

NTA NETWORK

OCTOBER 2010

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Dear NTA Members -

On this, my second and last communication to the membership via the *NTA Network*, I am pleased to report that, thanks to the contributions of many people over the past year as I note below, the National Tax Association remains in very good shape, both intellectually and financially. Certainly compared to the state of the US economy and federal budget, we are not suffering from either a lack of membership employment in the tasks required to move our Association forward or deficit financing of our activities.

Let me share with you some developments of the past six months and note what lies ahead. The 40th Annual Spring Symposium, "Tax Policy in a Time of Gridlock", was held in Washington, DC last May 13-14. It was one of the best attended in recent years, with about 220 people in the audience, and also involved an innovation for our Association with two of the sessions sponsored by the American Tax Policy Institute. The program as a whole was very ably organized by Alan Viard of the American Enterprise Institute as assisted by Vicki Perry of the IMF (and on the ATPI board) and Dennis Zimmerman of the ATPI (as well as a long-standing NTA member). We are very appreciative of the ATPI's co-sponsorship of the event and the support of its president, Mike Schler, and look forward to further collaboration in the future. Also serving on the program committee were Kimberly Clausing, Dhammika Dharmapala, Harvey Rosen, Joel Slemrod, and Gene Steuerle. The NTA also gratefully acknowledges the financial contributions of the Vanguard Group, the National Association of Realtors, the Investment Company Institute, and the Association of General Contractors in supporting the Spring Symposium.

The program covered a range of current topics including budget policy, behavioral economics, health care reform, corporate taxation in a global economy, the taxation of lower-income taxpayers, and taxation and financial sector reform. The luncheon speaker was Congressman Chris Van Hollen of Maryland's 8th Congressional District and member of the House Ways and Means Committee, who addressed the group on tax issues on the current legislative agenda and prospects for tax reform.

The Symposium was also the occasion for the presentation of the Davie-Davis Award for Public Service to Harry Grubert of the Office of Tax Analysis of the US Treasury Department. The award honors the memory of Bruce Davie and Al Davis, who embodied the very idea of public service - Bruce as both a Congressional and Treasury staffer and Al with the House Budget Committee. Together, they worked hard to promote the interests of sound budgetary and tax policy. Deputy Assistant Secretary of the Treasury Mark Mazur presented the award to Harry in recognition of his long service at the Treasury Department and his important research contributions on international tax matters. Congratulations, Harry.

Following the Spring Symposium, the Eighth Annual State-Local Tax Program was held on Friday afternoon, May 14. Its theme, "Fiscal Sustainability and Fiscal Institutions" continued the NTA's focus on this topic initiated by Ranjana Madhusudhan, a past president of the NTA. Kicking off the program, luncheon speaker Lieutenant Governor Richard Ravitch of the State of New York talked about the fiscal crisis facing his state and, indeed, the entire state-local sector. He emphasized the need for bold and constructive action

rather than the short-term palliatives taken in the past that only delay and do not solve the fundamental fiscal problems. It was a sobering but useful introduction to the afternoon's sessions on fiscal sustainability and the condition of the state-local sector. Don Boyd and Ranjana Madhusudhan comprised the committee for this program, and I thank them both for their work.

On the evening of May 13, the NTA Board also held its semi-annual meeting. A few items are worth noting, particularly the contributions of a number of NTA members in the work of the Association. First, I would like to express my appreciation to the nominating committee for the Holland Award, an award for life-time achievement in the field of public finance and the highest award conferred by the NTA. The committee was chaired by Joel Slemrod and consisted of Alan Auerbach and the academic members of the board (Donald Bruce, Dhammika Dharmapala, Bill Gentry, Michelle Hanlon, Laura Kalambokidis, Leandra Lederman, George Plesko, and George Yin). Joel and his committee considered a number of worthy candidates and proposed Henry Aaron as the recipient of the 2010 Holland Award, a recommendation enthusiastically endorsed by the board. Henry will receive the award at a special presentation at the 2010 Annual Research Conference in Chicago, of which more information can be found below.

Also the board approved the composition of the general nominating committee consisting, as our by-laws require, of two past presidents Bob Tannenwald and Ranjana Madhusudhan, with the former as chair, as well as three other NTA members, Kirk Stark, Therese McGuire, and Tom Neubig. This committee has the responsibility of nominating the officers of the Association and new members of the board; nominees are elected to their positions at the business meeting of the NTA during our annual research conference. Coming up with a slate of nominees is both extremely important to the ongoing work of the NTA and is very time-consuming, as I can attest from my many past conversations with Bob as chair, and all members are deserving of our thanks.

The NTA office has sent out a notice of the slate of candidates recommended by the nominating committee for the board and officers. As a reminder they are as follows:

President	Leonard Burman, Syracuse, NY
1st Vice President:	Matthew Murray, Knoxville, TN
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Advisory Members:

David Brunori, Arlington, VA
 Daniele Franco, Rome, Italy
 Peter Fisher, Iowa City, IA

Another committee I would like to acknowledge is the committee to select the recipient of next year's Davie-Davis award. This committee has begun its work under the continuing chairmanship of Mark Mazur and includes two current board members, Gerald Auten and George Plesko, two other members of the Association, Bill Gale and Jane Gravelle, along with Fred Giertz as an ex officio member. Mark will report to the board at the November meeting on the committee's nomination. Thank you all for your assistance.

I would also extend a note of appreciation for their service to our retiring board members who will have completed their three years of service next month: Gerald Auten, William Gentry (who continues to serve our Association as co-editor of the *NTJ*), Laura Kalambokidis (who conducted surveys of the research conference attendees the last two years), Fitzroy Lee, and Ken Simonson (who chaired the fund-raising committee during his term).

Speaking of the fund-raising committee, special recognition is due to this rather new committee of the board, which has been instrumental in helping with the financial side of NTA's operations. Ken Simonson, the past chair of the committee turned over the reins this year to two co-chairs, Pete Brady and Janet McCubbin, who along with fellow committee members, Michelle Hanlon and Bob Weinberger, expanded upon earlier efforts and have reached out to a large number of potential sponsors of NTA events. Between the work of the committee and contributions from other sources, particularly for the spring symposium and the up-coming fall conference, we will have succeeded in raising over \$45,000 for the association this year, substantially improving our financial position. I thank the committee for their superb work this past year.

Our premier event, of course, is our upcoming research conference to be held in Chicago. The program co-chairs, Wojciech Kopczuk and Karl Scholz, assisted by the board and the program committee, have been working long hours over the past several months to put together an outstanding program.

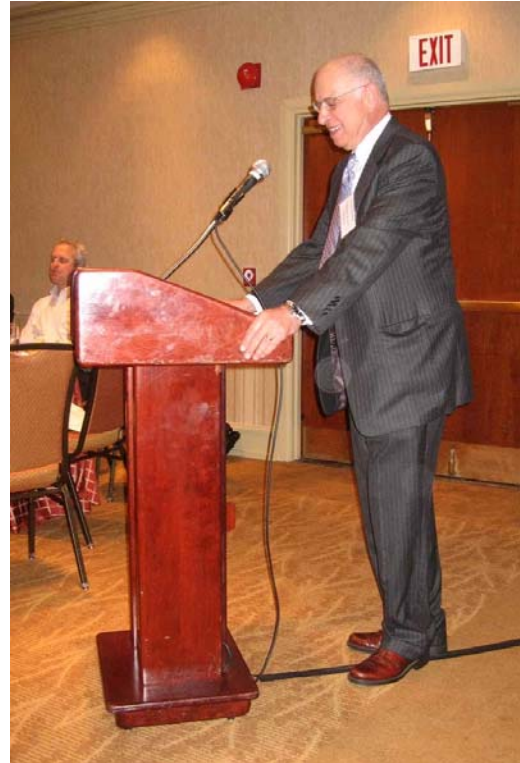
Featured luncheon speakers will be Narayana Kocherlakota, President of the Federal Reserve Bank of Minneapolis and author of path-breaking work on the new dynamic public finance, and Doug Elmendorf, Director of the Congressional Budget Office. The program includes a special plenary session for Emmanuel Saez, winner of the 2009 John Bates Clark Award, moderated by our past president Jim Poterba, and an opening plenary session on the fiscal outlook with a panel headed up by incoming NTA president Len Burman. In addition, Henry Aaron, as noted above, will receive the Daniel Holland award. All told there will be 47 concurrent sessions, both panel discussions and prepared papers, on as many topics in public finance as you could possibly want. We own an enormous debt of gratitude to Wojciech and Karl for their efforts as program co-chairs.

I hope many of you have already signed up for this event and encourage you to do so if you have not. It will be stimulating and fun. Go to our website for details. <http://www.ntanet.org/>

Finally, I would note that I have very much enjoyed my year as president of your association and have greatly appreciated the many contributions made by our members and staff. Within our membership I would like to thank Pamela Moomau for continuing to edit and produce our newsletter, *NTA Network*, in a very professional manner and Jennifer Gravelle for her yeoman work in keeping our website running and up to date. Our Executive Director and staff – Fred Giertz, Charmaine Wright and Betty Smith – manage to stay on top of everything and keep things humming, and as this note indicates, the time and effort volunteered by our members is just terrific. Personally, I have benefited greatly from the guidance of my predecessor Jim Poterba and pledge to give no less assistance to Len Burman as he assumes the presidency next month. We are fortunate to have them both as our leaders.

See you in Chicago.

Harvey Galper



NTA President Harvey Galper (above) and Representative Chris Van Hollen (below) at the Spring Symposium



**Congratulations to
Harry Grubert
Davie-Davis Award Winner!**

Each year, the National Tax Association honors one of its members for his/her service to the public by providing expert analysis and advice on tax policy and public finance to elected officials, other policymakers, and the general public. The Davie-Davis Public Service award was established in 2005 in memory of NTA members and public servants Bruce F. Davie and Albert J. Davis. It is presented each year at the NTA Spring Symposium. This year's Davie/Davis award winner is Harry Grubert, a senior research economist at the Office of Tax Analysis at the U.S. Department of the Treasury.

For over three decades, Harry has had a substantial impact on the formation of policy on international taxation both within and outside the Treasury Department. Harry has played a lead role in the development and analysis of a wide range of proposals on international taxation at the Treasury Department. Harry also is a significant contributor to the published research on international tax issues. His work has greatly improved the understanding of the economic effects of current law and alternatives for reform. There is no doubt that Harry's substantial research legacy will continue to influence the formation of tax policy well into the future.

Prior to joining the Office of Tax Analysis in 1978, Harry served as the Director of the Office of Foreign Economic Research at the Department of Labor. Before that, he served in various staff positions at the Bureau of Labor Statistics, the President's Commission on Federal Statistics, the Securities and Exchange Commission, the Center for Naval Analyses, and the Office of Management and Budget.

Harry received his Doctorate in Economics from the Massachusetts Institute of Technology in 1968, and taught at the University of Rochester before joining the public sector. He has widely published on topics related to trade and international taxes, and his work appears in the *National Tax Journal*, the *Journal of Public Economics*, the *Review of Economics and Statistics*, *Journal of International Economics*, and other journals.

Harry is also an Associate Editor of *International Tax and Public Finance*, and an International Research Fellow, Oxford University Centre for Business Taxation.



**Harry Grubert receives award from Davie-Davis Committee
Chair Mark Mazur**

**Congratulations to Emmanuel Saez
Genius Award Recipient**

Public finance economist **Emmanuel Saez** has been named a 2010 MacArthur Foundation Fellow. The Foundation cites his work “drawing on qualitative analyses, behavioral experiments, and theoretical insights to enhance our understanding of the relationship between income and tax policy” in its award announcement. Saez will be speaking on Comprehensive Tax Reform in a general session of the National Tax Association Annual Conference on Taxation in Chicago, on November 18, 2010.

How Some U.S.-based Multinational Corporations Effectively Shift Income to Low-Tax Jurisdictions

Case studies of six multinational corporations prepared by the staff of the Joint Committee on Taxation ("Joint Committee staff") provide some insight into business structures that may facilitate shifting of income to low-tax jurisdictions. The studies are included in *Present Law and Background Related to Possible Income Shifting and Transfer Pricing*¹ which was published in connection with the House Committee on Ways and Means' public hearing on transfer pricing issues held on July 22, 2010.

Each of the six taxpayers selected - referred to as Alpha, Bravo, Charlie, Delta, Echo, and Foxtrot - was chosen because it had low average worldwide tax rates during at least one multi-year period after 1999.² While the companies were chosen from six different industries, they had certain features in common, including: (1) a significant portion of their U.S. income as measured by Generally Accepted Accounting Principles ("GAAP") before income taxes was earned offshore where it was subject to relatively low average foreign tax rates; (2) the taxpayers asserted that a substantial amount of the accumulated U.S. GAAP earnings offshore was permanently reinvested such that no U.S. tax was accrued for financial accounting purposes; and (3) U.S. income before income taxes as a percentage of worldwide income before income taxes was lower than U.S. sales as a percentage of total sales worldwide.

While there could be numerous reasons for these reported results, the six case studies identify several practices used by some or all of the companies that contributed to the common reported features. First, several of the taxpayers studied organized aspects of their foreign operations using a principal structure. Generally, a principal is a legal entity designated by the taxpayer as the risk taker, either on a global or regional basis. The principal is characterized by having centralized responsibility for various functions, which typically include the development, production, and sale of goods. The principal is usually organized in a low-tax jurisdiction, or where the company can negotiate a favorable tax regime with the local tax authorities.

The case studies reflected the use of principal structures resulting in a higher concentration of more profitable functions in foreign jurisdictions where the average tax rate is lower and a concentration of less profitable functions in jurisdictions where the average tax rate is higher. The taxpayers with principal structures each established an entity to act as the principal, typically located in a foreign jurisdiction where the principal was subject to low average corporate income tax rates as a result of the jurisdiction having low statutory tax rates on business income or as a result of negotiations by the taxpayer with the local government. These principal entities had ownership and responsibility for continued development of intangible property rights. In contrast, lower value functions such as contract manufacturing³ or limited risk distributing⁴ were located in jurisdictions as dictated by nontax business needs or historical precedent. The taxpayers in the case studies generally had a concentration of low value functions in jurisdictions where the average tax rate was high. While the low-value-function entities were essentially guaranteed positive taxable income based on the nature of their contractual arrangements with the principal, these

entities had no opportunity to share in possible greater-than-normal returns.

Second, each taxpayer studied exploited its intangible property rights effectively as part of its foreign operations. One way this was accomplished was through the use of cost-sharing agreements. A cost-sharing agreement is an agreement between persons to share the costs and risks of research and development expenditures as they are incurred in exchange for a specified interest in any property that is developed. Because each participant has an economic ownership interest in specified intangible property developed pursuant to the agreement, generally no royalties are paid by the parties when the intangible property is used. Typically, participants to the agreement that own existing intangible property at the time the cost-sharing arrangement commences make the rights to existing intangible property available to the other participants in exchange for a buy-in payment. Several of the taxpayers had such agreements in place between the U.S. group and a foreign subsidiary. The buy-in and cost-sharing payments had the effect of moving economic ownership of the intangible property rights to low-tax jurisdictions.

Another way that intangible rights were effectively exploited by the case-study taxpayers was through the use of licensing. In cases in which licensing was used to exploit intangible property, the foreign subsidiary entered into a license agreement with the U.S. group to make and sell certain product lines either solely outside the United States or worldwide, generally in exchange for a royalty payment. In cases in which cost sharing was not involved and the foreign subsidiary sold the product back to the U.S. group, the U.S. group was often compensated through the transfer price of the product in lieu of the foreign subsidiary paying a royalty.

Third, each of the taxpayers deferred a substantial percentage of their foreign earnings by effectively managing their exposure to the U.S. subpart F anti-deferral rules.⁵ The subpart F rules generally identify the types of foreign income that, when earned by a foreign subsidiary of a U.S. corporation (i.e., a controlled foreign corporation or "CFC"), are taxed currently in the United States. The taxpayers used the check-the-box rules,⁶ creating disregarded entities, to manage subpart F. Disregarded entities are wholly owned foreign entities for which an entity classification ("check-the-box") tax election has been made to treat the foreign entity as a branch of its owner.

As a branch of its owner, transactions between the disregarded entity and its owner are generally ignored for U.S. tax purposes. The case-study taxpayers used disregarded entities in a variety of ways to avoid subpart F, including ensuring that cross-border royalty payments made from the principal to the foreign owner of the intangible property were disregarded. Additionally, where the principal entity had intragroup sales to U.S. or foreign subsidiaries, the taxpayers used check-the-box in conjunction with the manufacturing exception to avoid application of the subpart F foreign base company sales income rules.⁷

The Joint Committee document includes an in-depth discussion of (1) how these characteristics enable taxpayers to achieve low average worldwide tax rates, (2) how these characteristics as exhibited by the case-study taxpayers interact with applicable U.S. tax rules including recent modifications to U.S. tax rules,

and (3) other general issues and considerations that the Joint Committee staff considered as warranting highlighting.

-Kristeen Witt, Kevin Livingston, and Brion Grabor
Joint Committee on Taxation

Endnotes:

(1) See JCX-37-10, July 20, 2010 for the complete case studies. The document is available at www.ict.gov.

(2) The studies were not investigations of the taxpayers' tax positions, and do not constitute a representative sample of U.S.-based multinational corporations.

(3) Contract manufacturers are entities that typically own the manufacturing operations and, as a service provider, manufacture or process goods on behalf of the principal. Contract manufacturers generally earn a guaranteed cost-plus return on the manufacturing services they provide.

(4) Limited risk distributors provide distribution services, but do not assume commercial risk with respect to the products distributed. Limited risk distributors generally earn a guaranteed return in exchange for the distribution services provided.

(5) See Internal Revenue Code sections ("secs.") 951 - 964.

(6) Treas. Reg. sec. 301.7701-1, *et seq.*

(7) Generally, subpart F foreign base company sales income rules result in the current taxation of income of a CFC from the purchase of personal property from a person outside the CFC's country of incorporation and its sale to a person outside the CFC's country of incorporation, where either person is related to the CFC. However, where the CFC meets the manufacturing exception by being treated as a manufacturer, the subpart F foreign base company sales income rules do not apply. Sec. 954(d).

At the Spring Symposium...



More from the Spring Symposium.....





Recent Writings

<http://www.urban.org/publications/412062.html>

Joseph Rosenberg, Eric Toder, *Effects of Imposing a Value-Added Tax to Replace Payroll Taxes or Corporate Taxes*, Urban Institute, April 7, 2010

<http://www.taxpolicycenter.org/publications/url.cfm?ID=1001418>

William G. Gale, Benjamin H. Harris, *A Value-Added Tax for the United States: Part of the Solution*, Tax Policy Center, July 22, 2010

HTTP://PAPERS.SSRN.COM/SOL3/PAPERS.CFM?ABSTRACT_ID=1668701##

Nai Jia Lee, William C. Wheaton, "Property Taxes under 'Classification:' Why Do Firms Pay More?" MIT Department of Economics Working Paper no. 10-10, June 29, 2010

<http://www.frbsf.org/publications/economics/papers/2010/wp10-25bk.pdf>

Robert S. Chirinko, Daniel J. Wilson, "Job Creation Tax Credits and Job Growth: Whether, When, and Where?" Working Paper 2010-2, Federal Reserve Bank of San Francisco, September 2010

<http://www.irs.gov/taxstats/article/0,,id=223808,00.html>

Internal Revenue Service, Statistics of Income Publications Archive

JOB OPENINGS

See the NTA website for recent listings of jobs in taxation:

<http://www.ntanet.org/>

Call for Papers

The Internal Revenue Service will hold its 2011 Research Conference in Washington, D.C. in June or July, 2010. See <http://www.irs.gov/taxstats/article/0,,id=227170,00.html> For details on paper submissions.



Welcome New Members

Albers, Eduardo, Santiago, Chile

Alexander, Giselle, Phoenix, AZ

Barnett, Jeffrey, US Bureau of the Census, Washington, DC

Bonacker, Scott, Rogersville, MO

Chen, Paul, Washington, DC

Chetty, Raj, Harvard University, Cambridge, MA

Curtis, Michael, Glowacki & Company, Miami Lakes, FL

Davis, Carl, Institute on Taxation and Economic Policy, Washington, DC

Dennis, Carrie, US Bureau of the Census, Washington, DC

Fabris, Martina, Institute of Public Finance, Zagreb, Croatia

Hall, Nancy, Montana Governor's Budget Office, Helena, MT

Hanlon, Seth, Center for American Progress, Washington, DC

Harper, Frank, Aurora, CO

Hogue, Carma, US Bureau of the Census, Washington, DC

Howard, Mary, Tennessee Technological University, Baxter, TN

Lee, Cheryl, US Bureau of the Census, Washington, DC

McCoon, Mark, Linden, MI

Meyer, Ashley, Pittsburgh, PA

Mulkeen, Thomas, Church & Dwight Company, Princeton, NJ

Nair, Sthanu, Indian Institute of Management Kozhikode, IIMK, Calicut, Kerala, India

Nomura, Hiroyasu, Dokkyo University, Saitama, Japan

Owens, Stephen, US Bureau of the Census, Washington, DC

Racca, Joshua, Carrollton, TX

Shanske, Daniel, University of California, Hastings School of Law, San Francisco, CA

Stone, Samuel, University of Indiana, Indianapolis, IN

Sugana, Harmawan, Duke University, Durham, NC

Tedeschi, Ernest, Pew Charitable Trusts, Washington, DC

Tennant, Jennifer, Cornell University, Ithaca, NY

Members on the Move

Alm, Jim from Georgia State University to Tulane University, New Orleans, LA

Augustine, Nancy from George Washington University to Pew Charitable Trusts, Washington, D.C.

Batchelder, Lily, from New York University to US Senate Finance Committee, Washington, DC

Carasso, Adam from the New America Foundation to U.S. Senate Budget Committee, Washington, DC

Dauchy, Estelle, From Ernst & Young to PHSB Business School, Shenahen, China

Eads, Jim from the Federation of Tax Administrators to Ryan, Austin, TX

Feld, Lars to Walter-Eucken-Institut, Goethestrasse, Germany

Fisher, Peter from the University of Iowa to the Iowa Policy Project, Iowa City, IA

Gale, Brian from Georgetown University to Boston College School of Law, Chestnut Hill, MA

Heim, Bradley from US Department of Treasury to Indiana University, Bloomington, IN

Jones, Damon from Stanford University to University of Chicago, Chicago, IL

Livingstone, Jane from the University of North Carolina, Greensboro to Western Carolina University, Waynesville, NC

McCubbin, Janet from AARP Public Policy Institute to US Department of Treasury, Washington, DC

McLynch, Jeff from the Institute on Taxation and Economic Policy to New Hampshire Fiscal Policy Initiative, Concord, NH

McNierny, Meghan to Old Dominion University, Richmond, VA

Morse, Susan from Santa Clara University School of Law, to University of California, Hastings School of Law, San Francisco, CA

Peters, Klara Sabrianova from Georgia State University to the University of North Carolina, Chapel Hill, NC

Petrescu, Iona from American Enterprise Institute to the University of Maryland, College Park, MD

Richards, Zachary from the University of Tennessee to the Joint Committee on Taxation, Washington, D.C.

Rork, Jonathan from Georgia State University to Reed College, Portland, OR

Schaltegger, Christoph from University of St. Gallen to University of Lucerne

Shvedov, Maxim from Congressional Research Service to AARP, Washington, DC

Turner, Nicholas from University of California, San Diego to US Department of Treasury, Washington, DC

Watts, Ann Boyd from the University of Tennessee to Clemson University, SC

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