

10 International Tax Questions for The Volcker Tax Reform Panel

By Philip R. West

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The Volcker task force is charged with making recommendations for closing loopholes, simplifying the code, and generating revenue. Recent international tax proposals have been described as closing loopholes and generating revenue, and the international tax rules are certainly complex. It stands to reason, then, that the task force will be considering those proposals and rules. And whether or not the task force focuses on the international tax rules, in the coming months those rules almost certainly will be a hot topic of debate in one form or another. It is therefore appropriate to comment on them here.

The Volcker task force, however, is well advised already. So rather than offer one more opinion on what the outcome of its work should be, I thought it would be more useful to pose some fundamental questions that it may want to consider as it proceeds. Hopefully, these questions will also be useful, or at least interesting, to a broader audience.

1. The international tax debate can be framed in terms of both revenue and policy. To what extent should the debate be about allocation of the spending burden, and to what extent should it be about other policy considerations such as economic efficiency and the effect of the international tax rules on the economy?
2. To what extent should competitiveness be a relevant factor, compared with other policy considerations? How should competitiveness be defined? (By comparing specific international tax rules? By comparing the tax burden on foreign income more broadly? By comparing the total corporate tax burden? By comparing the overall business

environment? By comparing other factors?) And once competitiveness is defined, how should it be measured?

3. Should the business community and the administration (and Congress) attempt to reach an agreed understanding of the international tax rules adopted by our major trading partners and how they operate in practice? Should the OECD attempt to publish such a description and analysis? How important is this comparison? In other words, do foreign rules create international norms to which we should be moving or a race to the bottom that we should be resisting, ignoring, or at most just factoring into our own policy deliberations?

4. What is the connection between our international tax rules and job growth or loss? What is the significance of these two facts: (a) large amounts of income can be earned abroad without a large number of foreign jobs, and (b) neither Congress nor the administration thinks it is a good idea (or at least a good enough idea to propose) to alter the basic rule that foreign manufacturing income is deferred (that is, that the movement of manufacturing jobs abroad would generally increase deferral)?

5. Related to 4(a) above, can and should anything be done about the fact that earnings are often driven by intangible assets such as intellectual property and contract rights, which can be both mobile (and therefore easily located in low-tax jurisdictions) and valuable without regard to physical assets or jobs?

6. Is it politically impossible to recommend significant international tax simplification through either a full inclusion system with foreign income taxed at a lower rate than domestic income or a territorial system with appropriate treatment of U.S. expenses? Would significant transition relief make either of these (or other) proposals more attractive?

7. What should be done about the decreasing relevance of corporate residence, both because it is very manipulable and because its justification as a basis for taxation is tenuous? And what does this say about the wisdom, from a policy

perspective, of our deferral rules and the arm's-length standard, when weighed against the alternative of formula apportionment?

8. Assuming the presumptions of S. 506, the Stop Tax Haven Abuse Act, introduced by Sen. Carl Levin, D-Mich., could easily be altered to depend on something other than a so-called blacklist, what objections to the bill moved the administration to include much narrower provisions in its recent budget proposals?

9. How aggressive is the administration willing to be to more effectively obtain tax information from other countries? To the extent those countries are less developed countries, how would (a) the relatively small amounts of revenue derived from providing financial secrecy, (b) developments in distance learning and the remote provision of services, and (c) our experience with the wage credit in Puerto Rico suggest a policy that includes a significant increase in foreign aid?

10. What role should a VAT play in the debate? ■