

**TAX POLICY ISSUES**  
**JUNK BONDS--CAPITAL GAINS--MULTINATIONALS**

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# **TAX POLICY ISSUES**

## **ABSTRACT**

**JUNK BONDS** have risen again. The yield is still high compared, for instance, with benchmark Treasury bonds, but is much subdued compared with their height before the 1989-90 debacle. The risk is also high but some risk-reducing factors are at work this time. The tax incentive to use high leverage remains powerful. A challenge to tax policy is to reduce the strong tax-induced incentive to use leverage rather than equity to finance capital projects.

**CAPITAL GAINS** have once more become the subject of tax tinkering--and what tinkering! The complexity of the applicable provisions has approached infinity. Anyone who has had to report a sale can bear witness; as can those who have received a capital gain distribution from a mutual fund. A few consolations exist: the complexity will be reduced for a while after the transitional 1997 tax year; enjoyment of a 20% maximum rate rather than 28% has become a realistic prospect (as has an even lower top rates for some); the lower rate did not cause a stock market crash; and homeowners have received a bonanza, plain and simple, unless their property is in the very top tier. Open policy issues are: indexing for inflation; reversion to the old 12-month rule instead of 18 months; and, with the Internal Revenue Code as a whole, a reduction of complexity.

**MULTINATIONAL** companies remain the subject of attention in what has become known as the global village. Transfer pricing practices require constant surveillance in view of the temptations caused by disparate taxing provisions and practices in the various countries of the world. Official bribery in some jurisdictions presents special problems in enforcing United States laws. Tax credits, multinational agreements and specific tax treaties must be relied on to ensure equitable treatment between various multinational companies and also between multinational and domestic companies.

**Part I**

**A TAX POLICY ISSUE: THE NEW JUNK BONDS \***

Footnotes at page 6

"...market for junk bonds continues to sizzle."

*Wall Street Journal*, April 10, 1998, p. C17

"Small companies lead junk-bond financing boom".

*Wall Street Journal*, April 14, 1998, p. B2

"Asset sales are a necessity in order for them  
to delever and get close to investment grade."

*Wall Street Journal*, February 26, 1998 p. B8  
[An analyst referring to Starwood merger with ITT]

April 15, 1998: Corporate high quality----6.60%  
High-yield corporate-----8.23% ["Junk Bonds"]  
Treasury (>10 years)-----5.93%

*Wall Street Journal*, April 16, 1998 p. C18

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\*An earlier paper on this subject by the same author is "Leverage: The Tax Incentives", Working Paper No. 625, July 1991.

## **A TAX POLICY ISSUE: THE NEW JUNK BONDS**

**Junk bonds have risen again. The earlier debacle in which the junk bond market had been nearly wiped out in 1989-90 is almost forgotten. "Junk bonds", it must be recognized, are also known as "high-yield" bonds in polite society. Bonds below "investment grade", i.e., rated BB or lower, are regarded as "junk" or "high-yield".**

### **THE YIELD IS STILL HIGH BUT MUCH SUBDUED**

**As would be expected, high risk continues to produce high yields in the marketplace. For the entire year 1997 the average total return of junk-bond funds was 12.96% while the figures for general U. S. Government funds and Mortgage funds were 8.84% and 8.58%, respectively.<sup>1</sup> In the growing economy that prevailed, more and more companies were able to make payments at a high level. Still, the rates of interest paid were nowhere near those of the earlier days.**

**In September 1997 the average yield (not to be confused with total return) was about 8.8%, by one estimation. One fund manager was quoted as saying that the high-yield bond sector was, "ripe for niching"<sup>2</sup>. The new junk bonds seem less junky than the old; some almost qualify for the coveted award of respectability--**

investment grade. They have a relatively narrow margin with U.S. Treasury bonds, considering the disparity in risk. Near the end of October 1997 the 30-year Treasury bond was paying 6.28% while junk bond funds were paying 8.49%.<sup>3</sup>

#### **THE UNITED STATES IS NOT ALONE**

Canada, too, has an "emerging" high-yield debt market.<sup>4</sup> It was reported that, "U. S investment banks scramble for Canadian business." Europe, too, is involved: "Europe gains appetite for junk bonds; U. S. investment banks help serve them".<sup>5</sup> In addition, of course, there are the bonds of individual companies in many emerging markets.

#### **THE RISK IS STILL HIGH**

In mid-September 1997 we were informed: "More bond mutual funds are taking on risks and only the most wary investors may know it".<sup>6</sup> It seems that investors don't read the disclosures. The risks have been particularly high in interest rate changes and in emerging market bonds. It has been claimed that some fund managers feel under pressure to invest in junk because of poor performance in their funds otherwise. It has also been claimed that some funds have greater risks than implied by their stated purpose or their name.

#### **SOME RISK-REDUCING FACTORS ARE ALSO AT WORK**

One of the devices used to reduce (or spread) the risk is the popular practice of collateralization: "CBOs increase popularity of junk bonds". They were described as "...a nifty vehicle that transforms default-prone junk bonds into solid, investment-grade credits."<sup>7</sup> Underwriting has a comparable effect: "Firms offer junk-deal guarantees" and "Underwriters incur more issuance risks".<sup>8</sup>

**In early November 1997 the reports were that "Junk bonds seem strong, but doubts are lingering".<sup>9</sup> As credit ratings of the junk bonds improve, more investors are attracted. One analyst assures us that "when companies do well and have good earnings, they usually get credit improvements". This was when the report was that "Inflows streak for junk funds hits 7th week."<sup>10</sup> Two junk bond funds were called "Jewels in Junk". We were informed that "Focused strategy pays for 2 high-yield bond funds".<sup>11</sup> Investors seemed to be growing more comfortable with junk bonds, possibly as stock prices kept growing apace. At one point, at the time of the celebrated struggle for control of ITT, the report was, "ITT sets record in junk-bond sale".<sup>12</sup>**

**There have also been inroads into the municipal bond market. Some risky, hence high-yield, municipal bonds have acquired the means to approach investment grade through a new form of insurance that may get traditional, conservative funds and institutional investors to include them in (as opposed to including them out).<sup>13</sup>**

#### **THE TAX INCENTIVE TO USE LEVERAGE REMAINS STRONG**

**The song is ended but the malady lingers on. The malady is this: The high rates paid by some corporate bonds are partly subsidized by the government through the deductibility of interest expense. This distinguishes them from equities, whose dividends are not a deductible expense to the corporation yet are taxable to the shareholder; hence, the complaint of the "double taxation of corporate dividends". Alan Reynolds has reminded us that, in the context of the crash of '87, the House Ways and Means Committee had a bill--not enacted--that "would have made it nearly impossible to deduct the interest expenses from corporate takeovers".<sup>14</sup> The tax-induced interest advantage over dividends remains; hence, a major subsidy of bond over equity financing persists.**

## **THE ROLE OF TAX POLICY**

**The policy question--though quiescent at the moment--still calls for attention. What will happen to junk bonds in the next cyclical downturn? Can we really be sure that there will never again be any such thing? Harvard endowment evidently targets only 2% for junk bonds<sup>15</sup>: Can all individuals and institutions, whether tax-paying or not, similarly resist temptation? Evidently, many investors cannot: The junk-bond funds continued to flourish in 1998.<sup>16</sup> Even some major banks have been playing a prominent role in junk bond activity.<sup>17</sup> Should the tax-tilted playing field be levelled? Should the disparate treatment of the corporation in the two forms of capital income pay-out, namely, interest and dividends, be ended? By removing the deductibility of interest expense? Or by treating dividend pay-outs like a deductible expense? The latter solution would end, once and for all, the claim of "double taxation of dividends." Either solution would tend to dampen one incentive toward the issuance of junk bonds rather than equity. The fiscal revenue consequences of the two approaches differ, of course. In a balanced budget environment this is a major consideration. Moreover, the legal implications of the two forms of capital financing--apart from taxation--would still remain; hence, leverage, including junk bonds, would by no means become extinct.**

# **A TAX POLICY ISSUE: THE NEW JUNK BONDS**

## **FOOTNOTES**

**(WSJ=Wall Street Journal)**

**(month-day-year)**

**1 WSJ 1-13-98 C1**

**2 Los Angeles Times 9-23-97 D4**

**3 Los Angeles Times 10-26-97 D3**

**4 WSJ 9-18-97 B6**

**5 WSJ 7-11-97 C1. At the governmental level, there is the example of South Korea. WSJ 4-9-98 A16.**

**6 WSJ 9-17-97 C1**

**7 WSJ 7-7-97 C1**

**8 WSJ 7-21-97 C1**

**9 WSJ 11-6-97 C1**

**10 WSJ 7-21-97 C1**

**11 Los Angeles Times 8-19-97 D5**

**12 Los Angeles Times 9-20-97 D3**

**13 WSJ 10-3-97 C1**

**14 WSJ 10-17-97 A22**

**15 WSJ 12-12-97 B5**

**16 WSJ 2-20-98 B9B [AZ/SC ed.]**

**17 WSJ 3-26-98 C1 C14**



Part II

**CHANGING THE LOCKS AGAIN ON CAPITAL GAINS\***  
*A Critique of the New Tax Provisions*

Footnotes at page 16

**"Four accountants recently gave four different answers to a reporter asking about which of the new rates should apply in a hypothetical case, even though the answer became clear after studying an IRS worksheet."**

*Wall Street Journal*, March 6, 1998 p. C1

**"Our clients are having a lot of thrills with the new capital-gains rate."**

*Wall Street Journal*, April 2, 1998 p. A10  
[Quoting a trust company manager]

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\* An earlier paper on this subject by the same author is "Changing the Locks on Capital Gains", Working Paper No. 708, January 1994

## CHANGING THE LOCKS AGAIN ON CAPITAL GAINS

The tax law passed in 1997 includes a major reduction in the capital gains tax. Setting the maximum tax rate at 20% for long-term capital gains--while keeping it at zero in some exempt situations--is the key. It provides an inducement for a marked revision in the tax-oriented behavior of savers and investors. There may be significant effects on both the magnitude and composition of the national product. This paper explores some of the likely consequences.

### WOULD THE CAPITAL GAINS TAX CUT ENCOURAGE A STOCK SLIDE?

The long run-up in stocks to a high in August, 1997--and then the sharp slide on October 27 --undoubtedly made many investors wonder, "Should I sell now and preserve my profits by taking them?" In thinking through the tax consequences of selling, the existence of a maximum 20% tax penalty rather than 28% must play a prominent part. The reduced tax penalty speaks for selling. Can this be distorted into saying that the reduced capital-gains tax "caused" the stock market slide? Wouldn't the prospect of ultimately paying a lower tax promote a corresponding *demand* for stocks? The choice is between taking an immediate tax saving by selling and choosing the prospect of the same low rate applied to a greater gain at some time in the future. The sharp sell-off and then substantial recovery at the end of October 1997 could be consistent with both attitudes playing a part in the outcome, with the tax-selling pressure dominant at first and then the tax-waiting pressure appearing later--to the extent that capital gains taxes were on the minds of

traders at all in those hectic days. The main point is that the cut from 28% to 20% could induce investors to buy and hold, not merely to sell and pay the tax. The strong recovery of the market to new highs--even after the dip at the onset of the East Asian crisis--certainly shows no signs of a dumping of stocks because of the cut in capital gains taxes.

#### **WOULD THE GAINS TAX CUT DAMPEN DERIVATIVE ACTIVITIES?**

There are many kinds of derivative activities: we shall focus on a particular one that employs puts and calls at the same time; specifically, the "zero-collar" device. It figured prominently in some of the merger activity in the latter part of 1997.<sup>1</sup> We were told that the director of one of the companies involved "uses exotic play to hedge stake", referring to the "zero-collar" hedge.

The idea is to protect a gain in an appreciated asset by selling a call at the high strike price and buying a put at a low strike price. The premium you receive from selling the call more or less offsets what you have to pay for the put. Your investment is protected from a major decline but you pay no capital gains tax while the collar is in effect. You would have had to pay a capital gains tax if you had sold the appreciated asset outright to make sure you were protecting your gain.

The lower tax maximum of 20% rather than 28% probably does not reduce the incentive to employ this derivative device if the "collar" is literally of "zero" cost; but it could be influential if the premiums on both sides and perhaps other transaction costs would leave the investor with a substantial exposure.

**This use of derivatives, broadly conceived, is to protect a gain without actually realizing and paying the tax. Other techniques exist.**

**Various public and private releases have provided lists under some heading like, "How to cut your capital-gains tax bite", as in the *Wall Street Journal*<sup>2</sup>, which lists the various ways high-income investors avoid or reduce the capital-gains tax [as of early August, 1997, including some items that have since been repealed or have been proposed for revision]:**

- Selling short against the box [no longer effective].**
- Exchange funds.**
- Equity swap.**
- Stock options.**
- Zero-cost collar.**
- Sell outright, using the new lower rate, rather than  
hold to death.**
- Charitable remainder trust.**
- Put options.**
- Innovations?**

**The use of tax-saving provisions is widespread, according to one legal scholar:**

**"For many wealthy investors, the capital-gains tax 'is becoming essentially a voluntary tax' because of new financial products allowing them to shift risk without having to recognize gains..."<sup>3</sup>**

## **HAS THE CAPITAL GAINS TAX BEEN SIMPLIFIED?**

**Are you kidding? We have been told that "Capital pains await many investors as they try to decipher the new rules".<sup>4</sup> It is clear that capital pains will accompany capital gains. The new version of the capital gains tax form, Schedule D--with 54 lines no less--has reached a new height of complexity, all because the governing legislation requires it. The various periods within 1997--the legislation having been enacted after the middle of the year, but with a retroactivity previously announced for a somewhat earlier date; and the new approach to gains on homeowners; all these are responsible for most of the complexity. But isn't the celebrated 20% rate like 'flat'?**

**Paul Caron<sup>5</sup> has pointed out that the new capital gains tax isn't 'flat' by any means or by any definition of the term. We can say that there are now at least nine capital gains tax rates that vary at least in part according to the taxpayer's income or ownership history: 28% 25% 20% 18% 15% 14% 10% 8% 7.5%.**

**'Nuf said?**

**To enjoy the new rate of 20% the asset must have been held for 18 months or longer (ignoring transitional provisions). Representative Archer has said that he may fight to repeal this longer holding period. Congressional staffers have indicated that if the change were made it would probably not be retroactive.<sup>6</sup>**

**Mutual fund holders are particularly vulnerable to the multiplicity of rates while holding, not even selling, their shares. For instance, one mutual fund sent out a notice to holders in December 1997, with a check for a long term capital gain distribution, informing them that a stated percentage of that distribution was subject to the 28% maximum rate. Other funds conveyed, or promised, similar information for tax-preparation purposes.**

**This is in compliance with the new tax law. As in the past, the length of the *investor's* holding period is not what determines the "long term capital gain distribution" designation. The buying and selling *within* the fund by the fund itself is what controls. Now the same applies to the question whether the 20% or 28% maximum rate applies to a particular long term capital gain distribution. In case of the sale of *fund shares* by the investor, the holding period of those shares by the investor is still what controls.**

**To report all this the mutual fund holders have to file a Schedule D with their tax return. They previously did not have to submit this separate schedule if the only capital gains they had to report were mutual fund capital gain distributions.**

**Witness the opinion of two members of the Taxation Section of the American Bar Association:**

**"Changes in the rules on taxability of long-term gains on non-corporate capital assets, such as securities and real estate, may cause some of the biggest headaches for tax practitioners and their clients."<sup>7</sup>**

## **GO REFIGURE!**

**One can easily conceive of a new activist group being formed around the slogan: "Abolish the death penalty--Condemn all murderers to filling out Schedule D of Form 1040 for the rest of their lives. And in case of bad behavior, have them fill out Alternative Minimum Tax -Form 6251, with special emphasis on the requirement to 'refigure' [the term used in the Instructions] for use in the AMT form some of the items already completed for Schedule D use." More and more taxpayers are being exposed to this experience because the AMT exemption levels have not been indexed for inflation.**

## **THE HOMEOWNERS' BONANZA**

**Under the heading, "Pack and Save", a syndicated columnist, Kathy Kristof, has pretty well summarized the boon given to homeowners in the new tax law: "Some people who own two homes are making moving plans. Taxpayers now get a break on profit from selling any home - if they've lived in it."<sup>8</sup> . The old rollover provision is no more: It had required that the gains tax could be deferred by buying a house at least equal in value to the one sold. Now there is no need to buy another house--for any price. Moreover, the process can be repeated every two years if all requirements are met. The main proviso is that the seller have owned and lived in the house for at least two of the past five years. The gain made on the sale is not merely deferred, it is totally forgotten taxwise, up to \$250,000 for one person or \$500,000 for a couple. The old \$125,000 exemption for those over 55 is no longer useful and has been removed.**

**Is everybody happy? No. Those with larger gains will be subject to a tax on the excess gain. Previously they could roll over into an equally or more expensive home, thereby deferring the tax. If they can wait until death, they can still enjoy exemption from the capital gains tax.**

**The new exemptions apply to sales made after May 6, 1997. Any portion of the gain that had enjoyed a depreciation deduction is subject to new provisions.**

**The above is merely an academic overview for scholarly discourse and is not adequate for the preparation of any tax returns or forms.**

## **ARE CAPITAL GAINS INDEXED FOR INFLATION?**

**No. Despite a valiant effort by some lawmakers, capital gains remain unindexed. If asset prices rise with a general inflationary increase, the full gain on a sale remains subject to the capital gains tax. This is despite the fact that the tax bill**

**passed by the House on a 253-179 vote would have provided for indexing.<sup>9</sup>**

**It was reported at the beginning of July, 1997 that Representative Archer would fight for capital-gains indexing despite President Clinton's opposition:<sup>10</sup>**

**Later, in an article entitled, "End the Inflation Penalty", he wrote:**

**"Half of all taxable 'capital gains' are actually attributable to inflation"....**

**"Americans who save or invest do not gain from inflation - and neither should the federal government".<sup>11</sup>**

**There is also a substantial opposition to indexing. Note the following plea as expressed in a newspaper report:**

**"Please reject capital-gains indexing, the New York State Bar Association tax section urges Congress:**

**'Our experience as tax professionals leads us to the conclusion that the tax-avoidance possibilities**

**that will result from adoption of these provisions**

**are so easily exploited that they will inevitably lead**

**to its ultimate repeal, or to endless amendments**

**...intended to close gaping loopholes', warns tax-**

**section chairman Richard O. Loengard Jr. of Fried Frank."<sup>12</sup>**

**It would be essential that an indexing provision state explicitly what named price index would be used; and a complete table of indices and multipliers for all relevant dates would evidently be gratefully received by the tax practitioners. The great**



unwashed (who prepare their own tax returns, with or without benefit of computers) would also be most appreciative; in fact, even more so.

## CONCLUSION

Will there ever be a conclusion? It hardly seems likely. The situation is described well in a newspaper item that has appeared:

**"Mark Bloomfield, president of the American Council for Capital Formation, says there are 'only three sure things in life: death, taxes and the debate on capital-gains taxes that will never end.'"<sup>13</sup>**

While the debate continues, complexity and confusion reign. As pointed out above, those who receive capital gains distributions have to separate those portions that are at 20% from those at a 28% maximum; but must wait for the basic information from the fund and then make the necessary calculation if the fund has not taken the trouble to do the arithmetic itself for the individual investor. All of this is on top of the longstanding problem that an investor may have to pay a capital gains tax on a distribution even though the fund goes down in market value while the investor holds it.<sup>14</sup> An open-end fund investor might particularly have a problem along these lines in case of a crash followed by a mass of redemptions. The fund might have to liquidate large numbers of shares showing paper gains, thereby provoking taxable capital-gain distributions to investors.

When all is said and done, though, the drop from a 28% maximum to 20% leaves more money in the pockets of investors despite all complexities and contingencies. But wait. We are told that there are "tax-code bashers"<sup>15</sup>, that at the end of March, 1998 they were gearing up for "April 15 tax-deadline media events"<sup>15</sup> and that:

**"Instead of protests, United for a Fair Economy next week will unveil pledges from over 60 taxpayers to donate their savings from capital-gains-tax cuts to various causes."<sup>15</sup>**

# CHANGING THE LOCKS AGAIN ON CAPITAL GAINS

## FOOTNOTES

(WSJ=Wall Street Journal)  
(month-day-year)

- 1 WSJ 10-15-97 C1
- 2 WSJ 8-7-97 C1. For revisions and proposals see WSJ 2-11-98 C1 C4.
- 3 Daniel Halperin, Harvard Law School, as reported in WSJ 11-12-97 A1.
- 4 WSJ 8-27-97 A1
- 5 WSJ 11-28-97 A11 (a letter)
- 6 WSJ 1-14-98 A1
- 7 *American Bar Association Journal*, November 1997 p.56, "These Taxing Times", by Samuel L. Braunstein and C. Wells Hall III pp. 54-59, vol. 83. In April, 1998, the simplification of the holding period provisions was under serious consideration in Congress. WSJ 4-9-98 A24.
- 8 Los Angeles Times 10-12-97 D2. A clarifying Senate bill deals with the homeowner provisions, including how to handle occupation of less than two years. WSJ 4-9-98 C1 C16.
- 9 WSJ 6-27-97 A2
- 10 WSJ 7-2-97 A1
- 11 WSJ 7-17-97 A22, "End the Inflation Penalty", by Bill Archer, (R) Texas, ch. House Ways & Means Committee.
- 12 WSJ 7-9-97 A1
- 13 WSJ 1-28-98 A1
- 14 WSJ 2-20-98 C1 C26
- 15 WSJ 3-27-98 A1. The promised list was duly released and showed that 80 wealthy individuals who would benefit from the 1997 tax law agreed to pledge at least \$628,000 to various causes, according to an Associated Press report. Los Angeles Times 4-1-98 D8.

Part III

**TAXING MULTINATIONALS:  
TAX CREDITS, TRANSFER PRICING AND BRIBERY\***

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**"Tax proposals target insurance, multinationals and estate planners."**

*Wall Street Journal*, February 3, 1998 p. A10  
[Referring to Administration budget proposals]

**"Many U.S.-based multinational corporations are trying to persuade Congress to block IRS rules they say could hurt their ability to compete internationally. The new rules limit the ability of foreign subsidiaries of U. S. companies to lower their foreign taxes by making cross-border payments to related entities, says David Harlton, a tax partner at Sullivan & Cromwell in New York."**

*Wall Street Journal*, April 1, 1998 p. A1

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**\*An earlier paper on this subject by the same author is "Taxing Multinationals while Minimizing Economic Distortion", Working Paper No. 743, 1995.**

## **TAXING MULTINATIONALS: TAX CREDITS, TRANSFER PRICING AND BRIBERY**

**Two persistent problems in the taxation of multinationals are the treatment of transfer pricing and the bribery of foreign officials. These factors greatly complicate the task of achieving an equitable taxation of these companies. Another aim is to avoid the double taxation of foreign investments. The foreign tax credit is a major vehicle to accomplish this purpose.**

### **TRANSFER PRICING**

**A striking example of the transfer pricing problem was revealed at the beginning of 1997.<sup>1</sup> The heads of a multinational company (Sunrider) were accused of using foreign companies that they controlled to overcharge their American company by from 50% to as much as 900% for ingredients, thereby drastically understating the company's profits and its U. S. tax liability. A half-year later the case was settled with the payment of \$93 million in the tax dispute.<sup>2</sup> The indictment had charged that the owners had used the foreign companies that they controlled to overcharge the American company for the imported ingredients as a way to illegally reduce its taxable income.**

**In another case, settled around the same time, Baker Hughes, Inc. announced that that it had reached agreement with the Internal Revenue Service to close an audit of its income tax returns.<sup>3</sup> The company said that the audit pertained to inter-company pricing on the transfer of goods and services between its U. S. and non-U. S. units.**

**The Internal Revenue Service has been engaged in reaching advance agreement with multinational companies to reduce conflict with them on transfer pricing. A record 41 such agreements were completed in the year ended September 30, 1997.<sup>4</sup>**

**Another approach is to dampen the incentive to reduce taxation through transfer pricing devices by promoting an international crackdown on the underlying tax differential. The U.K., for one, may toughen its tax rate as part of this international effort, it has been reported.<sup>5</sup>**

## **THE PROBLEM OF BRIBERY**

**At the beginning of the 1997 there were some encouraging reports on the perennial problem of international bribery:**

**"In international commerce, payoffs, not performance, often dictate who sells what to whom. But though bribery is routine between governments and multinational companies, seeking their business, a growing anticorruption movement is starting to show results."<sup>6</sup>**

**Such bribery remains a major concern even though U. S. firms, a survey found, are least likely to pay bribes abroad.<sup>7</sup>**

**A study by the National Bureau of Economic Research found that corruption deters investment; specifically, that "a worsening in a host government's corruption level from that of Singapore to that of Mexico is equivalent to almost a 21 percentage point increase in the marginal tax rate for foreign investment."<sup>8</sup>**

Such activity is governed in the United States by its "unique" Corrupt Practices Act.

The international movement against bribery is strengthened by the fact that a ban on bribery has been approved by the OECD.<sup>9</sup> Twenty-nine countries had adopted an anti-corruption treaty that penalized bribery. By the end of the year 34 nations had signed up.<sup>10</sup> One report says that 500 corporations admit to payments.<sup>11</sup>

### **"LOOPHOLES": AVOIDANCE AND DEFERRAL OF TAXES**

Apart from questionable transfer pricing and corrupt foreign payments there are opportunities for avoidance, reduction or deferral of taxes; loosely, "loopholes", as in "President takes aim at tax loopholes".<sup>12</sup> It happens that President Clinton's first line-item veto included an item dealing with allowing financial-services firms to defer taxes on foreign income earned in 1998; it would not have been reported immediately on their U. S. income tax returns.<sup>13</sup>

The taxing of multinationals is so complex that special software is virtually essential to the calculation. At one point some software firms accused the IRS of stealing their product. The IRS responded that they needed access to the software to understand the complicated paths that companies, particularly multinational corporations, take to pay their federal taxes.<sup>14</sup>

The Treasury had set regulations to close tax loopholes in the handling of the foreign tax credit. The aim of the credit is to ensure that American multinationals have the same tax burden no matter in what country they do business. Some of them buy the tax credits of companies that are, for instance, tax exempt and use them to offset their tax liability. American corporations generally face a 35% tax rate. Under the new rules the Treasury would disallow those claims for credits they

believe are aimed at avoiding U.S. taxes. The sale and trading of foreign tax credits, however, remained permissible.<sup>15</sup>

Loophole-closing or whatever, there has been a greatly reduced participation by businesses in international joint ventures since 1986, according to a study of the National Bureau of Economic Research (by Desai and Hines). They found that the decline in joint ventures has been most pronounced in low-tax countries.<sup>16</sup>

## **TAX AGREEMENTS**

Improvement through tax treaties--primarily designed to avoid double taxation--represents another hope for equitable treatment. At the beginning of 1998, treaties became effective with South Africa, Thailand, Ireland, Switzerland, Austria and Turkey; and an amendment to an existing treaty became effective with Canada.<sup>17</sup> Negotiations were completed with Estonia, Latvia and Lithuania, subject to ratification.<sup>18</sup>

## **CONCLUSIONS**

Much has been done but more has still to be done to achieve the equitable tax treatment of American investors and multinational corporations with foreign investments. The aim would be to enable U.S. companies to pay the same U.S. tax no matter where in the world they do business. The effect would be to prevent differential tax considerations from introducing an artificial barrier to achieving a competitive result. The result can be dramatic. In an important case, Amoco was celebrated as scoring "a major victory over the IRS in a federal appeals court" by which it was entitled to a foreign tax credit for its Egyptian operations.<sup>19</sup>

## **MULTINATIONALS**

### **FOOTNOTES**

**(WSJ=Wall Street Journal)**

**(month-day-year)**

**1 WSJ 1-7-97 A1**

**2 WSJ 7-3-97 B7**

**3 WSJ 7-1-97 A6**

**4 WSJ 1-5-97 A1**

**5 WSJ 10-10-97 A14**

**6 WSJ 1-27-97 A1**

**7 WSJ 8-25-97 A13C [AZ/SC ed.]**

**8 NBER Digest 10/97**

**9 WSJ 11-24-87 A14**

**10 WSJ 12-18-97 A16**

**11 Los Angeles Times 11-21-97 D3 D20 D22**

**12 WSJ 1-29-98 A2**

**13 WSJ 8-12-97 A3 A16**

**14 Los Angeles Times 9-27-97 D8**

**15 WSJ 12-24-97 A3 A5**

**16 WSJ 5-28-97 A1**

**17 WSJ 1-14-98 A1**

**18 WSJ 1-28-98 A1**

**19 WSJ 3-18-98 A1**

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