at the TCPI conference acknowledged, complete adherence to the arm's-length standard is not a viable option going forward, as the arm's-length standard is unlikely to fully capture various governments' desires for a greater share of multinationals' income (particularly income generated from mobile assets such as intangibles).

Williams phrased the question as, how far we can flex the arm's-length principle so that it reflects the underlying economic reality, and if that's not possible, what are the alternatives? It is generally expected that in some circumstances, there will be a need to go beyond the arm's-length standard and use different rules. Under such a regime, multinationals' transfer pricing will in effect be subject to two standards: the first, the arm's-length standard, will apply to generally noncontroversial transactions in the majority of jurisdictions. The second, a special standard, will apply to special transactions and outlier jurisdictions. This potential for a special standard is already identified in the action plan, which includes a mandate for "developing transfer pricing rules or special measures for transfers of hard-to-value intangibles." The government panelists noted the reality, not easily swallowed by private practitioners and tax directors of U.S. multinationals, that new sets of rules will provide for special circumstances under which global profits will be carved up, as countries look at alternatives that would get them a better result than the arm's-length standard. For the multinationals, the question becomes how large a scope of transactions is covered by the special standard. As the special circumstances (which are likely to be covered by more of an apportionment standard than an arm's-length standard) are likely subject to scope creep, the lip service being paid to the arm's-length standard becomes a mockery in the face of a potentially gradually increasing special regime that looks more like a formulary apportionment approach.

Thus, even though the CbC template requires information in the form of intragroup transactions, there is significant risk that tax agents in a particular jurisdiction would look at the entire mix of revenues as set out in the templates and decide to allocate some portion of a multinational's revenue to their own jurisdiction. Stack agreed that such a risk exists, but considers that it may be managed by building safeguards into the rules, thereby ensuring that there would be consequences built in when countries go astray. Stack believes that treaty protection could give protection if that risk materialized. It is unlikely that multinational enterprises, and their tax directors, are as optimistic as Stack is about the abilities of treaties and safeguards to minimize these risks. The morass in India in which many multinationals currently find themselves is just one example of such a risk, not mitigated by treaty or multijurisdictional government negotiation.

The Question of Transmission

One of the biggest questions associated with the documentation request draft is the issue of how this information gets transmitted from taxpayers to tax authorities. The OECD has no authority to require any taxpayer to submit information to any individual tax administration. There are essentially two alternative means of implementation of the documentation requirements being proposed by the OECD. One is for each country to pass its own laws adopting the template. This is certainly possible, but would likely take a significant amount of time and bring accompanying risks, among them the risk that in each individual country, there would likely be modifications to the templates. As each country modified the template, the goal of unifying the information being requested from taxpayers would soon be eliminated. Instead, multinationals would be facing not only increased compliance burdens but also a system no better than the current one, in which they are requested to provide different information, in different templates, to hundreds of different tax administrations. Only now, it would be much more information.

The OECD has recommended an approach in which the master file and CbC reporting template are prepared by the parent company and provided to the local affiliates in the group. Individual tax authorities could then obtain the files from the local affiliates.

Under the second alternative, each local jurisdiction requests information from its residents (for example, the parent company of a multinational enterprise), which is then shared with other countries via information exchange agreements in a treaty. Again, there are several problems with this approach. First, the tax treaty network is not universal. The second, more significant, problem is that every country has different standards for protecting the confidentiality of taxpayer information. U.S. government officials repeatedly have stressed the great importance they place on confidentiality of taxpayer information, and how requirements for sharing taxpayer information will not be implemented without assurances of confidentiality from the different governments involved. However, as anyone who has ever had their personal data or credit card number stolen can tell you, government assurances regarding the confidentiality of identifying information in the era of hacking of big data provide little comfort. No tax director, CFO, or CEO wants to see their company's transfer pricing template be on the Edward Snowden end of a data dump.

The many concerns, imagined or real, being raised by multinationals regarding the discussion draft template do not mean that lobbying tax administrations or legislators for relief is an appropriate response. Stack stressed to the TCPI audience that "we're not in a position to not deliver on the action item." Stack emphasized that Action Item 13 in part grew out of the tax administrators of the world feeling "beleaguered, besieged," and overwhelmed. These tax administrators want tools that they can use to address their concerns about profit shifting and stateless income, and view big data requests as such a tool. Williams noted the public dissatisfaction with some of the results of applying the current rules. If the discussion draft template is overkill in the amount of information being requested, this may reflect the frustration of tax administrators in being asked to accomplish too much with limited budgets and resources.

The scope of information being requested, combined with the likelihood of the dilution of the arm's-length standard as the generally accepted method for allocating multinationals' income across state borders, will undoubtedly lead to a significant rise in tax disputes for multinationals. As Stack noted, one of the biggest risks in transfer pricing is that we "muddy the waters"; the lack of a universally accepted global standard would undoubtedly lead to a situation in which multinationals are subject to different transfer pricing audit results in different jurisdictions. Transfer pricing disputes also represent a cost to tax administrations (albeit with the possibility of additional revenue), when they are not appropriately pinpointed. Williams pointed out that the existing system of dispute resolution in most countries relies on judges, who are more familiar with legal constructs than economic theories. Thus, a dispute that looks to a tax administrator familiar with transfer pricing guidelines as a winning case, may have less success when the arbiter is a judge more likely to look at legal entities, contracts, and agreements than economic justifications. In this way, the quantity of information being requested represents a cost and risk to tax administrations as well as to multinational companies.

Capital Allocation

The costs associated with a system in which multiple jurisdictions must divvy up a fixed amount of profits, but have not agreed on a specific method of doing so, was highlighted in a separate panel at the TCPI conference, titled "Current Issues in State and Local Tax: Capital Allocation Effects and Lessons for International Tax Reform." For any international tax directors in the audience who may have been otherwise complacent about their international tax planning, this panel was undoubtedly both informative and sobering. As state tax specialists demonstrated, the U.S. states, despite decades of experience allocating the profits of U.S. companies over different state tax jurisdictions, are today mired in endless disputes and multiple standards. The history of progress, and lack thereof, on the state tax side provides a scary template for tax administrations, the OECD, and multinational companies as the OECD embarks on a project to bring about uniform reporting standards and international tax rules on a global scale. The fact that U.S. states, which at a minimum share a common language and are bound together by a single federal government, have not been able to efficiently and equitably allocate U.S. companies' income over multiple state boundaries, does not provide much room for optimism regarding the OECD's efforts to introduce uniform standards over a much larger and more diverse playing field.

As the state tax examples demonstrate, the risks in the OECD not getting the documentation requirements right represent a concern for both multinational companies and tax administrations.

http://services.taxanalysts.com/taxbase/tnt3.nsf/dockey/1AD9BC0C122167DF85257C8D0010EBA3?OpenDocument&highlight=0,tax+council+policy+institute

TaxProf Blog

Mays Receives 2014 Pillar of Excellence Award

February 26, 2014
TaxProf Blog
Paul Caron

Janice Mays, Democratic Staff Director, Chief Counsel, and Former Chief Tax Counsel of the House Ways & Means Committee received the 2014 Pillar of Excellence Award at the Tax Council Policy Institute's 15th Annual Tax Policy & Practice Symposium in Washington, D.C.:

MaysThe 2014 award is given to Mays based on her extraordinary dedication and contribution to the field of tax law and policy. ... "Janice Mays embodies all the characteristics the Pillar of Excellence Award was designed to recognize," said Lynda K. Walker, executive director and general counsel of TCPI. "For more than three decades she has been a driving force behind federal tax policy development and is both widely regarded as a thoughtful expert and highly respected on both sides of the aisle for her leadership on Capitol Hill. We are honored to present the award to Janice, who has dedicated her career to shaping sound and fair tax policy."

Mays is the first woman and fifth overall recipient of this award, which honors individuals who consistently go above and beyond what is required, proving to be true leaders in their field. ... Qualifications for the Pillar of Excellence Award include playing a key role in tax policy; its impact on the tax business and national economy; participation in knowledge-sharing opportunities; and demonstration of the overall understanding of tax policies among professionals, executives and policymakers.

Mays joined the Committee staff in 1975 after receiving her undergraduate degree (cum laude) from Wesleyan College in Macon, Ga., and her juris doctorate from the University of Georgia College of Law. She also holds a Master of Law in taxation from the Georgetown University School of Law.

http://taxprof.typepad.com/taxprof_blog/2014/02/mays-receives.html

Turf Fights Push State and Local Tax Issues to Federal Level

February 24, 2014
State Tax Notes
Henry Reske

State efforts at tax reform are increasingly futile as a result of the struggle between uniformity and sovereignty, forcing Congress to step into fights over state and local tax issues, panelists said at a Tax Council Policy Institute symposium in Washington on February 20.

The panel was part of the institute's 15th annual Tax Policy & Practice Symposium.

Doug Lindholm of the Council On State Taxation said that whenever one hears about tax reform in the states, it's ''sort of like Groundhog Day,'' referring to the 1993 movie in which Bill Murray's character is forced to relive the same day again and again.

''Over and over and over there's a blue ribbon report that's written, recommendations are made and it sits on a dusty shelf,'' Lindholm said. ''It's unfortunate that nothing really comes of these.''

Stephen Kranz on McDermott Will & Emery described the state and local tax system as a complex, disparate mess. "There is a competition and fight going on at the state and local government level between those who desire uniformity and those who want to preserve the state and local government sovereignty," he said.

As the economy has change and companies have become more global, some have begun for uniformity through the Uniform Law Commission and the Multistate Tax Commission, Kranz said. He added, however, that "interests locally in each state have been resistant to changing state rules so that they are uniform."

He said the fight between sovereignty and uniformity has led business interests to take their fight to Congress, noting several examples, including the Business Activity Tax Simplification Act (H.R. 2992), the Marketplace Fairness Act of 2013 (S. 743), and the Digital Goods and Services Tax Fairness Act (H.R. 3724).

"There is a cry on Capitol Hill for Congress to address some of the mess that exists in our state and local system," Kranz said.

From the Editor: Camp's Comprehensive Discussion Draft Coming This Week

February 24, 2014
Tax Notes
Jeremy Scott

The big moment is finally coming. House Ways and Means Chair Dave Camp initially promised a tax reform bill in late 2013, but the government shutdown, the ACA meltdown, and Republican reluctance caused him to miss that deadline. But now, according to an e-mail sent to Ways and Means members, Camp will release his comprehensive tax reform proposal sometime this week, probably February 26.

Not every detail is known about Camp's plan, but sources indicate that it will include dropping both the top individual and corporate tax rates to around 25 percent (p.789). That's a pretty tall order when you consider that the chair has pledged to keep his plan revenue neutral. That must mean that some popular tax expenditures are going to be cut or trimmed. The Hill reported on Friday that the research credit might be one program that is on the chopping block. Camp's discussion draft could also tackle depreciation schedules.

The real question is whether the Republican plan will modify popular, and expensive, tax expenditures such as the home mortgage interest deduction, the exclusion for employer-provided healthcare, the deduction for state and local taxes, or the charitable deduction. Popular corporate tax incentives other than the research credit, like section 199 or deferral, might be affected. Whatever is included is likely to generate a great deal of discussion.

And that discussion and debate is likely to be the most important contribution of Camp's tax reform plan. It has little chance of becoming law. Obama administration officials were already speculating that Camp's proposal would be at odds with the president's plans to invest more in infrastructure or attack U.S. tax base erosion (p.791_. But to regard Camp's plan as a failure or unimportant just because it doesn't become law this year (or ever) would be a major mistake. The Ways and Means chair is about to finally put all of his ideas on paper. We will find out how the GOP might pay for its grand plans to reduce rates. We will find out what base erosion options are favored by Camp (rather than the variety of choices in his international discussion draft. By courageously staking out detailed positions, Camp will move the ball forward and advance the tax reform debate. That's an important accomplishment and should be lauded by everyone who would like to see the tax code reformed, whether they agree with the specifics of Camp's plan or not.

Conference Coverage
Two major conferences took place last week. The first, the Tax Council Policy Institute's symposium, started in Washington on February 19. Martin Sullivan attended a panel discussing what pay-fors might show up in Camp's draft (p. 779). Revenue raisers for a corporate rate cut will be hard to find, particularly if Camp is determined to get the rate to 25 percent, Sullivan writes. The federal government is depending on corporate tax receipts to raise over $400 billion per year as soon as 2015, so any rate cut will probably have to be financed by cuts to depreciation, the research credit, or other corporate tax expenditures. Some businesses aren't willing to make that trade, he writes. They would prefer that

corporate reform not be revenue neutral, and that a rate cut not come at the expense of deductions and credits that favor manufacturing. Other coverage of TCPI event appears on p. 797 and p. 808.

Samuel Maruca, the IRS's transfer pricing director, spoke in Miami at the TP Minds America Transfer Pricing Summit, outlining his implementation of issue-based transfer pricing rules and talking about the U.S. response to the OECD's base erosion and profit-shifting project (p.795). Maruca emphasized that the United States is committed to preserving the arm's length method and will resist efforts by the BEPS project to weaken it. An OECD official defended BEPS at one session (p. 800), while practitioners gave tips on successful advance pricing agreement and competent authority practice at another panel (p. 802).

Lee Sheppard attended a discussion at the IBA/Chartered Institute of Taxation cross-border taxation conference in London that focused no how European governments are starting to implement BEPS rules without waiting for the OECD to finish its project. (p. 775). She writes that many taxpayers are trying to avoid the bad publicity from a zero effective tax rate and that practitioners are becoming wary of using overly complicated structures to avoid tax. She also points out how BEPS and similar initiatives are changing the rules in Luxembourg.

Commentary

The Supreme Court's decision in Woods was a major victory for the government on the issue of inflated basis. But it also addressed several significant TEFRA issues. The holding answered two important questions regarding penalties from an inflated basis in a sham partnership, Karen Burke and Grayson McCourch write (p. 829). The first is whether the 40 percent penalty can apply when a transaction lacks economic substance. The second is whether a court has jurisdiction in a TEFRA proceeding to determine the applicability of misstatement of basis penalties. The Court answered yes to both, Burke and McCouch write, calling the decision welcome. They argue that the holding will open the way for prompt and conclusive penalty determinations in many pending shelter cases.

The IRS's new policy on IDRs, which has been postponed, caused a great deal of practitioner ire. Many though that the new rules lacked flexibility and would cause far too many summonses to be requested. Sheldon Kay and Thomas Cullinan review IRS audit procedures in response to the new policy, pointing out that many businesses are rarely audited and might need a roadmap that covers the basics of an examination (p. 839). They discuss both existing rules and the postponed changes to IDRs. IDRs are the principal means by which an agent gathers information for an exam, they write, adding that taxpayers need to be prepared for how to deal with requests and avoid compliance problems.

Section 32(k) was added to the code in 1997. It prevents taxpayers from claiming an earned income tax credit if they improperly claimed the credit in a prior year. Practitioners call this disallowance the EITC ban. John Plecnik writes that the ban is poorly defined in the law, but that Congress didn't intend it to apply in cases of negligence (p. 847). The legislative history supports the conclusion that law-makers intended to import to section 32(k) the well-established definition for reckless or intentional disregard from section 6662, he argues. Unfortunately, the section is brief and lacks description, he says. He reviews current IRS procedures for enforcing the ban and suggest improvements to bring it closer to congressional intent.

In his second column reviewing tax developments from 2013, Steward Karlinsky discusses changes to the taxation of individuals, real property, and estates and gifts (p. 851). He looks at the rate changes imposed by the American Taxpayer Relief Act, along with the new permanent rules for the AMT, the estate and gift tax, and capital gains and dividends.

Section 104 excludes from gross income the proceeds of settlements and judgments resulting from physical injuries. That distinction has caused a great deal of confusion for plaintiffs and taxpayers over the years. Robert Wood writes that several recent cases have considered the overlap between emotional and physical injuries (p. 857). The courts frequently reach different conclusions on the issue, he says. The IRS has backed off its old position requiring an overt manifestation of physical injuries in recent years, presuming the existence of a physical injury in some cases, he writes. He emphasizes the importance of adequate documentation and the right language in settlement agreements.

http://services.taxanalysts.com/taxbase/tnpdf2014.nsf/PDFs/TN1420224.pdf/$file/TN1420224.pdf

Corporate Revenue Raisers Remain Elusive

February 24, 2014
Tax Notes
Martin Sullivan

After a lot of anticipation and rumor, House Ways and Means Committee Chair Dave Camp, R-Mich., confirmed that he will release his tax reform plan this week. Expect the unexpected.

Camp has promised to deliver revenue-neutral corporate tax reform that will reduce the statutory tax rate from 35 percent to 25 percent. That won't be easy. And if we are talking about something that has a real chance of becoming law, it is probably impossible. There is no plan he can offer that won't alienate large swaths of the business community he is counting on for political support. Or he will break one of his promises – either to reduce the rate to 25 percent or to introduce a truly revenue-neutral bill.

On February 19 in Washington, at a Tax Council Policy Institute Tax Policy and Practice Symposium panel entitled "Balancing Base Broadening and Rate Reduction," tax leaders of four *Fortune* 100 companies discussed the tough choices that tax reform will pose for them and for Congress. Like everybody else, they were in favor of a lower rate, simplification, and more certainty. But on the all-important details as to what would be acceptable to their companies, there was a range of views.

Different Stories

Michael D. Fryt, corporate vice president of tax at FedEx, said that ideally, his company would like a 25 percent rate and full expensing. But if corporate reform must be revenue neutral, FedEx would exchange a 25 percent rate for less generous depreciation. Those remarks echoed Fryt's February 2012 testimony to the Ways and Means Committee, in which he stated: "We are willing to put all base-broadeners on the table for a significantly simpler and reformed corporate tax code with a material lower tax rate. In that regard, if capital cost incentives, such as expensing or accelerated depreciation, are one of the things that must be put on the table, we will live with that, assuming of course, it enables a much lower rate." At the conference Fryt emphasized the importance of a 25 percent rate. "Thirty percent does not get us there," he said.

Dianne Dossin, chief tax officer at Ford, explained that because of large losses incurred during the recession, her company has not paid cash U.S. income taxes in years. But she said Ford was working through its tax attributes and would soon be sending checks to the treasury. She stressed that for Ford, a lower rate is "the single most important factor." Ford would give up the research credit and accelerated depreciation for a "significantly lower rate," she said.

Dossin said that although Ford understood that in the current fiscal climate, a lower corporate income tax rate would be possible only if it were accompanied by base broadening, there were limits to what would be acceptable. In particular, Dossin disapproved of the financial and compliance burdens of capitalizing what normally were ordinarily deductible expenses. This undoubtedly was a reference to the tax reform discussion draft released by former Senate Finance Committee Chair Max Baucus that would require capitalization of research and advertising expenses.

Dossin explained that international issues are not a priority for Ford. As she said in her July 2012 testimony before the Ways and Means Committee, "Ford does not have substantial foreign earnings and cash that have been taxed at very low foreign tax rates." She added that Ford believes corporate reform should include "some minimum level of U.S. tax when corporation shift income to tax haven countries."

Michael Reilly, vice president of taxation at Johnson & Johnson, said his company was research intensive. Unlike Ford, it is keenly interested in international issues. Reilly acknowledged that base broadening and anti-base-erosion rules had to be part of any realistic international tax reform plan. But he said that because the "devil is in the details," his company's support depends on specific rules in any proposal. Readers may recall that Reilly had been involved in the development of an "Option D" anti-base-erosion alternative to Camp's draft proposals of October 2011.

Jamie Spellings, vice president and general tax counsel at Exxon Mobil, stressed that capital expenditure was hugely important to his company. Because of hydraulic fracturing (fracking), the U.S. oil and gas industry is going through a renaissance. But to take full advantage of the new technology, Exxon Mobil is greatly increasing its expenditure on steel pipes and refineries, he said. In 2005 Exxon Mobil's capital expenditure was $17.7 billion. In 2013 it was $42.5 billion.

Given its capital intensity, it is hard to see how Exxon Mobil could support a revenue-neutral rate reform that provides less generous depreciation. And, Spellings pointed out, Exxon Mobil's views were consistent with the policy implications of traditional economic models that show that accelerated depreciation provides more bang for the buck than revenue-neutral rate cuts. That's because investment incentives like accelerated depreciation focus benefits on spending on new capital. Rate cuts reward old capital as well as new capital. Only benefits for new capital provide incentives for investment. Benefits for old capital are a windfall.

Panel moderator Drew Lyon, an economist at PricewaterhouseCooper LLP's Washington National Tax Services, pointed out that in economic circles this traditional view was being challenged by a new view that put lower corporate tax rates in a more favorable light vis-à-vis accelerated depreciation. This new line of reasoning emphasizes the fact that lower statutory rates are important incentives for cross-border investment in intangible assets and high-profit tangible assets. This issue has been discussed before.

Without getting into the pros and cons of the economic arguments, what's immediately important for readers to recognize are the political implications. The economic benefits of tax reform can be disputed, and capital-intensive industries that will be losers under revenue-neutral reform can, with authority, attack tax reform on economic policy grounds.

Move the Goal Posts

In a widely cited 2011 letter, the Joint Committee on Taxation estimated that a revenue-neutral reform package that repealed accelerated depreciation, section 174 expensing of research expenditures, the last-in, first-out method of accounting, and the section 199 manufacturing deduction would result in a 28 percent rate. Because it is not permanently extended under current law, repeal of the research credit – which would lower the rate by perhaps 0.75 percentage points more – was not included. On the other hand, the JCT estimate did not include any transition relief. About 70 percent of the revenue gain from base broadening in the estimate was from repeal of accelerated depreciation.

Because transition relief is routine in a major tax increase, and because there is near universal bipartisan support for research incentives, it is difficult to imagine a politically viable revenue-neutral reform achieving a rate less than 30 percent. And that is assuming the opposition of capital-intensive companies to repeal of accelerated depreciation can be overcome.

Given these sky-high political hurdles, it is not surprising that the discussion at the Tax Council Policy Institute symposium turned to unconventional solutions. One of the most popular was borrowed from Donald Marron of the Urban Institute. Starting from the premise that the U.S. corporate statutory rate had to be reduced, Marron speculated that with deficits expected to be under control for the next few years, Congress might simply waive the requirement of revenue neutrality.

Another oft-discussed possibility is that Congress might take into account the extra revenues generated by the economic growth resulting from corporate tax reform. Even if those revenues aren't part of an official JCT score, they could still be used as an excuse to ignore revenue neutrality.

Finally, the panelists acknowledged that increased VATs paid for lower corporate rates in many other countries. Fryt, citing a sense of the Senate resolution against a VAT that was approved 85 to 13, agreed with other panel members that a VAT was not a realistic possibility for the United States. Ased to comment on what might happen three decades from now, Reilly said the United States would probably adopt something like a VAT but use a different name for it.

Big Bucks

Given international tax competition and the near universal condemnation of the corporate tax as our worst tax, a lot of folks believe the levy will soon be extinct. But as shown in the figure, the government is depending on the IRS to collect an average of about $450 billion in corporate taxes per year over the next decade. Unless Camp's new plan can pull a rabbit out of a hat, and as long as Congress refuses to consider smarter alternatives, the United States will be left with no choice but to rely on the most anti-business and economically damaging tax.

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Obama Budget Plan to Target Overseas Corporate Tax Avoidance

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Tax Notes
Matthew R. Madara and Amy S. Elliott

President Obama's coming fiscal 2015 budget plan will propose stricter tax rules targeting multi-national companies to prevent tax avoidance and evasion, an administration official who requested anonymity said February 20.

Companies affected by the proposals include U.S. companies with overseas operations and foreign companies that operate in the United States. The proposed changes would target attempts by companies to use different countries' tax rules by engaging in transactions that are considered debt in one country and equity in another.

The changes would designate more income as being subject subpart F, which would prevent companies from avoiding taxation on some income and tighten rules for digital transactions used by some companies to reduce tax.

Obama's budget plan is expected to be released March 4.

While most of the tax proposals expected to be in the coming budget plan are carryovers from prior budgets, one proposal from Obama's fiscal 2014 budget that will not be carried over is a move to the chained consumer price index, White House spokesman Josh Earnest told reporters February 20.

The chained CPI produces lower inflation values than the traditional CPI by assuming that consumers buy cheaper goods in times of inflation. The fiscal 2014 budget plan proposed using the chained CPI to index tax code measures for inflation, which would have translated into lower thresholds for various income brackets, increasing tax collection on the margin. Treasury projected in its green book explanation of the budget plan's revenue measures that the chained CPI proposal would have resulted in $100 billion of additional revenue over 10 years. (Prior coverage: *Tax Notes*, Apr. 15, 2013, p. 225.)

Obama included a chained CPI in his fiscal 2014 plan as part of "a unique budget offering to reflect the circumstances," Earnest said, explaining that Obama was attempting to work with Republicans, some of whom last year had expressed willingness to consider revenue-raising tax changes in exchange for entitlement reforms.

The fiscal 2015 budget "is really a return to regular order," Earnest said. Traditionally, White House budget proposals, in both Democratic and Republican administrations, are reflective of "how the president, in an ideal world, believes that the government should be funded," he said.

Business Tax Reform

The president's budget is likely to repeat the business tax reform plan that he originally laid out in a framework released in February 2012 and that he has continued to promote since then in speeches such as his State of the Union address last month. That plan features a reduction in the top corporate income tax rate from 35 percent to 28 percent (with the effective tax rate on manufacturing topping out at 25 percent), financed primarily by temporary timing changes like ending accelerated depreciation (estimated to generate $724 billion over 10 years) and repealing the last-in, first-out method of accounting (estimated to generate $87 billion over 10 years). (Prior coverage: *Tax Notes*, Feb. 3, 2014, p. 453.)

Speaking February 20 at the Tax Council Policy Institute's Tax Policy and Practice Symposium in Washington, Jason Furman, chair of the White House Council of Economic Advisers, noted that while there's general agreement that business tax reform should be revenue neutral in the medium and long term, Obama wants to use one-time revenue generated from transitioning to a new business tax system to invest in U.S. infrastructure. The influx of revenue would primarily go toward long-needed maintenance on highways, bridges, transit systems, and airports, he explained.

"The president in his State of the Union proposed to take this revenue and put it into a one-time investment in infrastructure, so you're creating jobs and enhancing growth both through tax reform and through business investment," Furman said. "This is also more fiscally responsible, because you're not paying for permanent tax rate changes with a temporary revenue source."

While Furman focused much of his talk on how a tax system shouldn't affect business decisions, he said an exception to this principle of neutrality should be made when tax preferences have a broader, economywide benefit. He said the section 41 research credit, the section 45 production credit, and the section 199 domestic production activities deduction are three examples of worthwhile tax incentives.

"The social returns to R&D investment are roughly twice the private returns that an individual company can capture. That means individual companies will not have the motivation to invest as much as our society would benefit from R&D, and that gives us a motivation for subsidizing R&D," Furman said, adding that the credit should be reformed, increased, and made permanent.

Obama's reform framework calls for making the section 45 production tax credit permanent and refundable "to encourage investments in renewable energy, like wind and solar, that again – when you take into account climate change – have benefits in excess of what's captured by any individual company," Furman said.

The section 199 manufacturing deduction has "considerable spillovers to other parts of the economy – to investment and innovation – and as a result are justified in being reformed and continued," Furman said.

Furman said provisions in the tax code that distort the benefits of debt-financed investment – namely allowing corporations to currently deduct as an ordinary business expense the amount of interest they pay on their debts – should be reconsidered.

Acknowledging that business income has undergone a massive shift out of Corporations and into partnerships and S corporations in recent decades, Furman suggested that the tax treatment of large businesses organized as passthroughs be rethought.

"Establishing greater parity between large corporations and their large noncorporate counterparts should be considered as a way to help improve equity, reduce distortions in how businesses organize themselves, and finance lower tax rates," Furman said. "It is, of course, essential that any changes in this area should not affect small businesses, and in fact, tax reform can and should simplify and cut taxes for small business."

http://services.taxanalysts.com/taxbase/tnpdf2014.nsf/PDFs/TN1420224.pdf/$file/TN1420224.pdf

NEC Director Skeptical of Camp Reform Priorities

February 21, 2014
Tax Notes Today
Amy Elliott and Luca Gattoni-Celli

National Economic Council Director Gene Sperling expressed skepticism February 20 that the upcoming tax reform proposal of House Ways and Means Committee Chair Dave Camp, R-Mich., can be reconciled with President Obama's revenue priorities, notably the president's plan to use short-term savings from corporate tax reform to invest in infrastructure.

Republicans, particularly the House Tea Party caucus, have not shown a willingness to work in good faith on major issues and compromise, Sperling said at a briefing hosted by Politico. But he added that "we'll take a serious look" at Camp's proposal, as well as at any other plan Congress produces. Camp is planning to release a comprehensive tax reform discussion draft the week of February 24. (Prior coverage 2014 TNT 34-1: News Stories.)

Sperling discussed the administration's preference for corporate tax reform that would curb tax incentives and use those savings to lower the corporate rate. The new tax system would be revenue neutral over the long term, but would initially produce a revenue surplus to be invested in infrastructure with the intention of boosting the economy, he said. (Prior coverage 2013 TNT 147-3: News Stories.)

Sperling said the administration wants tax policies that encourage domestic capital expenditures, such as a minimum tax on foreign earnings that American multinationals are now holding offshore, and a more permanent research credit.

Jason Furman, chair of the White House Council of Economic Advisers, made similar comments about the president's tax priorities during his February 20 appearance at the Tax Council Policy Institute's annual Tax Policy and Practice Symposium in Washington.

While there's general agreement that business tax reform should be revenue neutral in the medium and long term, President Obama wants to use one-time revenue generated from transitioning to a new business tax system to invest in America's infrastructure, Furman said. The influx of revenue would primarily go toward long-needed maintenance on highways, bridges, transit systems, and airports, he explained.

"The president in his State of the Union proposed to take this revenue and put it into a one-time investment in infrastructure, so you're creating jobs and enhancing growth both through tax reform and through business investment," Furman said. "This is also more fiscally responsible, because you're not paying for permanent tax rate changes with a temporary revenue source." (Prior coverage 2014 TNT 19-1: News Stories.)

Obama's vision for business tax reform, first laid out in a framework released February 2012 2012 TNT 36-18: Treasury Reports, features a reduction in the top corporate income tax rate from 35 percent to

28 percent (with the effective tax rate on manufacturing topping out at 25 percent), financed primarily by temporary timing changes like ending accelerated depreciation (estimated to generate $724 billion over 10 years) and repealing the last-in, first-out method of accounting (estimated to generate $87 billion over 10 years).

"There are a lot of difficult and controversial issues in tax reform, but I believe that if we started from the basic economics and started by asking the . . . basic question of what it would take for taxes to not matter between our decisions -- to make the tax system more neutral -- I think that's the right and most productive way to have a conversation about how to move forward on reforming our business tax code," he said.

While Furman focused much of his talk on how a tax system shouldn't affect business decisions -- how it shouldn't tilt the playing field in any particular direction -- he said an exception to this principle of neutrality should be made when tax preferences have a broader, economywide benefit. He said the section 41 research and development credit, the section 45 production tax credit, and the section 199 domestic production activities deduction are three examples of worthwhile tax incentives.

"The social returns to R&D investment are roughly twice the private returns that an individual company can capture. That means individual companies will not have the motivation to invest as much as our society would benefit from R&D, and that gives us a motivation for subsidizing R&D," Furman said, adding that the credit should be reformed, increased, and made permanent.

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Acknowledging that business income has undergone a massive shift out of C corporations and into partnerships and S corporations in recent decades, Furman suggested that the tax treatment of large businesses organized as passthroughs should be rethought.

"Establishing greater parity between large corporations and their large noncorporate counterparts should be considered as a way to help improve equity, reduce distortions in how businesses organize themselves, and finance lower tax rates," he said. "It is, of course, essential that any changes in this area should not affect small businesses, and in fact tax reform can and should simplify and cut taxes for small businesses."

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BEPS Country-by-Country Reporting Asks for Too Much Specificity, Stack Says

February 21, 2014
Tax Notes Today
Amy Elliott

The OECD's draft country-by-country reporting standards call for too much information from multinationals, said Robert Stack, Treasury deputy assistant secretary (international tax affairs), on February 20. The standards are part of the OECD's base erosion and profit-shifting project.

"My own instinct is that the template that came out is probably too many columns for what the risk assessment needs to be," Stack said, adding that tax authorities are just trying to get at a few high-level data points, namely income, taxes, and revenues, and maybe the number of employees and the property, plant, and equipment in a particular country.

Speaking at the Tax Council Policy Institute's annual Tax Policy and Practice Symposium in Washington, Stack said the second big issue with the reporting standards is how the information gets transmitted. "We tend to favor the government-to-government exchange for reasons of confidentiality," Stack said.

Philip D. Morrison of Deloitte Tax LLP asked whether there's a chance Congress would pass a law adopting a country-by-country template that would be shared in any way other than government to government. Stack said that whether Congress even needs to get involved will depend on what's in the template.

Morrison also asked whether Stack thought tax authorities would really be satisfied with overall, high-level numbers that don't drill down to individual transactions, and whether they would use the information for inappropriate purposes at the audit level.

"There is that risk," Stack said, adding that safeguards could be implemented so that tax authorities that stray from the template rules would be subject to consequences.

Arm's-Length Standard

Stack said applying the arm's-length standard can sometimes lead to results that "we [at Treasury] don't like as a policy matter."
He said that in order to prevent disproportionate profit from showing up in a no-tax jurisdiction where few people are based or little economic activity is taking place, tax authorities may need a tool that lets them step in and possibly make adjustments in open years when the results of the application of the arm's-length standard over time are out of whack with the bargain struck on day one.

"The beauty of that approach is it's a special measure" designed to fix the BEPS problem that leaves "the core rules of the arm's-length standard intact," Stack said.

He touched on the likelihood that the mutual agreement procedures will be amended to include mandatory arbitration rights as part of the BEPS project. He suggested that the idea of requiring tax administrators to grant those rights as a condition of signing on to the BEPS action plan is still in its infancy. "We'll have to see where that goes," Stack said, adding that in some quarters, there is enormous resistance to arbitration.

Revised BEPS Timeline

On the same day, the OECD released a revised BEPS project timeline 2014 TNT 35-26: News Releases with two major deadlines for comments -- on the discussion drafts dealing with the tax challenges of the digital economy and hybrid mismatch arrangements -- coming up in April and May, respectively. Morrison said the biggest takeaway from the revised timeline "is that there is generally only three weeks for public comment on most of the work product that will be coming out."

William Morris of General Electric stressed that practitioners should be really engaged in the BEPS project right now given its incredibly short timelines. "This may seem like something that will happen a very long way away and you may have some confidence that at least in terms of legislation you'd be able to . . . do something," but some countries have already jumped the gun on efforts to prevent BEPS, he warned.

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Dividend Equivalent Regs Could Negatively Affect Convertible Bonds

February 20, 2014
Tax Notes Today
William Davis

Finalization of the proposed section 871(m) dividend equivalent withholding regs (REG-120282-10 2013 TNT 234-10: IRS Proposed Regulations) will cause a bizarre state of affairs for the convertible bond market because the rules will greatly affect the bonds that are in the money, Erika W. Nijenhuis of Cleary Gottlieb Steen & Hamilton LLP said February 19.

Under the proposed section 871(m) regulations, instruments having a delta over 0.7 will be subject to withholding on dividend equivalent payments. The rule is directed at taxpayers that use total return swaps rather than U.S. stock to get a tax-advantaged result on dividends. If a taxpayer used a total return swap under the old rules, then it could switch the source to foreign and avoid withholding. Treasury issued the new proposed regs, along with related final regs (T.D. 9648 2013 TNT 234-9: IRS Final Regulations), on December 4. (Prior coverage 2013 TNT 234-1: News Stories.)

The concern is that convertible bonds acquired in the secondary market are in the money, meaning that the call has value and has payments coming on or after January 1, 2016, so it will be subject to withholding, Nijenhuis said at the Tax Council Policy Institute's Tax Policy and Practice Symposium in Washington.

Benjamin Berinstein of JPMorgan Chase & Co. said it doesn't make sense to apply the proposed regs to convertibles because the investors are often hedged. "We are hoping for a better answer in the convertible market . . . [than] to have investors not invest in the convertible market because they are really trying to avoid withholding tax," he said.

Nijenhuis added, "People are trying to convince the government that because convertible bonds are really capital-raising instruments issued by real operating companies that they ought to be carved out from the rules."

According to Nijenhuis, government officials believe that there are circumstances in which investors buy convertible bonds that have traded up significantly in the market as a way to gain exposure in the equity market without being exposed to the equity withholding taxes.

Berinstein acknowledged those situations but said he believes that most convertibles that are deep in the money are held by hedge funds. Those hedge funds are not trying to play long exposure in the stock, but are long and short in the stock and are paying dividends on the other end of the hedge, he said, adding that he does not believe that much of the market is using convertibles to avoid withholding on dividends, even when they go deep in the money.

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Tax Directors, CFOs Call for Max Corporate Tax Rate of 25 Percent

February 20, 2014
Tax Notes Today
Amy Elliott

Corporate tax directors and CFOs of some of America's largest companies put in one more plug February 19 for their tax reform wish list, topped by a maximum corporate rate of 25 percent, 100 percent deductions for expenses allocable to foreign income, and a repatriation holiday.

The push comes days before House Ways and Means Committee Chair Dave Camp, R-Mich., is expected to release a comprehensive plan to overhaul both the individual and the corporate sides of the tax code. (Related coverage 2014 TNT 34-1: News Stories.)

"We believe the ideal corporate tax system would include a 25 percent rate or lower along with strong capital investment incentives such as 100 percent expensing," Michael D. Fryt of FedEx Corp. said at the Tax Council Policy Institute's Tax Policy and Practice Symposium in Washington.

Fryt added that if Congress insists that tax reform be revenue neutral, a slowdown in capital cost recovery will be necessary to pay for the rate reduction. "But if this manner of tax reform does not occur for whatever reason -- political or otherwise -- and 25 percent is not in the cards, we would oppose further slowdowns in capital cost recovery, and we believe it ought to be 100 percent expensing to begin with," he said.

Diane Dossin of Ford Motor Co. said that while there is a lot that Ford is willing to give up to achieve a significantly lower tax rate, requiring capitalization of many items that would normally be eligible for ordinary business deductions would go too far.

"In the end, it's going to be devil in the details. There's some combination of things that is unaffordable, because we would not be earning enough cash flow from the business to pay our taxes," Dossin said. "To us, timing items make a huge difference."

But Dossin seemed optimistic that Congress wouldn't sign on to such drastic base broadening. "If the system you end up with does not work for Ford Motor Company in the United States, then is that what they want?" she asked. "I don't believe that that would be an acceptable outcome in this country."

Martina Hund-Mejean of MasterCard, Steven Sterin of Celanese Corp., and J. Kevin Willis of Ashland all expressed concern over their firms' accumulation of foreign profits and suggested reform of the current tax on repatriated earnings.

"It's a huge disadvantage to be a U.S.-based company and having this cash sitting all around the world, and when you bring it back suddenly you get immediately hit by a tax," Hund-Mejean said. "That is a direct competition, and it's a direct cost to us."

Sterin agreed that the U.S. corporate tax system should be reformed to allow the free movement of profits from one jurisdiction to another. "We've got to be much more competitive regardless of the domicile of companies in allowing for continued and further investment of profit," he said.

Willis said that he attends a monthly meeting where all that's discussed is trapped cash. He said it's "a fairly significant waste of time" to have to think about how to get foreign profits back into the United States for the least possible cost.

Once Camp's plan comes out, it will be clearer whether their wish list is achievable or simply a pipe dream, but either way the business community seems to be in agreement that something has to be done to reduce the rate and simplify the code.

"Whatever happens, we think it's very dangerous for us to maintain the status quo. We simply cannot allow our dysfunctional tax code to continue being such a burden on our businesses, on our people, and on our entire economy," Fryt said.

http://services.taxanalysts.com/taxbase/tnt3.nsf/dockey/C19D1C6A9DC8F9FF85257C85000ACB3F?OpenDocument&highlight=0,tax+council

POLITICO
MORNING TAX
An early filing of the day's tax news

Camp plans tax reform discussion paper – Groups ready the research to tout their favorite slice of the tax code

February 20, 2014
Politico
Lauren French

CAMP PLANS TAX REFORM DISCUSSION PAPER. From Kelsey Snell, Rachael Bade and your Morning Tax-er, "Defying skepticism from Republican leaders, House Ways and Means Committee Chairman Dave Camp plans to release a major plan to rewrite the tax code next week, according to an email obtained by POLITICO. The Michigan Republican wrote his party's tax panel members on Wednesday to make it official: He is moving forward with a proposal, the product of several years' work, despite the reluctance of House leaders to offer their support.

"We … know that many in Washington are scared by the prospects of tax reform; they don't want to look special interests in the eye and say the game is up. Well, it is. We simply cannot afford the business-as-usual mentality that keeps Washington comfortable, but complacent," Camp told Republican panel members in an email.

For months, House Republican leaders have fretted over Camp's looming tax legislation, worried it would force members to take positions on cutting lucrative tax benefits for businesses and middle-class voters — awful timing with 2014 elections on the horizon… Camp isn't expected to mark up the bill until Republican leaders ensure enough of the caucus and the business community will stand firmly behind it. But aides and lobbyists said Camp will be responsible for convincing his fellow Republicans to get on board if he wants to move ahead with consideration in the committee." http://politi.co/1fjdDTd

WHAT WE'RE HEARING. The bill is nearly finalized after the Joint Committee on Taxation offered Camp a less-than-desirable score last week, causing the chairman to do some last minute workarounds, a number of lobbyists close to the issue told Morning Tax. Deprecation will likely be lengthened in the discussion draft and while provisions for interest deduction remains, the credit for research and development is potentially gone — if not gone, definitely curbed. The biggest news seems to be on the rate. Camp has said his goal was to cut top individual and corporate tax rates to 25 percent — a tall order — but it seems the final rate will be between the 28-to 30 percent range. "Have heard that the individual rate is likely to remain above 30 [percent], and the differential between corp[orate] and individual could also generate some response," a GOP lobbyist close with Camp's office told Morning Tax.

FIRST OF MANY… The National Association of Federal Credit Unions will release a study this morning touting the economic benefits of their tax exemption — a move that is guaranteed to be the first of many trade groups staking their claim in the days before Camp drops his discussion draft. The group says stripping the exemption from the code would cost the government $15 billion in lost tax revenue. Check out the paper here: http://bit.ly/1crSYv9

HAPPY THURSDAY! We had one day of wonderful weather before today's slight chance of rain. It's like D.C. was just teasing us….Send tax gossip, scoops or actual tax advice to lfrench@politico.com or @LaurenNFrench on Twitter. As always, please follow @POLITICOPro and @Morning_Tax.

HOUSE & SENATE: Gone, baby, gone

HAPPY BIRTHDAY to Senate Minority Leader Mitch McConnell.

ON THE AGENDA: The **15th Annual Tax Policy & Practice Symposium** continues with a keynote address from the Chairman of the White House Council of Economic Advisors Jason Furman and panel discussions featuring Ray Beeman, the tax counsel and special advisor for Tax Reform for the Ways and Means Republicans and Mike Williams, a director of business international tax at HM Treasury. Festivities begin at 7:30 a.m. at the Ritz-Carlton. POLITICO's Chief Economic Correspondent Ben White will interview Director of the National Economic Council Gene Sperling at 8:30 a.m. on economic policy and the White House's growth priorities. The event is at the Mayflower Hotel.

CARL LEVIN'S NEXT TARGET. The Swiss bank debate will heat up next week when Democratic Sen. Carl Levin's Permanent Subcommittee on Investigations revisits their search for tax evaders next Wednesday. Past hearings held by Levin, who is retiring this year, helped bring to light tax evasion by UBS, Apple and Microsoft. Levin, along with co-chair Republican Sen. John McCain, is known for releasing bible-length reports on hot topics like Apple's tax schemes. A congressional aide said there will be a "substantially weighty report" to go along with the hearing. As is typical, Levin and his staff will brief the media and release the details on Tuesday, the day before the hearing.

The hearing is set to focus on "the status of efforts to hold Swiss banks and their U.S. clients accountable for unpaid taxes on billions of dollars in hidden assets," said a statement by the committee. The Justice Department is currently probing 14 major Swiss financial institutions — including Credit Suisse, Julius Baer and the Swiss arm of HSBC — for shielding U.S. tax cheats.

Caplin & Drysdale's Scott Michel, a long-time tax lawyer who advises citizens and banks involved in the program, said he expected a "robust discussion of the current status of enforcement. "The investigation that Sen. Levin implemented (in years past) were a key factor in ramping up the enforcement efforts here — I think it played a huge role and ultimately led in part to the adoption of FATCA — which changed the world," Michel said.

CAMP DISMISSES NYT EDITORIAL AS NOT 'SHOCKING' The New York Times offered strong support yesterday for the proposed rule change for 501(c)4s from the IRS and Treasury — and just hours later, Ways and Means Chairman Dave Camp called the paper's editorial board out for bad judgment.

"Given that this is mostly conservative groups we are talking about, it isn't shocking that The New York Times is joining the Obama Administration in attempting to silence these non-profits. While the Times suggests all exempt organizations should be treated equally, the regulations they endorse conveniently leave liberal labor union leaders free to engage in whatever political activity they want. Over the past few years, the IRS has systematically targeted conservative groups, threatened conservative donors with higher taxes and leaked confidential taxpayer information. This has already had a chilling effect in the conservative community," Camp said in a statement.

Though it is important to note that although Camp blasted the Treasury proposal for exempting unions, the draft did say it would consider changes to union and trade groups — and the Times editorial endorsed extending the proposed rules to those groups.

LIGHTS, CAMERA, ACTION ON CALIFORNIA FILM BILL. California assemblymen Mike Gatto and Raul Bocanegra have introduced a bill to expand the state's film tax and TV credit program — an effort to compete with burgeoning tax programs across the country. The proposal would lift the budget cap on films, allow new one-hour television shows to apply and extend the program for five more years. The two Democratic lawmakers didn't finalize a topline budget proposal for the bill but do plan to work with their counterparts throughout the year on how much California can afford to dole out.

"These mega projects really take a long time to film and really employ a ton of people. We've taken some steps to attract big television production to the state," Gatto said. "Those are great generators of revenue year in and year out."

In the last two years, only one feature film has shot exclusively in California, out of a total 41 major motion pictures, the assemblymen contend. With over 40 other states offering competitive tax credits to draw in films and revenue, these lawmakers argue that a $100 million budget isn't cutting it as New York offers the highest credits, with $420 million. Florida is second with $296 million through 2015.

STATS SHOCKER: MAJORITY SAY IRS INTERACTIONS ARE POSITIVE. Despite a rocky year, the IRS Oversight Board found that 78 percent of taxpayers were "satisfied with their personal interaction" with the agency in 2013. But that doesn't mean taxpayers want to pay for the experience. Only 59 percent of respondents said the IRS should receive additional funding to help fund taxpayer assistance programs — down 8 percentage points from last year. That fact makes this report bittersweet news for the agency, which is aggressively trying to convince Congress to pony up more cash, as it hands Republicans a great talking point against boosting the agency's budget. The good news is the high number of respondents who said they had a favorable interaction with the IRS. This shows the tea party targeting scandal may finally be slipping from the general's public memory. The study: http://bit.ly/1e8NDFl

QUICK LINKS:

-- Colorado Gov. John Hickenlooper estimates the state's decision to legalize marijuana use will bring in $134 million in tax and fee revenue during the next fiscal year. http://bit.ly/OcrvoO

-- The Denver Post's Andy Vuong reports that "A Denver judge has dealt a blow to Colorado's bid to tax online purchases, granting a request to temporarily block a 2010 law intended to encourage big e-tailers, like Amazon, to start collecting the state's sales tax." http://bit.ly/1kZR5KV

DID YOU KNOW? Swordfish will heat their eyes to improve their hunting capabilities.

http://www.politico.com/morningtax/0214/morningtax13069.html

POLITICO
MORNING TAX
An early filing of the day's tax news

Celebrities lend star power to financial transaction tax debate – New York Times editorial board sides with IRS

February 19, 2014
Politico
Lauren French

HARRY POTTER, "WALKING DEAD" CELEBS LEND STAR POWER TO FINANCIAL TRANSACTION TAX DEBATE. During a meeting between finance ministers in Paris today, French and German leaders are set to make an aggressive push for the European Union to adopt a financial transaction tax — and a set of European stars are hoping to influence leaders to adopt the tax on financial products that could raise an estimated 35 billion euros.

The video by Harry Potter director David Yates released ahead of the meeting features celebs in a satirical broadcast set in 2024. The actors are shaming the UK for blocking adoption of the financial transaction tax within the country after other EU nations move forward with the measure. Anchor Andrew Lincoln, of "The Walking Dead," interviews actors Heike Makatsch, Javier Cámara and Clémence Poésy, who play bankers from France, Germany and Spain, about the impact of the tax. As the bankers gloat about tackling global poverty and climate change, actor Bill Nighy, who plays a banker from Britain, awkwardly stutters that the country missed out by not implementing the tax.

The video is sponsored by Oxfam, a group whose primary mission is to end worldwide poverty, and is a strong advocate of FTTs. For its part, the UK has challenged the tax in the European Court of Justice, arguing countries that don't implement the tax will nonetheless be subject to some of its effects. The video: http://bit.ly/1jyvlSM

NEW YORK TIMES EDITORIAL BOARD SIDES WITH IRS. The controversial proposed rule change governing what kind of political actions — and potentially how much politicking — 501(c)4 groups can engage in earned an outspoken ally today. The New York Times editorial board comes down against both liberal and conservative critics who question the proposed regulations from the Treasury and IRS saying the Obama administration should expedite its process so the nonprofits would have to follow the new rules by the midterm elections.

"The best thing the I.R.S. can do is to ignore both sides and proceed swiftly ahead, making its proposed rules even stronger to squeeze the influence of money out of politics… If anything, the I.R.S. rules, which should be sped up to have some effect on the November elections, ought to be stronger. The same prohibitions against political activity should also apply to business leagues like chambers of commerce, and to unions, both of which are organized under different sections of the tax code that allow concealment of donors. The rules should be far more explicit that no amount of political activity is acceptable for any group that refuses to disclose contributors." http://nyti.ms/1htYphu

HAPPY WEDNESDAY. And also happy National Chocolate Mint Day, which is making Morning Tax crave some Thin Mints. Send tax gossip, scoops or actual tax advice to lfrench@politico.com or @LaurenNFrench on Twitter. As always, please follow @POLITICOPro and @Morning_Tax.

HOUSE & SENATE: Out

MUST-WATCH TV. POLITICO insiders Alex Burns, Anna Palmer, Manu Raju and Jake Sherman take you behind-the-scenes of what's driving the day's headlines every Tuesday — Thursday morning. Get the scoop on what Washington is thinking and how it affects the Beltway and beyond at www.politico.com/drivingtheday.

A message from POWERJobs: Jobs on our radar this week: Tax Manager at Deloitte, Policy Analyst at SAIC and Senior Manager of Web Services Public Policy at Amazon. Interested? Apply to these jobs and more at www.POWERJobs.com; finally, a career site made for YOU!

ON THE AGENDA: The **15th Annual Tax Policy & Practice Symposium** kicks off today with former House Ways and Means Chairman Bill Archer giving the keynote address at 8:20 a.m. at the Ritz-Carlton. Other speakers include PepsiCo's Senior Vice President of Tax Sarah McGill, Charles Alsdorf, the director of Capital Efficiency Services at Deloitte and former Ways and Means Chairman Bill Thomas. Also of note, Democratic Chief of Staff on the Ways and Means Council Janice Mays will be presented with the 2014 Pillar of Award.

ANOTHER YEAR, ANOTHER SEASON OF TAX FRAUD. Reuters' Patrick Temple-West reports, "Tax professionals predict another season of similar scams despite government efforts to curb them. In fiscal year 2013 which ended Sept. 30, a total of 438 individuals were sentenced to an average 38 months for identity theft tax refund fraud, the IRS said in January. This compared with 223 individuals sentenced to an average 48 months in fiscal 2012….Scammers typically make their bogus filings early in tax season before targeted taxpayers file their returns, industry professionals said. TIGTA found they submit multiple filings from the same address, sometimes from abroad." http://reut.rs/1m7HjVe

WHAT PROS ARE READING: Rachael Bade has a second report on Scott Walker's plan to cut income taxes in Wisconsin. "He's pondering elimination of the income tax altogether, delegating his deputies to consult with businesses around the Badger State about the possibility of replacing it with a consumption tax. He'll join those conversations in person soon," she writes. http://politico.pro/1h3T63A

ICYMI: Our Brian Faler dove into the Congressional Budget Office report on a proposed minimum wage increase that found that a hike could reduce employment by 500,000 workers while lifting 900,000 out of poverty. http://politi.co/MblK8Y

MEDICAL DEVICE TAX COSTS 33,000 JOBS. The medical device-makers' trade group estimates that Obamacare's 2.3 percent medical device tax has cost the industry 33,000 jobs so far. Based on a survey of its members, AdvaMed reports that companies have seen "employment reductions" of 14,000 people and have chosen not to hire 19,000 workers because of the tax that took effect last year. AdvaMed's top priority has been to repeal the tax, and it has enlisted bipartisan support in both chambers on Capitol Hill. The CBO estimates the tax will bring in $29 billion over a decade, however, and lawmakers have yet to put forward a proposal for how to make up the difference. The calculation of 33,000 jobs lost translates to a loss of indirect employment four times as great — roughly 132,000 positions, according to the report. And about 30 percent of the 38 companies responding to the survey said that they had cut research and development investment because of the tax.

LOBBY WATCH: The Printing Industries of America, Inc. has brought on Franklin Square Group, LLC to lobby on tax policy issues. 21st Century Fox hired the Maryland-based D&D Strategies to work on the

Reauthorization of Satellite Home Viewer Act. Louisiana's Sabiston Consultants, LLC will work on behalf of Brown-Taylor Development to lobby for historic tax credit qualifications. Dell Inc. has hired Ogilvy Government Relations to work on general tax issues. Merck & Co., Inc. brought on Crossroads Strategies, LLC to work on both Affordable Care Act and tax policy.

FOR DESSERT: A six-year-old's letter to the IRS about his tax documents. http://bit.ly/1jEx5tQ

QUICK LINKS:

-- David Craig, the Harford County executive running in the Republican primary for Maryland's governorship, outlined a tax cut proposal that would decrease the state's individual income tax to 4.25 percent and increase the personal tax exemption to $5,000. More: http://wapo.st/1ff7V4M

-- Brookings Institution senior fellow Robert Pozen argues that the best method to reform the tax code would be to focus on foreign corporate profits. "The U.S. Treasury receives little revenue from foreign profits kept abroad, which a company may not use to build U.S. facilities, acquire U.S. technology or pay U.S. dividends," he writes. http://on.wsj.com/Mb8IIB

-- If Congress can't cobble together a tax extenders package, the Wall Street Journal reports that the lack of accelerated deprecation bonuses could cause cash flow issues for businesses. http://on.wsj.com/1ja0Pza

-- Americans for Tax Reform's Patrick Gleason delves into the tax policy of Republican-controlled states and argues that they are beating their Democratic counterparts in tax competiveness. http://onforb.es/1htCoPX

DID YOU KNOW? There are whales alive today that were born before Herman Melville penned "Moby Dick."

http://www.politico.com/morningtax/0214/morningtax13055.html

Mays Receives Tax Council Policy Institute Award

February 19, 2014
Way and Means Committee Democrats

WASHINGTON – Ways and Means Committee Ranking Member Sander Levin (D-MI) today released the following statement on Janice Mays, Ways and Means Committee Chief Counsel, receiving the Tax Council Policy Institute's 2014 Pillar of Excellence award. The 2014 award is given based on Janice's "extraordinary dedication and contribution to the field of tax law and policy." Janice has served on the Ways and Means Committee staff since 1975 – under five different Democratic chairmen.

"This award is a well-deserved tribute to Janice's dedication to tax policy and her exhaustive work on behalf of Congress. What makes it all the more special is that she is the first woman to win this award, a reminder to all of us that she are not just a highly valued member of our team, but a continued trailblazer.

"Everyone at the Committee on Ways and Means, Democrat or Republican, knows and respects her knowledge of tax policy. Janice's work on the Tax Reform Act of 1986 is legendary. But even more important is her kindness, her willingness to share your knowledge with others no matter their background, and her ability to put everyone you encounter at ease, no matter the topic. Janice has been dedicated to the Committee on Ways and Means and the House of Representatives for 39 years now, and all the Members appreciate her dedication.

"I offer her my sincere congratulations on this outstanding achievement. I look forward to working together for years to come."

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http://democrats.waysandmeans.house.gov/press-release/mays-receives-tax-council-policy-institute-award