



News Release

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Prepared Remarks of IRS Commissioner Douglas Shulman to the 21st Annual George Washington University International Tax Conference

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WASHINGTON — Thank you for that kind introduction and warm welcome.

It's a pleasure and an honor to be in the company of so many experts as we discuss some of the emerging trends in international tax administration and what we are doing both domestically and globally to respond to them.

Let me begin by saying that the dialogue that will take place today is very different from one that would have occurred a year ago.

Although there were some ominous clouds on the economic horizon in August 2007, few could have predicted the battered and bruised financial landscape we see today.

As the great English statesman and philosopher Edmund Burke said, "An event has happened, upon which it is difficult to speak and impossible to be silent."

Tax administrators and tax professionals find themselves with a new, heightened and highly visible global role.

It's fair to say that U.S. taxpayers' attitudes and perceptions about the taxes they pay reflect the changing world around them.

We must recognize that many taxpayers are now looking at the world through a new economic prism – one that draws sharp lines in the taxpayer spectrum, such as global corporations versus the typical family filing a 1040 return with a W-2 attached to it.

Call it Wall Street versus Main Street.

We must recognize that U.S. multinational corporations shopping for the best tax deals across the globe will come under increased public scrutiny back home.

Let me be clear. Some of these tax strategies can be legal. And many corporations and their legal and tax advisors are genuinely trying to comply with the myriad of international tax laws they face and to avoid double taxation.

Legitimate practices to minimize tax exposure are also essential for U.S. corporations to operate and remain competitive in the global marketplace where foreign-based corporations have such tools at their disposal.

However, we have also seen some corporations constructing transactions to avoid tax entirely on certain income, or trying to go beyond the avoidance of double taxation and engage in “double-dip” transactions whereby they get a deduction or credit for the same amount in two countries.

To borrow a line from *Hamlet*, “There’s the rub.”

U.S.-based corporations more than tripled their foreign profits between 1994 and 2004, rising from \$89 billion to \$298 billion – with 58 percent of that profit earned in low tax or no tax jurisdictions

And this gives pause to some U.S. taxpayers and policymakers who want to be sure that that these corporations are paying their fair share at home.

Even before the current economic crisis, this concern was evident. A 2007 Taxpayer Attitude Survey found that 80 percent of respondents believe that it is very important that IRS “ensure that large corporations are reporting and paying their taxes honestly.” Compare this to 68 percent for small businesses.

Fast forward to today. The average American taxpayer who is being buffeted daily by fierce economic winds also feels they have been asked to shoulder most of the risk associated with rescuing the economy.

Call it what you will – fallout or consequences – but I believe that the events of the past year will create increased public pressure on corporate taxpayers to adhere to not only the letter of the law, but the spirit of their home country law.

Global corporations based in the U.S. pay taxes in countries throughout the world, but recent events have shown that when it comes to tax jurisdictions, not all are created equal. In our current economic environment, when major multinationals need a helping hand from government, they don’t seek a pro-rata portion from each of the dozens of jurisdictions around the world where they claim to do business.

Now, I don’t want to give the impression that it’s just corporate taxpayers who are increasingly under the microscope. Given the ease with which capital moves around the world, the IRS must and will remain vigilant to ensure that wealthy individuals don’t use offshore accounts to avoid paying their U.S. taxes. But that’s just the beginning.

We must constantly adapt to this evolving, dynamic and sometimes dizzying global environment in which multinational enterprises increased from 3,000 in 1990 to more than 63,000 in 2007 and the value of foreign tax credits being claimed increased by more than 25 percent in just two years from 2005 to 2007.

It’s clear that no one – not the IRS or any tax administration system in the world – can afford to fall behind this fast pace. Nor can we afford a go-it-alone strategy.

To this end, I am committed to engaging with my counterparts across the globe and pushing forward what I see as the collective and shared enterprise of fair and effective tax administration.

In the corporate arena, we're starting to make progress in our international efforts by focusing on three specific areas which are most on our minds these days and which I believe will best assist our efforts to reign in those corporations who are pushing the envelope and also to help those corporations who play by the rules.

First is Transfer Pricing. This is one of the most difficult areas for both tax authorities and taxpayers. I recognize that transfer pricing is not easy to manage – even for those taxpayers that aim to steer clear of any grey area.

Although there are many transfer pricing topics, I want to mention three that may be of current interest to the audience. Specifically, cost sharing, contract manufacturing, and global dealing.

Cost sharing involves those taxpayers aggressively pursuing transfer pricing schemes to shift income out of the US to low or no tax jurisdictions. One of the most common is to transfer a valuable intangible for less than arms-length compensation. The IRS has been vigorously attacking many of these transactions where we see corporate taxpayers crossing the line. In addition to pursuing cases in the audit and exam cycle, we are also working on temporary regulations related to cost sharing.

Contract manufacturing is about taxpayers trying to avoid subpart F income in foreign locations that do not have sufficient manufacturing activity. The IRS and Treasury are also working on regulations in this area that will make it more difficult for taxpayers to use this abusive tax planning.

Global dealing is somewhat analogous to the transfer of intangibles such as research and development related to a new drug, but it is applicable to financial institutions. Specifically, financial institutions will attempt to book transactions such as loans and swaps in low-or-no tax jurisdictions and then argue that a disproportionate amount of the profit should be allocated to the low-or-no tax jurisdiction.

The second big area is hybrid structures. These can include hybrid entities or hybrid instruments. Regardless of the form, their underlying purpose is to either exclude income from taxation or obtain double deductions/credits in various jurisdictions.

One of the most problematic of these structures are Foreign Tax Credit generators. In my opinion, FTC generator transactions are examples of situations where certain taxpayers may be trending toward the “bad actor” end of the spectrum. Without venturing into the legal nuances, I view this issue very simply. Foreign tax credits were designed by Congress to help U.S. taxpayers avoid double taxation. Common sense would indicate that, where a single payment of foreign tax generates credits for two taxpayers, these transactions deserve closer scrutiny. As many of you know, one case has been docketed and there are a few other cases in the process of being designated for litigation.

Third and lastly are withholding taxes. Today, the IRS will add withholding taxes to the Tier I list of issues. The tier issue process will provide the needed organizational priority and coordination to ensure taxpayer compliance with the U.S. withholding tax provisions. Our compliance efforts will span efforts to ensure individual, business and corporate taxpayers understand and fulfill their withholding tax filing obligations to addressing transactions that attempt to circumvent withholding taxes or claiming improper tax treaty withholding rates.

Let me also point out that this past September, the Senate Permanent Subcommittee on Investigations held a hearing looking into how the IRS has been investigating certain investment banks who have been trying to help their clients – mostly hedge funds – avoid dividend withholding tax. During the hearing, there was also extensive discussion about securities lending transactions and Notice 97-66. Let me bring you up to date on the issue.

IRS is reviewing the notice. However, in the interim, we're examining very carefully those transactions whose primary purpose is to avoid dividend withholding tax and will propose adjustments as needed.

Turning now to the individual area, our current focus is on unreported off-shore accounts. Here too we have a combination of tools at our disposal – all of which we're using simultaneously.

Think of a detective working a case who may employ everything from eyewitness accounts, physical evidence, paper trails and the cooperation of law enforcement officials in other states. That's similar to what we're doing with the following tools.

One of our best is the Qualified Intermediary Program. QI gives the IRS an important line of sight into the activities of foreign banks and other financial institutions. It also provides detailed information reporting that the IRS did not receive before this program was implemented.

Indeed, the QI program is critical to facilitating sound tax administration in a global economy. By bringing foreign financial institutions more directly into the U.S. tax information reporting system, we can better ensure that U.S. persons are properly paying tax on foreign account activity, and that foreign persons are subject to the proper withholding tax rates.

Admittedly, the QI program is a maturing, and complex program and there are flaws that must be addressed. I became convinced early in my tenure that we need to shore up the QI program and continuously enhance, improve and strengthen it. And we are.

In mid-October, we issued a set of proposed QI amendments for comment which I believe will make QI audits more useful and help give us that clear line of vision and transparency we need in tax administration.

Under the proposed changes, financial institutions that are QIs must provide early notification of material failure of internal controls. They must also improve evaluation of risk of circumvention of U.S. taxation by U.S. persons. And they must include audit oversight by a U.S. auditor. I certainly look forward to your comments and suggestions after you review this important proposal.

Using informants is another part of our toolkit. Since the inception of the Whistleblower Office in 2007, the IRS has received hundreds of tips on financial institutions and individuals with foreign accounts and international compliance issues. Some of these have become big money cases.

Dozens of these tips involve the names of individuals with offshore accounts; others involve the names and practices of financial institutions in those countries that typically have strict bank secrecy laws.

And keep in mind the value here is far greater than just the names of specific individuals. With work, these tips provide the information the IRS needs to pursue John Doe summonses – our next important tool.

The IRS generally uses the John Doe summons authority to identify individuals, groups or classes of US taxpayers whose member identities are unknown, who are involved in specific areas of tax noncompliance and who cannot be identified through other means.

For example, we would use this type of summons when we know that taxpayers use offshore bank accounts to avoid paying taxes, but we do not know their identities. A John Doe summons served on a domestic processor of offshore bank records would give us their names, addresses and other identifying information.

The IRS requested and received court approval to serve over 150 John Doe summonses in connection with its Offshore Credit Card Project. And we received court approval from multiple US District Courts on every John Doe summons request made.

These leads are part of another important tool at our disposal – our criminal investigation function. The IRS is increasing our resources devoted to investigating the misuse of foreign entities and the use of foreign bank accounts to hide taxable income and is currently pursuing hundreds of criminal investigations of U.S. taxpayers for offshore tax evasion. The numbers speak for themselves.

In Fiscal Year 2008, the IRS initiated 49 investigations that involve foreign and offshore issues. We also had 55 indictments information filed in foreign/offshore cases. There were 61 convictions, and the average term for those going to jail was 32 months.

I want to repeat that undisclosed foreign bank accounts are, and will remain, a top priority for the IRS. Those taxpayers who are hiding assets overseas should be concerned, and would do well to come in and voluntarily disclose their offshore accounts. According to long-standing IRS policy, taxpayers who voluntarily disclose in most cases avoid criminal prosecution.

Now, as I mentioned earlier, we cannot afford a go-it alone strategy. The IRS knows all too well that we have to be at the top of our game when playing in the international business arena. And we currently have cooperative agreements for information exchanges with over 70 jurisdictions and have expanded the program in recent years to even include some famous offshore ones, such as the Cayman Islands and the Bahamas.

The Joint International Tax Shelter Information Center – or JITSIC – has also proved to be another important arrow in our quiver to combat abusive international tax shelter activity on a real-time basis.

JITSIC's primary focus has been on the bilateral exchange of specific abusive transactions and their promoters and investors. The results, to date, have been promising. The U.S. has received information regarding some transactions of which it had not been previously aware.

Indeed, in light of the complexity of the transactions, and considering the inherent difficulty normally associated with obtaining taxpayer-specific shelter information from foreign

countries, it is unlikely that these transactions would have been uncovered and understood, but for JITSIC.

We need to redouble our commitment to international cooperation, and explore new and different ways to work with our counterparts overseas. That's why I've asked our international team to develop a multi-year proposal for expansion of JITSIC beyond its roots in combating tax shelters. I intend to engage my colleagues around the world in this discussion in the coming months.

I will continue to build stronger relationships with our tax treaty partners to improve our mutual agreement process to relieve double taxation and to improve tax compliance. It is important that the IRS provide leadership to enhance capabilities for increased joint examination activities with our treaty partners, improve our compliance risk assessment capabilities and improve our capacity to identify and share information on potential aggressive international tax transactions. Also, we will continue to support the important work of the OECD, Forum on Tax Administration and CIAT.

So what else lies ahead for the IRS when it comes to international tax administration?

First, we know that we must match resources to the challenge. That means hiring more financial product specialists, valuation experts, actuaries, economists, revenue agents, special agents, and attorneys.

And I'd like to make an appeal to all of you. If you know of someone who wants to make a real difference during a difficult economic time for this country, please encourage them to consider a career with the IRS. I can promise you, it's a decision they will not regret.

Second is the international tax gap. So how big is it? \$10 billion? \$100 billion? It's hard to say as I haven't seen any solid research to arrive at conclusive numbers.

Difficulties arriving at one include the complexity of cross-border audits, and the inherent complexity of the tax code in this area.

But in some ways, whatever the size of the international tax gap, our commitment to this issue would be unchanged. That is because our international compliance efforts are much more about protecting the \$2.7 trillion base of revenue that we collect today rather than just the incremental enforcement revenue that we collect from these efforts. Nevertheless, we are committed to aggressively pursuing the international tax gap – whatever amount it may ultimately be.

What I'm speaking about is blunting the broader effect of this race to the bottom by those who deliberately seek to avoid their legal tax obligations.

We cannot allow an environment to develop where wealthy individuals can go offshore and avoid tax without consequence.

We cannot allow an environment where large corporations can pay hefty fees and salaries for top talent to engage in overly aggressive shifting of taxable activities to low tax jurisdictions.

We cannot allow this corrosive behavior to undermine the fundamental confidence in the fairness of the tax system which could prompt more and more taxpayers to cross over that dangerous line into non-compliance.

In this arena we will devote whatever resources are at our disposal to ensure that our citizens are confident that we're all playing by the same set of rules.

Next month I will be attending the next Leeds Castle meeting of 10 Commissioners. As I touched upon earlier, the Leeds Castle group of countries came together in 2006 to deal with the burgeoning problem of tax shelters and increased globalization. And to a large degree we have been successful. Now is the time to use this same model of international cooperation and apply it to some of the emerging issues, such as transfer pricing.

In conclusion, I believe that we're up to tackling these unprecedented global challenges. It will require unprecedented cooperation between tax administration systems across the globe. And it will require professionals like you standing up for the integrity of these systems. I know we can and must succeed.

Thank you again for allowing me to share some thoughts with you today and I wish you the very best for the holidays and a happy new year.