# Current Tax Reading

Co-Editors: David Duff, Tim Edgar, and Alan Macnaughton*

**Reuven S. Avi-Yonah, "International Tax as International Law"**
(2004) vol. 57, no. 4 *Tax Law Review* 483-501

**Lorraine Eden and Robert T. Kudrle, "Tax Havens: Renegade States in the International Tax Regime?"**
(2005) vol. 27, no. 1 *Law & Policy* 100-27

**Mitchell A. Kane, "Strategy and Cooperation in National Responses to International Tax Arbitrage"**
(2004) vol. 53, no. 1 *Emory Law Journal* 89-169

There is some debate among tax academics and tax practitioners regarding the existence of an international tax regime. One school of thought holds that there is, in fact, a set of norms and principles that implements a set of general policy goals. According to this school of thought, this broad set of norms and principles constitutes an "international tax regime," providing a lens through which the specific details of country rules affecting cross-border transactions can be analyzed. Another school of thought holds that there is no such thing as an "international tax regime"; there is only a set of rules affecting cross-border transactions, and these rules are nothing more than the outcome of the pursuit by national governments of their perceived national interests in the context of such transactions.

Each of these three articles focuses on the subject of international taxation in a manner that can usefully be framed in terms of these two schools of thought. Avi-Yonah explores the broad issue of the character of international tax as international law. In short, he poses the question: Is international tax law part of international law? He observes that international lawyers would consider the question ridiculous since, from the perspective of their discipline, international tax law is obviously part of international law. Tax lawyers, however, would consider the question to be much

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less clear-cut since, from their perspective, they are not primarily international lawyers but tax lawyers "who happen to deal with cross-border transactions."[1] Avi-Yonah argues that both of these perspectives are valid. He explores, in particular, those aspects of international tax that are firmly grounded in international law concepts, as well as those that are different. Avi-Yonah is clearly a member of the school of thought that holds that there is such a thing as an international tax regime; indeed, he has been one of its principal proponents.[2] It is not surprising, therefore, that he emphasizes the character of international tax law as international law as the basis for recognizing international customary tax law as part of the international tax regime. He believes that explicit recognition of such a body of tax law would help to clarify some of the constraints that the United States faces in adapting its international tax laws to changing business realities. Moreover, he believes that explicit recognition of the significance of the Vienna Convention on the Law of Treaties can aid tax treaty interpretation.

Eden and Kudrle focus on the initiative of the Organisation for Economic Co-operation and Development (OECD) to eliminate harmful tax competition by tax haven jurisdictions. They characterize these jurisdictions as "renegade states"—states "whose practices are salient to an international regime but whose behaviour does not comply with the descriptive norms and practices of the regime."[3] Eden and Kudrle are thus firmly positioned in the school of thought that holds that there is such a thing as an international tax regime, which is flouted by the practices of tax haven jurisdictions. They provide a useful historical perspective on the OECD initiative, the roots of which they trace back to the failed attempts of the United States in the 1980s and the European Union in the 1990s to control tax competition from tax havens. Eden and Kudrle argue that the OECD, in effect, "picked up the baton" from the US Treasury department and the European Commission in the race to protect the integrity of the international tax regime. The success of this broader multilateral effort is critically undermined, however, by multinational enterprises and international tax and accounting firms, which are the primary beneficiaries of continued tax competition. Eden and Kudrle suggest a number of interesting areas for further research, including the role of these particular actors in sustaining international tax competition.

Kane focuses on the issue of international tax arbitrage—the use of cross-border transactions to realize a tax benefit from the inconsistent characterization of those transactions in two countries. Kane explores, in particular, the strategic interests of countries in maintaining inconsistent characterization as a means of delivering tax benefits. He argues that international tax arbitrage can provide a country with the

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1 At 483.

2 See, for example, Reuven S. Avi-Yonah, "Commentary" (2000) vol. 53, no. 2 *Tax Law Review* 167-75; and Reuven S. Avi-Yonah, "International Taxation of Electronic Commerce" (1997) vol. 52, no. 3 *Tax Law Review* 507-55.

3 At 101.

opportunity to deliver benefits in a non-transparent manner that may not attract retaliation from other countries. He illustrates his argument by drawing on the apparently inconsistent responses of the United States to international tax arbitrage. He distinguishes international tax arbitrage from international tax competition on the basis that taxpayers are indifferent to the content of a rule in the former instance but not in the latter. More particularly, if rules are harmonized, in the case of international tax arbitrage taxpayers do not care which of two different characterizations is chosen. In the case of international tax competition, taxpayers would prefer that rates be harmonized at the lowest possible level. Kane's perspective fits neatly with a perspective that stresses the absence of an international tax regime and emphasizes the strategic interests of countries in adopting tax rules applicable to cross-border transactions. He does, however, conclude by exploring the reasons why countries might ultimately be better off if they were to pursue strategies of cooperation in responding to international tax arbitrage. Such behaviour is generally consistent with a view of international tax law as an international tax regime.

T.E.

**Dirk Zetzsche, "The Need for Regulating Income Trusts: A Bubble Theory"** (2005) vol. 63, no. 1 *University of Toronto Faculty of Law Review* 45-109

The author of this article argues that the income trust phenomenon in Canadian capital markets bears all the hallmarks of a "bubble." Those hallmarks include leverage, opportunistic support by interested parties, and overly optimistic retail investors. Zetzsche supports this characterization of the growth in income trust investments by drawing out similarities with the bubble in the information technology sector in 1999-2000.

Although Zetzsche emphasizes the bubble risk in the income trust sector, he believes that this particular organizational structure can be efficient for some firms. He suggests, nonetheless, five policy initiatives that would minimize bubble risk:

1. the tax incentives associated with income trusts must be eliminated in order to correct the misallocation of capital to low-growth businesses;
2. a default governance structure similar to that for corporations and shareholders should be adopted in place of the current weak governance structure;
3. income trust investors should be given some control over distributions policy;
4. regulatory provisions that constrain income trust holdings by institutional investors should be eliminated; and
5. the conduct of broker dealers and mutual fund managers should be more closely monitored to avoid an oversupply of income trust units.

Although the focus of the article is the non-tax aspects of the income trust phenomenon, Zetzsche recognizes the role that the income tax system has played in the growth of the sector. There is even a part of the article devoted to a description of the tax advantages of income trusts. The recommendation to eliminate regulatory provisions that constrain income trust holdings is especially interesting in light of the Department of Finance's proposal to limit such holdings as a means to stem the revenue leakage attributable to the income trust sector.[4] Unfortunately, in developing his bubble theory, Zetzsche does not explore the parallels between the income trust phenomenon and the leveraged buyout craze in the United States in the 1980s.

T.E.

**John E.S. Poyser, "Qualifying and Non-Qualifying Testamentary Trusts"** (2004) vol. 24, no. 1 *Estates, Trusts & Pensions Journal* 41-54

This article describes and critically reviews the administrative position of the Canada Revenue Agency (CRA) on the status of a trust as a testamentary trust. That position is compared with the somewhat sparse case law on the issue. Two of the more interesting parts of the article review the testamentary status of trusts that are funded from the proceeds of an insurance policy or a registered retirement savings plan on the death of an individual. The article also appears as a chapter in a text published in October 2004.[5]

T.E.

**Thomas D. Griffith, "Progressive Taxation and Happiness"** (2004) vol. 45, no. 5 *Boston College Law Review* 1363-98

**Marjorie E. Kornhauser, "Educating Ourselves Towards a Progressive and Happier Tax"** (2005) vol. 106, no. 9 *Tax Notes* 1069-74

The rate structure remains one of the more contentious aspects of the income tax. The issue has attracted and continues to attract the attention of tax policy makers, tax academics, and politicians. On one side of the debate are proponents of a progressive rate structure; on the other side are proponents of a flat or proportional rate structure. The debate is incessant, largely because proponents of these very different rate structures have very different views of the role of the income tax and its ethical justification.

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4 Canada, Department of Finance, 2004 Budget, Notice of Ways and Means Motion To Amend the Income Tax Act, March 23, 2004, resolutions 12 through 14, proposing that registered pension funds be limited to holding no more than 1 percent of their assets in business income trusts and no more than 5 percent of the units of any single business income trust. The adoption of this particular budget proposal, which was scheduled to take effect on January 1, 2005, was deferred pending further study. See Canada, Department of Finance, "Minister of Finance Announces Consultations on Pension Fund Investment in Business Income Trusts," *News Release* 2004-036, May 18, 2004.

5 John E.S. Poyser and Larry H. Frostiak, *The Practitioner's Guide to Trusts, Estates and Trust Returns* (Toronto: Carswell, 2004).

The Griffith article is one of four included in a special issue of the *Boston College Law Review* devoted to progressivity and budget processes in the United States.[6] Of the four articles, Griffith's is especially noteworthy for the refreshing perspective it provides on the longstanding debate over proportional versus progressive taxation. Griffith draws on the field of subjective well-being to justify a progressive income tax. He argues that the improvement in relative incomes that occurs for the vast majority of individuals because of the redistribution effected by such a tax increases the utility of those incomes. This result follows from certain empirical studies of the determinants of subjective well-being, which find that while happiness does not increase with absolute increases in income, differences in measures of happiness are closely correlated with differences in relative levels of income. Because a proportional tax does not alter the relative incomes that are the outcome of market forces, such a tax does nothing to enhance the happiness of the vast majority of individuals.

In a commentary on Griffith's article,[7] Kornhauser explores two questions raised by his argument. First, why do so many people oppose progressive taxation when it would make them happier? Second, can opinions be changed to better align attitude and self-interest? She argues that, in fact, appearances are deceiving; most people do not oppose the use of some degree of progression to alter market outcomes. She also argues that governments can help to reduce opposition to progressive taxation by reducing anti-tax rhetoric and educating the public about the importance of progressive taxation as a means to alter market outcomes in realizing a measure of distributive justice.

T.E.

**Reuven S. Avi-Yonah, "Corporations, Society, and the State: A Defense of the Corporate Tax"** (2004) vol. 90, no. 5 *Virginia Law Review* 1193-1255

We earlier reviewed an article by Canadian law professor Kim Brooks that provided a much-needed defence of a classical corporate income tax.[8] This article does much the same thing in the US context. Avi-Yonah contrasts the separate-entity and the aggregate theories of the corporation as the competing conceptual frameworks for

6 The other articles are Martin J. McMahon Jr., "The Matthew Effect and Federal Taxation," at 993-1128; William G. Gale and Peter R. Orszag, "An Economic Assessment of Tax Policy in the Bush Administration," at 1157-1232; and Daniel N. Shaviro, "Reckless Disregard: The Bush Administration's Policy of Cutting Taxes in the Face of an Enormous Fiscal Gap," at 1285-1334. Each of the four articles is followed by two commentaries, including one by Marjorie Kornhauser, infra note 7, reviewed below.

7 Also published in the same issue of the *Boston College Law Review*: Marjorie E. Kornhauser, "Educating Ourselves Towards a Progressive (and Happier) Tax: A Commentary on Griffith's Progressive Taxation and Happiness" (2004) vol. 45, no. 4 *Boston College Law Review* 1399-1412.

8 Kim Brooks, "Learning To Live with an Imperfect Tax: A Defence of the Corporate Tax" (2003) vol. 36, no. 3 *UBC Law Review* 621-72, reviewed in this feature (2003) vol. 51, no. 5 *Canadian Tax Journal* 2051-62, at 2052-54.

an assessment of a tax on corporate income. He argues that the former theory, which was the conceptual basis for the introduction of the corporate income tax in the United States, is the more defensible one. Most importantly, he argues that this theory of the corporation more accurately represents the relationship between corporate management and society generally. He advocates the use of the corporate income tax as a means of constraining the power of corporate management. Moreover, he believes that this rationale for the corporate income tax is necessary, from a normative perspective, as a justification for suppressing corporate tax shelters and international tax competition.

Avi-Yonah claims that his article presents "the first comprehensive rationale for defending the current corporate income tax."[9] We are unaware of any existing literature that proposes the same rationale for a corporate income tax as that articulated by Avi-Yonah; however, the earlier article by Brooks provides an equally comprehensive defence of the corporate income tax. While Brooks's defence is perhaps more conventional than that offered by Avi-Yonah, it is arguably more persuasive, since Avi-Yonah's rationale requires compelling reasons to choose the income tax system as the means to regulate corporate management power, rather than some type of non-tax regulatory instrument. In this respect, Avi-Yonah argues that the income tax is a preferable regulatory instrument primarily because of its ability to affect the accumulation of corporate wealth, which is the source of corporate management power. In addition, through the use of tax incentives and disincentives, the corporate income tax can be used to encourage some corporate activities and to discourage others.

T.E.

**Henry Ordower, "Seeking Consistency in Relating Capital to Current Expenditures"** (2004) vol. 24, no. 2 *Virginia Tax Review* 263-99

**Ethan Yale, "When Are Capitalization Exceptions Justified?"**
(2004) vol. 57, no. 4 *Tax Law Review* 549-606

Much of the content of timing rules under an income tax is attributable to the different treatment of current and capital expenses and the associated distinction between these two types of income-earning expenditure. In the first of these articles, Ordower reviews certain case law in the United States that has apparently allowed otherwise non-deductible expenses to be capitalized. He argues that this case law has failed to recognize a basic premise of the distinction between current and capital expenses: that the particular expenses are otherwise deductible for income tax purposes. After reviewing the relevant case law in some detail, Ordower develops a series of principles that attempt to maintain this basic premise. While some of those principles are already reflected in the Internal Revenue Code, others are not and require the introduction of appropriate legislative provisions.

9 At 1254.

In the second article, Yale reviews and assesses six different arguments in support of departures from capitalization treatment of capital expenditures. For most of these arguments, assessment involves a comparison of the administrative and compliance costs of capitalization and the efficiency effects of the current expensing of particular capital expenditures. Yale concludes that, as a first-best approach, capitalization treatment "is more robust than generally is appreciated."[10] The six arguments can support some limited exceptions to capitalization treatment, but not to the extent that current expensing is provided for US income tax purposes.

T.E.

**Jeffrey L. Kwall and Kristina Maynard, "Dethroning King Enterprises"**
(2004) vol. 58, no. 1 *The Tax Lawyer* 1-40

In *King Enterprises*,[11] the US Court of Claims applied the step transaction doctrine, as articulated by US courts, to treat a share sale made by the taxpayer as a single transaction consisting of a share sale and merger. The altered characterization, which substantially reduced the taxpayer's liability, was invoked even though the purchaser had unilaterally implemented the merger that followed the share sale. Kwall and Maynard argue in this article that the Court of Claims misapplied the step transaction doctrine in *King Enterprises*. In particular, they argue that the doctrine should not be applied to alter the character of a transaction to a taxpayer when another party unilaterally effects a subsequent step in a purported series of transactions. Because the general anti-avoidance rule uses a concept of a series of transactions similar to that under the US step transaction doctrine, Canadian tax practitioners may find this article of interest, especially in light of the extended concept of a "series of transactions" in subsection 248(10) of the Income Tax Act[12] and the fact that the holding in *King Enterprises*, after being ignored for three decades, has apparently been resurrected by the Internal Revenue Service in two recent rulings.[13]

T.E.

**David M. Schizer, "Balance in the Taxation of Derivative Securities: An Agenda for Reform"** (2004) vol. 104, no. 7 *Columbia Law Review* 1886-1946

The author of this article is the dean of the law school at Columbia University and one of the leading US academics on the taxation of financial instruments. In this article, Schizer argues that tax policy makers should cease attempting to realize consistency of treatment of the bet element in financial instruments and should instead strive for "balance" in the taxation of derivative securities. By "balance"

10 At 550.

11 *King Enter., Inc. v. United States*, 189 Ct. Cl. 466 (1969).

12 RSC 1985, c. 1 (5th Supp.), as amended.

13 Rev. rul. 2001-26, 2001-1 CB 1297; and Rev. rul. 2001-46, 2001-2 CB 321.

Schizer means symmetry in the tax treatment of gain and loss associated with a risky position. He argues that such treatment would eliminate tax-planning arrangements intended to realize a low effective tax rate for gains. In effect, the benefit of a low rate for gains would be offset by a consequent reduction in the loss recognition rate. Symmetrical tax treatment is a viable policy option for the bet element in derivative securities because there is an equal chance of gain or loss viewed ex ante on the issuance of such securities.

Schizer describes three possible regimes that could provide the desired balance in the taxation of derivative securities. He also thoughtfully considers both the theoretical and the practical limitations of these regimes.

T.E.

**New Zealand Inland Revenue Department, Policy Advice Division, *Taxing Securities Lending Transactions: Substance Over Form*, A Government Discussion Document** (Wellington: Inland Revenue Department, Policy Advice Division, November 2004), 35 pages, ISBN 0478271220

Many aspects of the New Zealand income tax and goods and services tax (GST) systems are innovative and theoretically pure. It is therefore somewhat surprising that the income tax system in particular has some notable gaps. For example, the accrual rules under New Zealand's income tax system arguably constitute the most comprehensive and thoughtfully designed regime for the taxation of financial instruments of any OECD country; yet the regime has lacked any specific rules for securities lending arrangements, which are necessary to effect a short sale of securities.

This discussion document proposes to introduce specific securities lending rules that will tax such transactions on the basis of their economic substance rather than their legal form. The document provides a useful overview of the entire range of issues implicated by this policy goal. Readers may be particularly interested in the discussions of the distinction between securities lending arrangements and repurchase transactions, the definition of "qualifying securities," and proposed anti-avoidance rules for non-qualifying transactions.

T.E.

**Organisation for Economic Co-operation and Development, Centre for Tax Policy and Administration, *Facilitating Collection of Consumption Taxes on Business-to-Consumer Cross-Border E-Commerce Transactions*** (Paris: OECD, February 2005), 25 pages

**Richard T. Ainsworth, "The One-Stop Shop for VAT and RST: Common Approaches to EU-U.S. Consumption Tax Issues"** (2005) vol. 37, no. 8 *Tax Notes International* 693-714

The collection of destination-based consumption taxes applied to the cross-border provision of digital goods and services remains one of the more vexatious taxation issues presented by electronic commerce (e-commerce). Countries continue to grope for a workable means of collecting such taxes on business-to-consumer cross-border transactions that do not involve physical goods entering the jurisdiction in which the consumer is resident.

The OECD report discusses the use of financial intermediaries and tax accounting software to serve the necessary collection and enforcement function in applying destination-based consumption taxes to cross-border business-to-consumer e-commerce transactions. Although useful in terms of the broad design details of this collection and enforcement strategy, the discussion studiously avoids resolution of many of the difficult technical design issues.

The Ainsworth article compares the "one-stop shop" approach recently proposed by the European Union as a means of collecting value-added tax (VAT) of member countries with that used by US states to collect retail sales taxes (RST). Ainsworth's comparison is detailed enough that tax policy makers should find it more useful than the more general discussion in the OECD report.

T.E.

**C. Eugene Steurele, *Contemporary U.S. Tax Policy*** (Washington, DC: Urban Institute Press, 2004), 322 pages, ISBN 0877667209

This recent book by a leading US tax economist provides an interesting analysis of the development of US tax policy from the Reagan years through to the present. The principal focus is not the technical detail of the relevant policy initiatives or the inevitable political wrangling. Instead, Steurele emphasizes a holistic view of taxes as one-half of the government budgetary process; that is, he consistently draws attention to the link between the revenue and the expenditure sides of fiscal policy. Although this link is an obvious one, it is often lost by tax specialists whose natural focus is on the revenue side, as if tax policy can and should be developed independently of expenditure policy. The development of US tax policy over the past three decades reveals many of the pitfalls of a failure to take an approach to budget policy that integrates tax and expenditure decision making.

A secondary emphasis of the book is Steurele's commitment to what might be referred to as "traditional tax reform," which emphasizes the merits of a comprehensive income tax base coupled with moderate progressivity in the personal tax rate structure.

T.E.

**Howell H. Zee, ed., *Taxing the Financial Sector: Concepts, Issues and Practices*** (Washington, DC: International Monetary Fund, 2004), 85 pages, ISBN 1589063163

This book consists of six chapters surveying the major issues and country practices in the taxation of financial intermediaries. Four chapters are devoted to the income tax issues associated with banks, insurance corporations, investment brokers and collective investment entities, and innovative financial instruments; a separate chapter reviews the treatment of financial services under a VAT; and another chapter reviews the application of transactions taxes to transactions in securities. All six chapters stand alone, and each is written by a different contributor. The chapter on financial services and VAT is a reprint of an article previously published in *Tax Notes International*.[14]

The book is useful as a basic introduction to the respective issues. This treatment may be attributable to the fact that the genesis of the book was an International Monetary Fund (IMF) mission to China, which was intended to provide an introduction to the taxation of the financial sector in preparation for the opening of China to foreign financial institutions. A World Bank publication provides a more sophisticated theoretical treatment of many of the issues highlighted in this book.[15]

T.E.

**David Joulfaian, *Estate Taxes and Charitable Bequests: Evidence from Two Tax Regimes*, OTA Paper 92** (Washington, DC: US Department of the Treasury, Office of Tax Analysis, March 2005), 32 pages

This paper adds to the already rich theoretical literature in the United States on the effect of estate taxation on gifting behaviour. Joulfaian contributes to the existing literature by using longitudinal data to explore the effect of estate taxation on charitable bequests. More particularly, he examines the pattern of giving in 1976 and 1982 for US decedents who were unmarried or widowed. Joulfaian chose those years in order to measure the impact of a significant reduction in estate tax rates in 1982. He concludes that the data trend suggests that estate taxation has minimal effect on charitable giving, except for the incentive provided by the deductibility of charitable bequests.

T.E.

**Carla Carnaghan, Pauline Downer, Ken Klassen, and Jeffrey Pittman, "E-Commerce and Tax Planning: Canadian Experiences"** (2004) vol. 3, no. 2 *Canadian Accounting Perspectives* 261-83

The authors conducted in-depth interviews with nine Canadian companies regarding their reasons for engaging in e-commerce, which is defined as business sales transactions facilitated by computer technology. The motivation for the study is that tax administrators have expressed concern about the potential for tax leakage, specifically noting that e-commerce makes it easier to create a permanent establishment in a low-tax jurisdiction and attribute significant taxable profits to it. The

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14 Alan Schenk and Howell H. Zee, "Treating Financial Services Under a Value Added Tax: Conceptual Issues and Country Practices" (2001) vol. 22, no. 26 *Tax Notes International* 3309-16.

15 Patrick Honohan, ed., *Taxation of Financial Intermediation: Theory and Practice for Emerging Countries* (New York: World Bank and Oxford University Press, 2003).

conclusion is that tax planning is a minor consideration in deploying e-commerce for sales purposes, so tax policy makers likely have some time to develop remedies for any potential problems with tax leakage.

A.M.

**Kevin Milligan, "Subsidizing the Stork: New Evidence on Tax Incentives and Fertility"** (2005) *The Review of Economics and Statistics* (forthcoming in the August 2005 issue)

Assistance to families with children is normally thought of as an attempt to provide horizontal equity through the tax system, in that children reduce ability to pay. However, Quebec's "allowance for newborn children" was a measure with a very different objective—increasing the birth rate. Milligan's paper analyzes the effectiveness of this measure.

From 1988 to 1997, a non-taxable benefit was paid to residents of Quebec when a child joined the family. The amount for most of this period was $500 for the first child, $1,000 for the second, and $8,000 for the third. Based on data from equivalence scales, which measure the cost of children, the subsidy as a percentage of the cost of children over the first five years of life was 1.3 percent for the first child, 3.2 percent for the second child, and 30.1 percent for the third child.

Milligan uses statistical analysis to estimate the effect of this incentive. Overall fertility rates seem to suggest a significant effect: the proportion of women with a child under the age of six increased in both Quebec and the rest of Canada over the period, but the increase in Quebec was 2.4 percent higher. Regression analysis is used to sort out the relative contributions of different effects. Milligan finds that for families eligible for the full $8,000 subsidy, the fertility rate increased by 25 percent. A $1,000 increase in benefits is estimated to increase the probability of having a child by one-sixth. This finding contrasts sharply with the view that the program was not successful in this regard, which was reported to be the reason the program was cancelled in 1997 and replaced with a day-care subsidy.

A.M.

**Kevin Milligan, "Who Uses RESPs and Why," in Charles M. Beach, Robin W. Boadway, and R. Marvin McInnis, eds., *Higher Education in Canada*** (Kingston, ON: Queen's University, John Deutsch Institute for the Study of Economic Policy, 2004), 467-94

Registered education savings plans (RESPs) are clearly becoming more popular; the percentage of children aged 0 to 17 years who are beneficiaries of RESPs has risen from 5 percent in 1997-98 to 26 percent in 2002-3. However, in order to judge the success of these plans, it is necessary to examine their goals. The 1998 budget said that RESPs help Canadians, especially those with low and middle incomes, to acquire skills and knowledge. This distributional emphasis can be justified in that lower-income families might have difficulty accessing credit and therefore might under-invest in education.

This paper examines the achievement of this goal using Statistics Canada's 1999 Survey of Financial Security. In the regression equation excluding wealth, the following impacts on the participation rate are found:

1. the rate is 13.7 percent higher for the highest-income fifth of the population than for the lowest-income fifth;
2. the rate is 12.4 percent higher for university graduates than for those without a high school education;
3. the rate is 11.3 percent higher for families whose oldest child is aged 0-4 years rather than for those whose oldest child is 15-17; and, perhaps surprisingly,
4. the rate is 7.9 percent higher for immigrants.

The third and fourth factors seem to indicate the importance of the fixed costs of opening an account and educational expectations, respectively. Another insight is that pre-existing savings may be more important than income: where wealth is included in the equation, wealth becomes very significant and income drops out.

Milligan concludes that the program is not achieving its goals. The February 2004 Speech from the Throne supports this assessment in noting that "participation by lower income families—often those who could most benefit—has been disappointingly low."[16]

A.M.

**Canada, Technical Advisory Committee on Tax Measures for Persons with Disabilities, *Disability Tax Fairness*** (Ottawa: Department of Finance, December 2004), 155 pages, ISBN 0662388402

**Canada, Department of Finance, "The Disability Tax Credit: Evaluation Report," in *Tax Expenditures and Evaluations 2004*** (Ottawa: Department of Finance, 2004), 39-64

The technical advisory committee, co-chaired by Robert Brown and Sherri Torjman, has prepared a very thorough analysis of the problems associated with the disability tax credit and related measures. Since the report has been prepared for both the minister of finance and the minister of national revenue, it covers both policy and administration issues. Measures in the 2004 and 2005 budgets have already incorporated some of the recommendations, and more changes can be expected.

The Department of Finance's evaluation report on the disability tax credit and the technical committee's report overlap to some degree. However, the Finance report also compares Statistics Canada data on people with disabilities with data on people claiming the disability tax credit and concludes that there is no overall problem with takeup of the measure. There is also some interesting discussion of

16 Canada, Office of the Prime Minister, Speech from the Throne, February 2, 2004.

the problems in determining the extra costs incurred as a result of disabilities, leading to the conclusion that a new Statistics Canada survey is needed.

A.M.

**Henry J. Aaron and Joel Slemrod, eds., *The Crisis in Tax Administration*** (Washington, DC: Brookings Institution Press, 2004), 402 pages, ISBN 0815701225

This book has 11 chapters covering a wide variety of topics. Four are of particular interest to Canadian readers:

- In "Tax Preparers," Marsha Blumenthal and Charles Christian analyze the role of accountants and lawyers in the tax system, concluding that tax policy makers should consider the effects of proposed tax changes on both practitioner use and practitioner fees.
- In "Small Business and the Tax System," Joel Slemrod examines the reasons for offering tax concessions for small businesses, with emphasis on the idea that such concessions might offset the higher compliance costs that these businesses experience. Slemrod also examines data showing that small businesses have a higher non-compliance rate.
- In "The Turbo Tax Revolution: Can Technology Solve Tax Complexity?" Austan Goolsbee uses data on users of tax preparation software to show that people with more complicated tax situations are not more likely to adopt such software; instead, the decision seems to be driven by a taxpayer's knowledge of computers and the Internet.
- Finally, in "Experience and Innovations in Other Countries," Jeffrey Owens and Stuart Hamilton discuss the need for tax simplification.

A.M.

**International Monetary Fund, "How Do Canadian Budget Forecasts Compare with Those of Other Industrial Countries?" in *Canada: Selected Issues*, IMF Country Report no. 05/116** (Washington, DC: International Monetary Fund, 2005), 45-90

This IMF study addresses one of the mysteries of Canadian fiscal policy: why has the federal surplus been consistently underestimated for the past few years? By comparing Canada with 11 other countries with respect to both institutional arrangements and forecasting outcomes, the study contributes greatly to our understanding of this issue. There are several key findings:

- Forecasting appears to be more difficult in Canada than in many other countries because of greater macroeconomic volatility, particularly in exports.
- Both private forecasters and the government have underestimated Canada's economic growth. Canada has unexpectedly outperformed other industrial

countries in economic growth in recent years, so part of the problem is simply that there has been a lot of good news.

- On the other hand, Canada's forecast error is composed of many small but consistently one-sided errors, suggesting that Canadian budgets have followed a cautious forecasting approach.
- In Canada, private forecasters provide macroeconomic projections, but forecasts of fiscal variables are compiled by the Department of Finance. Much of the conservatism comes into the translation of the macroeconomic outlook into fiscal projections. Projections of personal income tax and GST revenue are particularly troublesome, and perhaps private forecasters could become involved in that. The government could also provide more information on the assumptions and methods used in this process.

A.M.

**International Tax Dialogue, "The Value Added Tax: Experiences and Issues," background paper prepared for the International Tax Dialogue conference on VAT, held in Rome, March 15-16, 2005**, 31 pages, available on the Web at http://www.itdweb.org/

**United Kingdom, National Audit Office, *Tackling VAT Fraud*, Report by the Comptroller and Auditor General** (London: Stationery Office, March 2004), 41 pages

The first of these publications is a background paper that surveys tax policy issues concerning the VAT around the world. The paper claims that the spread of the VAT has been the most important development of taxation over the last half-century. Although it was a little-known tax outside France in the 1950s, it has now been adopted by 136 countries, including Canada (as the GST) but not the United States. The paper's most interesting finding is that there is a strong case for increasing VAT thresholds in order to reduce the number of taxpayers who must collect the tax. While Canada's $30,000 threshold is higher than many, some countries have thresholds approaching US $200,000.

The second paper addresses many of the same issues, but focuses solely on noncompliance in the United Kingdom. Clearly there is a major problem to be solved: the gap between true VAT liability and the amount collected is estimated to be 15.7 percent.[17] Canada's auditor general has become interested in similar fraud in Canada, although the scale appears to be much smaller here.[18]

A.M.

17 At 1.

18 Sheila Fraser, Auditor General of Canada, "Opening Statement to the Standing Committee on Public Accounts: Enforcing the Goods and Services Tax," March 19, 2003, available online at http://www.oag-bvg.gc.ca/.

**Organisation for Economic Co-operation and Development, Centre for Tax Policy and Administration, *Tax Administration in OECD Countries: Comparative Information Series*** (Paris: OECD, 2004), 70 pages

This information provides comparative data on tax administration in OECD countries and is to be updated every two years. The number and significance of the differences across countries is striking. The following are some of the differences between Canada and other countries:

- Canada and 8 other countries collect tax at source from employees but still require tax returns, while 15 countries have systems of withholding for employees that are cumulative throughout the year and are hence mostly return-free.
- Canada and 4 other countries do not require information reporting to the revenue body for sales of shares or real estate, while 10 countries, including the United States, require reporting for both.
- Total unpaid taxes were on the high side for Canada at 6.8 percent, with 4 countries higher (including Portugal at 40 percent!) and 11 countries lower (including the United States at 4.4 percent).

A.M.

**Organisation for Economic Co-operation and Development, Centre for Tax Policy and Administration, *Compliance Risk Management: Managing and Improving Tax Compliance*** (Paris: OECD, 2004), 73 pages

**Organisation for Economic Co-operation and Development, Centre for Tax Policy and Administration, *Compliance Risk Management: Use of Random Audit Programs*** (Paris: OECD, 2004), 51 pages

**Organisation for Economic Co-operation and Development, Centre for Tax Policy and Administration, *Compliance Risk Management: Progress with the Development of Internet Search Tools for Tax Administration*** (Paris: OECD, 2004), 18 pages

Often the best way to find information about the CRA's compliance programs is to browse through OECD publications looking for references to Canada. These studies are quite interesting in that regard.

One part of the study *Managing and Improving Tax Compliance* discusses the need to link disparate sources of data, citing as an example Canada's practice of linking the income of business proprietors to "family income levels for the neighbourhoods in which they reside"[19] (presumably to find business people whose incomes

19 At 33.

are suspiciously low relative to those of their neighbours). Another part of the study discusses the efficiency of the CRA's audit targeting criteria, noting that the "lift factor" from targeting is from 2.5 to 4.4 times what one would expect without targeting. For example, random audits of small and medium-sized unincorporated businesses showed that 7.4 percent fell in the high-risk range but 32.4 percent of the adjustments were in that group, which is "4.4 times higher than one would expect if there was no relationship between risk estimates and results."[20] Yet another part of the study discusses the Atlantic Canada fishing industry initiative, which was created because so many fish sellers demanded cash payments that difficulties arose for legitimate fish buyers in obtaining product.[21]

The study *Use of Random Audit Programs* notes that although the CRA primarily uses targeted audits, there is a very small-scale "core audit" program of 1,100 to 2,200 random audits each year. This is done for the purpose of validating the audit targeting criteria and for determining compliance trends over time. The study notes that negative public perception has not been a problem because of the small number of audits, but the CRA's own field audit staff objected because of the low recovery rates.[22]

The study *Progress with the Development of Internet Search Tools for Tax Administration* is interesting because it shows how Internet searches can be used to catch tax evaders. It appears that Canada does mainly manual searches at this time, but Germany and the Netherlands have developed automated Web-crawler tools (such as Google and other search engines used to index Web sites). One of the uses of the German tool is to identify previously unknown e-commerce activities that are subject to tax in Germany, while the Netherlands tool also has the capability to be used on a sampling basis to provide a quantitative overview of trends in Internet trading.[23]

A.M.

20 At 24.

21 At 56-57.

22 At 29-33.

23 At 11-12.