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Stephen Utz
University of Connecticut School of Law

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*Stephen Utz**

Taxes and the 2008 US Election

The 2008 election *will* give the US a new President and *could*, in theory, replace the whole House of Representatives and one-third of the Senate. Barack Obama's promised "Change" will occur, no matter what happens.

This is true not only for the glamour fields of oil prices and war but also for taxation. Two overarching reasons to expect tax revision are the country's excessively large *national debt* and the *tax gap*. The *tax gap* is the difference between the income reported by US taxpayers and their actual income. The Treasury Department estimates that perhaps 20% more in taxes would be collected, if current law were enforced. Ordinary voters are hearing more and more about this, which moves the problem of collecting the missing taxes to the front of the political stage. The second overarching reason, our *record-breaking national debt*, has various consequences – it keeps the dollar weak, raises the need for more revenue to pay interest on the debt, but also inflates the dollar, thereby reducing the real cost of the debt service. The most pressing consequence for the White House and Congress is that the unusual size of the debt makes borrowing more difficult. (The amount of US government debt held by foreign governments also threatens to become a political issue, though it is not especially a tax issue.) The 2008 electoral winners will therefore be more comfortable if they can borrow less, so they may try to close the tax gap.

Several *other* politically powerful reasons for tax revision come to mind. (1) *Another* kind of gap, the difference between the highest incomes and the majority of middle class incomes, will make it tempting, at least for a strong Democratic majority, to raise taxes on the high end, either by rolling back President Bush's reduction of the tax rate on the highest incomes or by targeting corporate executives' and private equity fund managers' compensation. (2) Growing popular suspicion of offshore corporate transactions creates pressure for extending US taxation to outbound investment. (3) The increasingly broad application of the *alternative minimum tax (or AMT)* for individuals may prompt some of several possible responses, but the front-runner is to exempt lower incomes, which could benefit not only US taxpayers but also foreign individual investors who have "effectively connected trade or business income" in the US. (4) In hard economic times Congress has regularly granted *faster writeoffs for business property*, which effectively lowers business tax rates; the recently passed 2008 economic stimulus legislation contains some of this and we can expect more. (5) Although only technocrats use the term *economic rent*, widespread distress at the high price of gasoline, fuel oil, and prescription drugs puts pressure on Congress to impose higher taxes on the profits of those who supply them. (6) *Tax breaks for energy conservation and environmental protection* already exist, but these have become a playground for lobbyists – ethanol, fuel cells – and a correction may be coming. The list could go on, but these seem to me to be the principal tax issues for 2009.

Broadly speaking, many, if not all, of the items on my list have an international dimension, which I will emphasize in my comments today.

In order to understand the politics of U.S. federal taxation, it is useful to know roughly who bears the tax burden. Here are some broad statistics. Almost 70% of total federal tax revenues come from withheld income tax on employees.[1] Commentators often mention that those individuals with higher adjusted gross incomes (the top 5%) pay higher effective income tax rates,[2] but it is also true that these highest AGI earners are not the individuals with the highest economic incomes, who on the contrary pay a lower effective rate of tax than the rest of individual income tax payers.[3] The numbers are paradoxical, but they, in part, reflect the extreme levels of (not necessarily illegal) tax avoidance that the US tax system tolerates. Corporations now pay a relatively small part of total federal tax revenues – about 12%. Taxes on gifts and trusts account for less than 3%.

Against this backdrop, presidential campaign promises can easily be seen to address perceived class concerns over tax burdens. All three candidates now in the race think that "real" people (the middle class) should get tax breaks, and only Barack Obama has specifically mentioned the possibility of raising taxes on anyone – he has proposed raising the tax rate on corporate earnings and on most investment gains ("capital gains" as defined by the US tax code). But presidents rarely control legislative outcomes. How might party gains and losses in Congress affect tax rates for individuals?

Republican and Democratic majorities would select different beneficiaries for any new tax measures. If either party has strong majorities in both Houses of Congress, the politics may be relatively straightforward. Republicans would preserve most of the tax cuts of the last eight years, including lower marginal tax rates for ordinary income, and lower tax rates for capital gains and dividends. A strong Democratic majority would probably increase in the highest marginal tax rate but not the marginal rates for lower incomes; what would happen to capital gains and dividends is not clear – remember Obama's proposal. More difficult to predict is the direction of a weak Democratic or Republican majority in the Senate. If the parties are strongly antagonistic, it takes more than a simple majority in the Senate to pass legislation.

Turning from ordinary tax rates to the AMT, all the presidential candidates promise to reduce or get rid of it. McCain would like to see it repealed, at a cost he estimates to be about $60 billion a year, and he would allow permanent expensing of all business property, at a cost he doesn't estimate, but which may be at least $60 billion a year as well. (It's a good thing these tax reforms are so inexpensive.) While the major candidates are all talking about cutting taxes for the middle class, none has a word to say about related matters like the national debt, the dollar, and the balance of trade.

* Stephen Utz, Professor of Law at the University of Connecticut School of Law, Hartford.

1 Internal Revenue Service Data Book 2007, Publication 55B, Washington, DC, issued March 2008, Table 1 (showing income tax revenue for 2007 to be 50.2% of total federal tax revenues and "withheld" or employee tax revenues to be 34.5%, or 68.7%).

2 Kyle Mudry & Justin Brian, Individual Income Tax Rates and Shares 2005, at page 39 (IRS Bulletin Article based on IRS Statistics on Income) - http://www.irs.gov/pub/irs-soi/05inrate.pdf.

3 Donald Bartlett & James Steele, The Great American Tax Dodge, at 33 (2000)(a polemic against the undertaxation of the super-rich, relying on IRS Statistics on Income).

What about corporate and international tax issues? McCain would cut the corporate tax rate from 35% to 25%. Neither Obama nor Clinton have spoken on how corporations should be taxed, apart from comments on flow of corporate income out of tradition US tax jurisdiction. Frankly, no presidential candidate has revealed much of an agenda concerning this and related matters. I will say more about the politics of more specific corporate and international tax issues, as I discuss them separately.

None of the presidential candidates has mentioned either of the two main pressures for tax change, with which I began my remarks. Let me return to these unpleasant topics now.

The tax gap. Income can escape tax in many ways. Most prominent is the deliberate use of tax shelters– designed for and sold to corporations by accounting firms, investment banks, and law firms. In earlier times, tax shelters made use of uncontroversial tax rules to shift losses to individuals who did have the right to deduct them. More recently, tax shelters have seemed to twist the rules, though sometimes technically remaining within them. The Justice Department and the IRS seem to be winning the battle against these, bringing in substantial amounts of missing revenue. While some individuals have used aggressive tax shelters, which the government also seems to be cleaning up, outright underreporting (i.e., tax fraud) by small businesses is huge.[4] The electoral winners in 2008 are not likely to do anything about this because neither political party can afford to target small business for investigation. Apart from tax shelters and tax fraud, however, there are other less clearly illegal, but equally costly, kinds of tax avoidance

Two important strategies available to multi-national corporations (MNCs) are improper *transfer pricing* and *corporate inversion.*

Transfer pricing (*Verrechnungspreise*) is the pricing of goods and services in contracts made between related corporations. Related entities may all benefit from goods and services available to any of them, and the prices in their contracts about such goods and services are not market prices. So, without economic effect, transfer pricing can shift income from corporations in high-tax countries to subsidiaries or related corporations in low-tax countries. (Note that US tax principles rarely permit the government to deny the separateness of a corporation from its shareholders, even if separate corporations are formed to avoid taxes.) For decades, the US and many of its trading partners (especially in the OECD) have struggled to prevent tax-motivated use of transfer pricing, but the tax authorities of most of these countries now agree that the struggle is failing.[5]

Corporate inversion – the second corporate strategy that contributes to the tax gap – is new has been in existence since 2000. Most US MNCs used to have corporate holding companies in the US, and since the US taxes its residents' income worldwide, foreign branch operations paid US income tax and foreign subsidiaries were more remotely subject to tax on repatriating their earnings. New MNCs have begun to replace US holding companies with holding companies in tax havens like the Cayman Islands, where there is no corporate income tax. The income of branches and subs, with a little paperwork, is thus removed from US tax returns.

Congress and the Bush administration have openly tolerated corporate inversions. Perhaps they sincerely doubted the importance of the resulting tax loss. What seems at least equally responsible for falling US corporate tax revenue is that real business operations are moving overseas, and this, according to some evidence, shrinks the base even more than corporate inversions do.

Bush's Tax Cuts and the Public Debt. The Bush tax cuts[6] should be seen in the light of the overall growth of the US public debt from \$5 trillion to \$10 trillion during the Bush presidency.[7]

Although observers on all political sides agree that this is an important issue with powerful medium and long-term budgetary consequences, the nature of the problem gives Congress many choices. Too many. Some will argue that it is too late to do anything about it, so let's not try. Others will say the debt justifies removing tax loopholes, and still others will say it requires lower taxes to stimulate the economy. The public may become restive, but it takes more than a tremor in the opinion polls to make Congress act.

Politicians and the public are used to hearing about very big budgetary pressures that never seem to have any real consequences. Medicare (old-age national health benefits) and Social Security (our very modest national old-age pension scheme) cannot be paid for out of the revenues of the existing taxes that are earmarked to pay for them. But they are politically hot to handle. So far nothing has been done.

As another predictable budget-busting program, we should count our cycle of bailouts for economic surprises. When viewed favorably, these bailouts are sometimes described as stimulus packages. But the difference between stimulus and unwarranted refund of taxes has become blurred. Reagan's negative corporate income tax for 1981-83, the bailout of savings and loan associations in the 1980s, the bailout of US banks that lent too much to Mexico, Argentina, and Brazil in the 1990s, the bailout of US airlines after 9/11 – each of these was, at least in part, a charitable contribution by the government to economic losers who, by free market standards, should have swallowed their losses. In each case, of course, a national interest was the official reason. And in each case, the connection between the bailout and prospective benefits was too theoretical to be tested objectively.

What the cycle of bailouts shows is the exceptional optimism of all concerned, government insiders as well as the public.

4 The government's most recent estimate is that 80% of the tax gap is due to understating of income (and not, for example, overstatement of deductions) by independent business taxpayers. "New IRS Study Provides Preliminary Tax Gap Estimate", IR-2005-38, March 29, 2005 – http://www.irs.gov/newsroom/article/0,,id=137247,00.html.

5 The OECD has struggled for decades to maintain the integrity of the "arm's length" standard for evaluating transfer pricing between members of an MNC. The US Treasury has at times criticized the OECD's efforts and the arm's length standard itself, although US tax regulations have recently been promulgated, which seem to demonstrate a change of heart on the part of the Treasury – these extensive regulations apparently take the arm's length standard seriously and spell it out in great detail. Appearances can be deceptive, however, and I do not know whether government enforcement efforts are proportionate to the apparent regulatory intent.

6 President George W. Bush persuaded Congress to cut individual income taxes twice – in 2002 and 2005. The most important cuts lowered all the marginal income-tax rates for individuals, ostensibly benefiting people at all income levels, although the largest tax saving went to taxpayers in the top 2%. Everyone agrees that the lower tax rates will contribute to a massive budget deficits, unless spending is also cut or other taxes are increased. Those least friendly to the rate cuts offer economic analyses that show them to be unsustainable if nothing else is done. Those friendly to the rate cuts come up with numbers that show them to be good for the economy as a whole, but only if the shortfall they caused is met by cuts in government spending.

7 Nobel Prize Winner Joseph Stiglitz and Linda Bilnes conclude in their recently published book *The Three Trillion Dollar War* that the absolute size of the debt and the growing costs of the Afghanistan and Iraq wars threaten the US economy with a downturn as long and deep as that of the 1930s. They claim that the consequences of the public debt may already be too substantial to be corrected by an end to military involvement in Afghanistan and Iraq *and* even the most strenuous fiscal reforms.

What economists call "structural change" in the US economy seems to occur so often that long-term planning and long-term caution are discouraged. This of course does not mean that disaster is not just around the corner. It only means that we will not do anything about it.

Combining the tax gap and the public debt, I think it is worthwhile to reason as follows: if the US economy were cut off from the rest of the world, falling tax revenues and a rising national debt would affect US taxpayers alone: corporate shareholders, suppliers and employees. It might not be a zero-sum game, because the benefit might not offset the loss to the country resulting from an underfunded government, but it would be a closed game.

Given that US corporations are *not* exclusively owned, supplied, or staffed by US residents, falling US corporate tax revenues do *not* exclusively benefit US citizens and residents.[8]

If the new President and Congress want to restore revenues, they must either raise taxes on citizens and residents or raise taxes that at least may fall on non-citizens who are also non-residents.[9] In all places and at all times, governments face some pressure not to raise taxes on the people who elect them. In the US, the political cost of raising taxes on citizens is especially high just now, because the economic future is in doubt and because an anti-tax movement has a lot of middle-class supporters.

Does it follow that post-election change will include higher taxes on *foreign* investors in the ailing US economy? Politically, this seems possible. But the cost of discouraging foreign investment is high too.

A Third Way. The new government and legislature will prefer to find a third alternative – one that does not tax most US citizens and residents more heavily but also does not discourage investment from abroad. A third choice is to tax corporate groups that are active in the US on *more* of their worldwide income. The Constitution does not limit congressional power to tax *resident* individuals or *resident* juridical entities that have certain "minimum contacts" with the country (here, I believe the term would be a "genuine connection"). How then could MNCs with US contacts be made to pay more than they do now?

1. *Formulary apportionment* (*Zerlegung*). Both in the European Commission and in US tax circles, there is much talk just now about what is called formulary apportionment in the US and Canada. This is an approach to taxing the income of corporations that are active in more than one tax authority's territory, not by attempting to measure the income of these corporations in each territory, but by measuring their total income in all areas and then apportioning that tax base among the authorities that have a tax claim on that income. The apportionment formula may equate the corporate income to be taxed in a given country with a fraction of total income equal to the fraction of the corporation's employees and/or assets and/or sales that are found in the country. For example, if Corporation X has worldwide income of $1 billion, and one-fourth of its employees work in the US, and one-half of its sales are in the US, then a formula that gives equal weight (one-third each) to number of employees, total value of assets, and gross amount of sales, would allow the US to tax 3/12 of the $1 billion in corporate income at whatever rates the US applies to the income of a corporation with exclusively US staff, assets, and sales. Note that transfer pricing becomes irrelevant.

   The US subnational states and the provinces of Canada have both used this approach for about the last 60 years. In the US the individual states began using it unilaterally, without agreeing on the elements to be included in the formula, and hence, playing a potentially competitive game. In Canada, the federal government imposed formulary apportionment after WWII and met faced no particular opposition in doing so.

   It is notable, though, that formulary apportionment in both paradigm examples was unlikely to induce corporations to take their business elsewhere, when a taxing state takes too aggressive a position in devising its formula or setting its tax rates because these tax rates are inevitably relatively low in comparison with other taxes corporations pay the federal government, and because subnational states in both countries are not allowed to tax out-of-state corporations in a discriminatory manner.

   Having said this, the US is not likely to adopt a formulary apportionment approach to the taxation of MNCs, unless it can either do so in cooperation with its trading partners or the MNCs themselves favor it (and they are not likely to do so if it raises their taxes and tax compliance costs substantially).

   Therefore, this promising possibility is not likely to be the solution to the revenue problems the US faces in the near term.

2. *Abandoning Traditional Tax Respect for the Separateness of Offshore Corporations with Domestic Ties.* Something less comprehensive that formulary apportionment may accomplish a similar outcome, arguably at a lower administrative cost and without irritating our trading partners. The problem to be addressed has two parts. On the one hand, US tax laws have long "deferred" tax on the income of the foreign subsidiaries of US companies, waiting for their earnings to be repatriated before demanding that the earnings be taxed and allowing credit for foreign taxes already

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8 Note that the Bush tax cuts were limited to US citizens and residents, among whom are resident non-citizens. The recent Bush stimulus package was partly limited to US citizens – the immediate tax rebates were so limited, although roughly one-third of the dollar value of the tax relief in question went to US corporations, without restriction as to the citizenship or residence of their owners. Still, broadly speaking, the benefit of recent tax cuts has stayed in the US.

9 When we trace the shortfall in tax revenues to its sources, both falling corporate tax revenues and deliberate tax cuts look culpable. The presidential candidates have said little about any tax issue apart from the tax cuts. Hillary Clinton and Barack Obama would both scale back Bush's tax cuts for higher incomes. McCain, who opposed the tax cuts in the first place, would not keep them. What is really likely to happen? If a Democrat wins, with a strong majority in both House and Senate, the tax cuts are likely to be repealed for perhaps the top bracket which now applies only to taxable incomes of more than $356,000, in other words, to the highest 1% of incomes. I would not expect Democrats to increase the marginal rate for incomes in the $150,000 range, which is a merely comfortable middle-class income. Other less conspicuous tax cuts could be reduced, such as the very high exemption for gains on house sales; most housing gains at the moment are at the high end of the market, so this would also be a targeted tax increase for high rollers. What about McCain? His fiscal message is not easy to understand. At times he seems basically to be a fiscal conservative and an opponent of special interests; at other times, he seems less principled and he has promised parts of the Republican base that he will continue Bush's fiscally liberal pattern, with ample friendliness towards what could be regarded as special business interests. Given all this, if McCain wins, with a strong Republican majority in Congress, the Bush tax cuts are likely to remain in place, though some targeted tax cuts of the past might disappear. If McCain wins and the Democrats have a majority in either the House or the Senate, the Bush tax cuts may disappear on their own in 2010 without new legislation. But there would be horse-trading (a Kuhhandel) because some of those tax cuts affect lower income voters as well.

paid. This policy of deferral has often been questioned, and Subpart F of the US Tax Code specifically takes away the privilege of deferral for certain classes of foreign subsidiary income. Subpart F focused on operations that were kept offshore for no particular business reason – such as keeping oil shipping income in foreign tax havens simply by registering the ships there and establishing low-cost subsidiaries to own or lease the ships – and it included the income from these operations in the income of the US parent corporation. The spirit of Subpart F was therefore both to ignore the corporate shell of a foreign subsidiary in selected cases and to select those cases on the basis of the affinity or kinship between the offshore operations and the more encompassing domestic operation.

I have mentioned the newer problem of corporate inversions. These involve not foreign subsidiaries but foreign parents whose US subsidiaries are the true center of worldwide operations. The underlying problem, however, is the same. Respect for the corporate shell of an offshore company is essential to the inversion, and the reason for disapproving of the strategy is that the offshore operation is really closely akin to, and indeed part of, the domestic operation, which is more encompassing than that of the offshore "parent."

The solution may therefore be to replace Subpart F with a broader set of tax rules designed to deal with both subsidiaries and parents whose operations are close to and subordinate to onshore corporate operations. (Charles Kingson has proposed something like this)

3. *Better Regulation of Transfer Pricing.* The OECD and the US have for years bickered over the workability of a shared standard for transfer pricing. Transfer pricing is the term used for the allocation of costs and profits in contracts within a group of related corporations. In the international tax context, transfer pricing provides a means of shifting income from a high- to a low-tax environment. For example, X Corp in country A may lower its taxes to be paid in that country by agreeing to pay more (hence lowering its income) to related Y Corp in country B, which has a lower tax rate. The agreed international standard for judging whether a transfer price is valid is the "arm's length" (*Fremdvergleich*) method – as incorporated in the model OECD double tax treaty; it provides that prices between related entities should be adjusted to closely approximate the prices that would be set by unrelated enterprises acting independently.

   Unfortunately, the worldwide fall in corporate tax revenues suggests, as does the long history of disaccord among those countries that have tried to use the arm's length method, that it is impractical - at least in a world of complex MNCs that are willing to take aggressive positions with the taxing authorities they encounter.

4. *Prevention of Earnings Stripping.* Some Members of the European Union protect their corporate tax revenues from all corporations, not only from MNCs, by trying to prevent earnings stripping. Earnings stripping is a strategy for avoiding corporate tax. A corporation agrees to pay some or all of its shareholders "interest" on "debts" the corporation owes them, roughly in proportion to their ownership interests in the corporation. Since the interest paid, if it is properly classified as interest, is deductible from corporate income, the corporation's income tax is reduced. The owners of the corporation do not suffer, however, because they receive the earnings of the corporation as interest. This may be taxable to them, but the effective tax rate (the net tax rate taking into account the tax at both the corporate level and the shareholder level) can be lower than the effective tax rate on declared corporate earnings that are then distributed to shareholders.

At the moment, the US has a relatively toothless tax rule against earnings stripping. The details of this provision, Code § 163(j), are not very important, beyond the fact that it is directed only against the distribution of earnings disguised as interest to a 10% or greater shareholder in the payor corporation. Most corporations that are subject to the corporate tax in the US are publicly traded and not closely held. It is extremely rare for one of them to have any shareholders with a 10% or higher interest. Hence, § 163(j) may almost never apply to these highly visible corporations.

One can only speculate about the extent to which private equity funds hold large positions in US corporations that are subject to the corporate tax. Since private equity funds are usually partnerships or LLCs, their investors are treated as owning whatever the fund owns in proportion to their interests in the fund. Hence, a more than 10% investor in a private equity fund that controls a US corporation could trigger the earnings stripping rule, if that investor were paid interest. (There are other requirements for the application of the rule, but I ignore them here.) I do not know whether this actually happens, but I do know that many private equity fund investors hold smaller than 10% interests. Indeed, that seems to be a pattern, and it may reflect the threat of § 163(j).

Another aspect of the earnings stripping mechanism deserves mention here. US international tax rules exempt from US taxation all most interest paid to non-resident individuals that are not US citizens or to non-resident corporations. This so-called portfolio interest exemption primarily benefits passive investors who are citizens of countries with which the US does *not* have double-tax treaties, because these treaties usually give the right to tax interest to the country of which the person receiving the interest is a national.

The portfolio interest exemption removes the tax from certain interest recipients. It does not remove the tax from the corporation paying that interest, if the interest is subject to section 163(j). Section 163(j) denies the corporation a deduction that would normally be available for interest paid. In other words, it makes the interest taxable to the corporation paying it. If the deduction were formally denied for interest payments to domestic and non-domestic taxpayers alike, it might still disfavor interest payments to foreign investors to a greater extent than it would to domestic investors, but that would depend on who the investors happen to be. It seems possible that US investors through stock markets are much less likely to hold a 10% (or a 5% or a 2%) stake in a US corporation than are private investors in US corporations through private equity funds. Hence, it is possible that foreign investors might implicitly be targeted and more heavily burdened by lowering the threshold for limiting the interest deduction to thinly capitalized US corporate taxpayers.

If Congress wanted to raise tax revenues quickly, it could do so by lowering the threshold from 10% to, say, 5% -- at least if there are private equity fund investors who hold stakes as large as this. The private equity fund market could quickly adjust, and existing private equity funds *might* be able to adjust as well, though at considerable cost in ma-

nagement and legal expense, which *might* have to come out of the managers' "carried interests."

One would have to know much more in order to evaluate the revenue potential of this move. And no one perhaps knows what other consequences would follow.

One unknown is the extent to which sovereign wealth fund investments in the US might be affected. These funds helped investment banks and commercial banks to recover from the effects of the subprime mortgage crisis, and many now hold very large minority positions in these financial institutions. If interest payments to them on further loans were not deductible, the result would not only be to reduce the value of the payments to these funds but also to reduce earnings of the payor corporations to the detriment of all shareholders, foreign and domestic.

Another unknown relates to US pension funds, for example, which are large investors in private equity funds, and while they can benefit from earning stripping, the benefit remains in the US and must almost certainly be taxed when pensioners receive their retirement money. But uncertainty in the private equity fund market could reduce the value of pension funds holdings, perhaps drastically. We have just experienced the contagious effect of uncertainty in financial markets with the subprime mortgage crisis.

In summary, tightening the interest deduction for thinly capitalized US corporations might produce substantial tax revenue, but the consequences are not easily foreseen without a great deal of specific information about the recipients of the interest payments in question, and even then, it is largely the identity of the corporate payors that we should be concerned about. If they are important players in the US economy, we may not want to make it harder for them to attract investment from abroad.

This concludes my survey of possible US legislative strategies for raising specifically *corporate* tax revenue. In brief, the most attractive strategies are those that extend the application of US taxes to non-US corporations by taxing the groups to which they belong. These include formulary apportionment and the more limited strategy of taxing corporate groups with substantive links to the US, even if they do not meet the traditional requirements for residence. Both strategies would have to be reconciled with US treaty obligations, which would present formidable new problems under treaties that rely on the older US approach to corporate residence. Simply to honor the treaties could in most cases avoid the problem – the treaties make consequences depend on residence determined under older US standards, and that is that.

What then should we expect from the combination of a new President and a possible change in the partisan balance of Congress? As I have summed up the forces at work on the legislative agenda, more tax cuts seem unlikely, and even the extension of the Bush tax cuts is less likely than not, without a major Republican win in both legislative houses. Neither party is plausibly seen as standing for fiscal restraint in other respects. Still, the government officials who *do* look at the numbers are likely to capture the attention of the new Congress by pointing out that borrowing will not come easy, and that higher debt will do nothing to help trade or the threatened recession. The public does not like the idea of US corporate wealth escaping taxes, so a globalization of the corporate tax base may have enough momentum to win bi-partisan support – I would suggest that if it does, this will take the form of new version of Subpart F, as previously described. I doubt that any combination of party majorities and minorities in the Congress will lead to explicitly higher tax on investment from abroad. The carried interests of private equity funds, however, will be a tempting target for the tax harvest.

IABA / DAJV Symposium in Honor of the 100th Birthday of Prof. Dr. Dr. h.c. (mult.) *Stefan A. Riesenfeld* (1908 – 1999)

This year, the annual reunion of the International Association of Boalt Alumni (IABA) was held in Cologne on the weekend of June 6 - 8, 2008. Organized by Dr. Martin Schulte (LL.M. 1990), the event brought together more than 50 alumni of Boalt Hall School of Law at the University of California at Berkeley and their spouses. Guests travelled to Cologne from as far as Japan, Australia, Peru and Berkeley, but also from a number of European countries.

On Friday, June 6, 2008, IABA and DAJV co-sponsored a symposium with lectures in honor of Prof. Dr. Dr. h.c. (mult.) Stefan A. Riesenfeld (1908 -1999) whose 100th birthday was celebrated two days later.

After the opening of the session by Dr. Martin Schulte, Prof. Dr. Stephan Hobe, substituting for Dean Prof. Dr. Michael Sachs, welcomed the guests on behalf of the Cologne law faculty. The University of Cologne had kindly made available its finest lecture hall, the *Neue Senatssaal*, for the lectures in honor of Stefan Riesenfeld, who held an honorary doctorate from the law faculty.

Following these welcome remarks, Dr. Hans-Peter Ackmann (LL.M. 1986 and Past President of DAJV) gave an outline of Riesenfeld's life and academic achievements. The three speeches delivered by faculty members of the Cologne law faculty (Prof. Dr. Stephan Hobe) and of Boalt Hall (Prof. Dr. David Caron and Prof. Dr. Dr. h.c. Richard Buxbaum) were devoted to legal topics that would certainly have been of interest to Stefan Riesenfeld.

The lectures which are printed below were met with much interest by participants of the IABA reunion as well as the DAJV membership with about 90 attending. The symposium ended with a reception which gave participants a welcome opportunity to relive their own personal Riesenfeld memories and share the many anecdotes about this German-American legal genius.

Dr. *Martin Schulte*, LL.M. (Univ. of California, Berkeley)
Rechtsanwalt (Köln)/Attorney-at-Law (NY)