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Questions and Answers

Questions

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Questions and Answers

MR. HYDE: We'll take 10 minutes for questions. For the purpose of the transcript, I would appreciate you giving your name. Also, please indicate to which member of the panel your question is directed. I would hope, however, that other panel members will feel free to offer comments with respect to any questions raised.

I will start off with one question for Arthur Scace. What is the response of the business sector to the utilization of the Foreign Investment Review Act? I encountered one specific incident in which a client in the computer service industry wanted to establish a branch in Toronto to better service one of its customers, a Canadian subsidiary of a multinational corporation. We consulted Canadian counsel which happened to be Arthur's firm. Counsel concluded that Canada was not interested in pursuing new investments in the computer industry, and indicated that we should direct our attention to another alternative.

Do you have any comment regarding that illustration?

MR. SCACE: I'm sorry, I cannot comment.

FRED KIDDER: I have a question for Mr. Patrick. Would you care to comment on the United States' concept of taxation, namely, worldwide taxing versus the selective taxing of certain countries? And, should the United States allow a taxpayer to deduct some foreign taxes and credit others?

MR. PATRICK: I would be pleased to comment. It seems to me that one should comment on this question in the abstract because it was posed theoretically. The idea was in the blueprints for tax reform prepared in 1975 and 1976 for a taxation system implemented in various intermediate stages. At that point, the question arose as to determining an appropriate tax structure for the taxation of individuals who were citizens, although not residents, of the United States. There seemed to be a virtually uniform concensus among the taxpayers and the Treasury Department Representatives that the imposition of taxes should be based on a criteria other than residency within the country.

The blueprints promulgated in 1976 by the Treasury Department contain that theoretical decision. I think that there are numerous reasons for not imposing taxes on persons who are not jurisdictional residents. One problem, which has been inherent in U.S. laws, is a lack of clear policy on the taxation for residents and nonresidents.

I have always thought that the sharpening of those definitions might make it easier to move for income tax exclusion of nonresidents. There had been a movement for a substantial exclusion of U.S. citizens residing abroad. That political perception, in the 1950's and again in 1962, led to the increasing imposition of a tax on nonresidents abroad. The need for

the first set of U.S. restrictions may be demonstrated by the case of the highly paid entertainer who is publicly visible in the United States, but who also earns large sums of money offshore.

There are several bills pending in Congress. One growing trend supports relaxing or changing some of the rules abroad. This reflects a change from the imposition of taxes on overseas activities.

There seems to be a strong sentiment that the legislature must consider something like a $50,000 exclusion. So the limitations, I think, are directed toward the practical problems which occur when moving from a system that has traditionally taxed U.S. citizens' income when residing abroad to total exemptions. This transition between taxing policies probably could not occur at one time. I think, however, that there is a growing trend toward enacting such legislation.

Having lived abroad myself, I can say that expatriated Americans were doing quite well in the 1950's, in many instances better than their domestic counterparts. Objectively, I don't think that this description of the disparate standards of living is as accurate today.

Under today's system of double taxation for expatriates, it is unlikely that the taxpayer is sufficiently well acquainted with the two tax structures to complete his return without the assistance of outside consultants, or his company's accounting firms. This is a very serious problem for expatriates. How do you coordinate your returns and get your relief?

MR. KIDDER: Another question is whether companies could take deductions and credits, perhaps on a country-by-country basis?

MR. PATRICK: I don't have a firm opinion on that issue. It is ironic, as I understand the situation, that because some industries have been functioning in different areas they are subject to multiple taxes. In this country there hasn't been much objection to some taxes having been recently ruled noncreditable. There is an interplay which exists. I don't have a fixed view on which approach makes more sense.

From a comparative law perspective, I understand that the Canadian budget has a type of tax relief provision for Canadians who, while still residents of Canada, are overseas for at least six months. There is a proposal for $50,000 in relief or half of the salary for the year. I heard yesterday that it is in the budget that's been submitted.

MR. HYDE: Are there any further comments on that issue?

HENRY KING: I have a three part question for Mr. Scace. First, the possible passage of these proposed amendments; second, penalties on these performance reviews, and what happens if one doesn't meet the established standards; and third, whether in your view of proposed takeovers, the resulting publicity will change things significantly if the proposal passes?

MR. SCACE: As far as passage is concerned, you have to remember that for the first time in many years we have a majority government in Canada. As they are free to do whatever they want, I think that if the proposal were included in a throne speech, the odds are great that it

would pass. It seems fair to say that over the past 15 years the government has been very receptive to concrete credit systems in the taxation of the banking industry. A number of these bills however have been held up even though the points have been valid.

Second, there is no indication as to what standards and penalties will be applied. I think, as I indicated, that it is very difficult, using the example of Exxon, to determine how a bureaucrat can make a decision that Exxon has breached these rules.

It seems that every Canadian subsidiary in Canada breaches most of the rules. There is not enough priority given to research and development. One client of ours went public, and $125 million was paid to it for the entire U.S. dividend to its U.S. parent. It would seem to me that the most logical step would be to continue with the undertaking system and progress gradually, requesting additional research and development. Ultimately, the multinational would probably comply.

In response to the third question, I simply don't know. The publicity was in the form of a small announcement, so no detail is available and it's hard to be certain. Because there aren't many public offerings, a takeover would probably be noticed. I don't think that a public offering, where timing is such an important factor, is consistent with the comparatively slow FIRA process. Therefore, it seems obvious that publicity would not be appropriate in that situation; in the private arena, though, the publicity isn't likely to be a factor.

If your client comes to my country and offers $100 million to purchase a company, FIRA will proceed to investigate the background of the negotiation, industry competition, the bid and sale prices, along with other seemingly confidential information. Apparently, a separate division exists within FIRA which handles such investigations. It is unlikely, however, that such a division will be able to maintain its confidentiality much longer or that such a proposal would not pass when submitted for a vote.

MR. HYDE: Thank you, Arthur.