Manal Corwin Examines International Tax Reform Policy, Politics

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Sense and Sensibility: The Policy and Politics of BEPS Will Global Tax Policy Consensus Translate into Coordinated Implementation

19th Annual Tillinghast Lecture

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I. Introduction

Good evening. It is a true honor and a privilege to be here tonight to deliver the 19th annual Tillinghast lecture.

I borrowed the title for my lecture today from Jane Austen's well known novel "Sense and Sensibility," in which Ms. Austen, or Jane as I like to refer to her, explores the relative merits of making consequential decisions based on passion versus logic and common sense. Jane Austen's brilliance is rooted in her ability to be a keen observer of human nature, her astute awareness of the constraints of the culture and society of her time, and her brilliant sense of exactly what her characters must do to navigate the limitations of human nature and the constraints of their society in order to be effective. Put another way, she was a master of articulating how to be effective without changing the hypothetical.

The debate about the taxation of multinationals has characteristics of both sense and sensibility. Specifically, the debate has two distinct strands. One is the measured and long standing policy debate about the adequacy of current international tax rules and standards to protect the tax base of taxing jurisdictions. The second is a highly politicized mainstream public debate, of more recent vintage, focused on tax morality and whether multinationals are paying their "fair share" of taxes.

While each of these strands is unique in its focus, the two conversations intersect in important ways and are propelling the OECD initiative on Base Erosion and Profit Shifting

(or BEPS) in ways that are likely to achieve tangible results in a very short period of time.

I want to spend our time together today:

1 Describing each of the two stands of the debate, and analyzing the negative impacts of the "mainstreaming" of the issues around international taxation.

2 I then want to offer a prescription for reconciling sense and sensibility in the context of this debate. Drawing heavily on the recent US and global experience with FATCA, and the wisdom of what the original architect of the US and global international tax system, Thomas Sewell Adams, referred to as "enlightened self-interest," it is a prescription focused on the critical role of stakeholders in shaping policy consensus in a manner that, though fueled by public sensibility and political expedience, can lead to sensible policy outcomes and coordinated implementation that is in the end a step in the right direction towards reform.

3 Finally, I will identify what in my view are some of the key areas of opportunity to apply this prescription in the context of the current OECD BEPS Initiative.

II. The Two Strands of the Debate

A. Policy Conversation

Policy concerns about the limitations of current international tax rules and standards to protect against the ability of multinationals to shift profits in ways that erode domestic tax bases are not new. There has been a longstanding conversation on the topic within the technical working groups at the OECD for many years. Notable outputs of that work have included:

- A 1998 report on Harmful Tax Competition by countries and follow up work to curb harmful tax practices
- Work done between 1998 and 2006 addressing treaty abuse, and
- A directory of aggressive tax planning schemes that began in 2006 and that is shared among tax administrators, are just a few of the initiatives on which the OECD has focused in this space.

The topic has also been a staple of conversations and debates, and is the focus of academic literature about US international tax policy -- simultaneously linked with the need for international tax reform and juxtaposed against concerns about the competitiveness of

US companies. Indeed, a review of past Tillinghast lectures illustrates the longevity and enduring nature of this conversation. Beginning with the third lecture in 1998 on Tax Arbitrage delivered by Professor David Rosenbloom, to the 2011 lecture on tax competition delivered by Dr. Jeffery Owens, the former head of the OECD's tax committee, 6 of the past 18 lectures have dealt with this topic including:

- Professor Michael Graetz lecture in 2000: "Taxing International Income: Inadequate Principles, Outdated Concepts, and Unsatisfactory Policy,"
- John Samuels lecture in 2007: True North: Charting a Course for U.S. International Tax Policy in the Global Economy,"
- Professor David Cay Johnston's lecture: "Faux Firms and Fairness: Taxing Capital, Trade, and Production in a Global Economy," and
- Professor Dan Shaviro's lecture: "The Rising Tax-Electivity of U.S. Corporate Residence"

This longstanding policy conversation has focused on the shortcomings and limitations of various aspects of the US international tax system including: the merits of a worldwide versus a territorial system of taxation, the appropriateness of an income tax versus a consumption tax, the competitiveness of multinationals, tax competition and the race to the bottom, and of course base erosion and profit shifting. While views and prescriptions for change have varied, the need for some kind of reform has been a consistent theme.

Notwithstanding the longevity of the policy conversation, and the vast amounts of ideas, scholarship, and legislative proposals it has generated, very little has actually happened to significantly change the status quo globally or in the U.S. -- until now. Why? Because the public outcry over the issue has fueled a sense of urgency among politicians and created a political imperative for change (at least outside the U.S., but I believe ultimately in the U.S. as well).

B. Public Outcry

The recent public outcry about the taxation of multinationals has certainly been marked by passion and emotion and has reached a crescendo of late. Spurred in significant part by the financial crisis and ensuing austerity measures adopted in a number of European Capitals, there emerged a growing sense of outrage by the public about the role of large multinationals (particularly in the financial services industry) in triggering the crisis, and a heightened awareness and increasing sense of indignation as to whether multinationals were paying their "fair share of tax."

The growing firestorm -- escalated to a certain extent by NGOs, fueled by politicians on the defensive in the wake of their handling of the financial crisis, and fanned by the media -- catapulted even fairly technical features of international taxation from the confines of academic lecture halls, government meeting rooms, trade association conferences, and specialized tax journals into the mainstream media and popular culture.

Perhaps nothing illustrates this phenomenon better than the popular Dilbert cartoon, published in 2010, mocking a financing structure referred to as the Dutch Sandwich.[1] In the cartoon, Dogbert tells a client:

> "I can lower your corporate taxes using a strategy that tax attorneys call the "Dutch Sandwich" and I'm not even making that up"

The client responds:

> "so . . . that would transfer our tax burden to people who can't afford tax attorneys,"

to which Dogbert responds:

> "Yeah . . . their sandwich has a less appealing name."

The issues have been covered on the front pages of mainstream newspapers including the New York Times, the Wall Street Journal and the Financial Times. They have been the subject of discussion on radio and television talk shows ranging from NPR and CNN, to the Comedy Channel -- where they were taken up by the Daily Show and the Colbert Report. And, they have been featured in articles and mainstream magazines.

In addition, widely publicized contentious hearings questioning the tax practices of multinationals further fueled public indignation and focused much of the attention on US multinationals. Headlines appeared all over Europe naming and shaming multinationals. The European public responded with protests and boycotts, politicians responded with commitments to take immediate actions, and companies went into damage control mode.

While initially the extent of public attention to this issue was most pronounced in Europe, it has now fully caught on in the United States aided in no small measure by the emotionally charged debate over inversions. The August 27, issue of Rolling Stone Magazine featured this story: "The Biggest Tax Scam Ever: Some of America's top corporations are parking profits overseas and ducking hundreds of billions in taxes. And how's Congress

responding? It's rewarding them for ripping us off." The cover of the September 12, issue of Newsweek reads "Corporate Deadbeats: if you were Apple, Google, or Amazon taxes wouldn't bite, they would make you richer." (The Article got top billing over "ISIS v. the CIA"). The September, 20th issue of the Economist features this article: "Corporate tax dodging: Transfer Policing: Big economies take aim at the firms running circles around their taxmen."

The topic has even made it onto the silver screen in a documentary film by director Harold Crooks entitled "The Price We Pay" that made its worldwide debut at the Toronto film festival earlier this week. The film's inflammatory message the "tax morality" of multinationals and the deleterious impacts it has on the "man on the street" stands out as a stark example of the tenor and reach of the public conversation on the taxation of multinationals.

III. Negative Impact of Mainstreaming the Issues

So what is the impact of the mainstreaming of the international tax debate and what does morality have to do with it? In terms of impact, there is no question that the mainstreaming of the issue is making its mark. Politicians, fueled by the public outcry, have committed to implement changes. Business and policymakers alike are concerned about what this public outcry and high level political engagement will reap. US multinationals in particular, who are disproportionately targeted, fear damage to reputation without obvious recourse. The complexity of the international tax rules makes it nearly impossible to diffuse the public sensibility about the issues. Try explaining to a reporter not familiar with tax rules why "transfer pricing" is not in fact the name of an evil planning strategy conjured up by business and their advisors to avoid paying taxes, as opposed to simply the name given to prices charged between related parties that must be set based on a series of complex domestic and international rules which are themselves based on the arms length standard.
. . .

There is also significant confusion in the non-tax press and amongst politicians about the intersection of issues that have recently captured public attention (including BEPS, inversions, FATCA and global automatic exchange). For example, a Wall Street Journal piece reporting on Australia's crackdown on multinationals perceived to be shifting profits out of Australia through tougher audits and investigations, states "the crackdown follows widespread international attention last year focused on large companies -- including General Electric Co, Pfizer Inc., and Apple Inc., that were using so-called tax inversions and

other methods to slash their bills, such as moving headquarters to lower-tax jurisdictions."[2]

In an another example involving Australia's tax reform efforts and reflecting confusion amongst politicians, the Labor party is reported to have accused the incumbent Abbot Government of talking tough on dealing with multinational profit shifting, while avoiding action.[3] In particular, a labor party spokesman is quoted as saying: "[Treasurer] "Joe Hockey has huffed and puffed in the Parliament about tackling multinational tax avoidance but continued to stall on a key initiative that would actually achieve this." "As the current chair of the G20, it is an embarrassment that Australia has not yet signed up to this important tax measure which we helped negotiate."[4] The measure to which he was referring, however, was the OECD Declaration on Automatic Exchange of Information in Tax Matters, which has nothing to do with multinational profit shifting, but instead relates to governments automatically exchanging bank account information about each other's residents basis to address offshore tax evasion by individuals.

Whatever your policy perspectives on the issues, most tax professionals would agree, that there are legitimate reasons for concern. The highly charged rhetoric that is characteristic of the mainstream portrayal of the issues, by focusing public attention on multinational behaviors rather than international tax rules and standards and confusing the issues, is misleading at best, and ultimately dangerous. Unchecked, it has the effect of distorting behaviors of both multinationals and governments in ways that are costly and do not advance or address the real underlying policy concerns. How so?

First, the conflating of tax law and policy with so called tax morality is misleading in ways that are costly to multinationals, puts them at odds with shareholder expectations, and distracts the public and politicians from addressing the more fundamental sources of the issue.

While it is reasonable to conclude that a corporation that is breaking the law is acting immorally, tax decisions that multinationals make that are within the bounds of the law and consistent with their fiduciary obligation to maximize shareholder value are not easily susceptible to an objective moral code on which one could get even government policy makers across the globe to agree.

Thus, for example, while it might be easy to reach consensus that stateless income, or income that is not taxed anywhere is not a desirable policy outcome, or that artificial

structures lacking economic substance designed to avoid taxes are inappropriate, if not illegal, it is more difficult to achieve consensus around what is the right or "moral" amount of worldwide tax a corporation operating across multiple sovereign jurisdictions should pay under the international rules that are in place today.

Moreover, even if it were possible to agree on what a moral global effective tax rate would be, it is difficult to employ moral principles to determine to which country the tax should be paid -- only clear and coordinated tax laws can do that. Simply put, morality cannot serve as a guiding principle for establishing, implementing, or enforcing complex international tax rules and standards in a global world.

Second, while public naming and shaming may drive changes in behaviors of business and motivate actions by politicians, those changes and actions are not necessarily desirable or effective in addressing the fundamental issues and tax policy concerns. For example, a company sensitive to criticism about its effective tax rate might seek to pay slightly more taxes to raise its rate just enough to address public perceptions, but perhaps not enough to address policy concerns. Moreover, such a company might make choices informed more by the need to neutralize the impact of public opinion rather than by business or economic considerations or appropriate policy outcomes.

Thus, a company faced with public pressure in France, will look to solve the problem in France. Why? Because once public sentiment has been unleashed in France, the company is not likely to be successful in neutralizing that sentiment by increasing its tax payments to the U.S., for example, even if that is the correct policy outcome. Similarly, a company facing criticism for shifting profits to an island jurisdiction, might achieve the same profit shifting result by shifting profits to a "less controversial" jurisdiction from the perspective of the public, but still achieve very low rates through earnings stripping, or other techniques.

An additional concern with the effect of public opinion on the tax practices of multinational is that it disproportionately impacts companies that are particularly sensitive to reputational or political risks. Consumer based companies that are susceptible to boycotts, for example, will be much more responsive. This discriminatory effect is leads to economic distortions and thus is also undesirable from a policy perspective. Even the staunchest advocates for changing multinational behavior should not be satisfied with these outcomes.

This level of public pressure also impacts the behavior of politicians in significant and potentially undesirable ways. We have already seen this phenomenon in the context of the current debate reflected in the political resolve expressed by politicians in a number of jurisdictions to take immediate action. Here again the outcomes, might not be desirable. Unilateral actions designed to look good to the relevant political constituency can wreak havoc on a coordinated international tax system and threaten to unravel that system in ways that are undesirable for government and business.

As everyone in this room is acutely aware, tax, particularly international tax, is complicated. The broad brush approach that is characteristic of the public conversation is risky and could lead to hastily conceived and incomplete changes to long-standing tax laws. Oliver Wendell Holmes famously observed in his dissenting opinion in Northern Securities Co. v. United States (1904) "Great cases like hard cases make bad law. For great cases are called great, not by reason of their importance . . . but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment."

IV. A Silver Lining?

Given the current state of affairs, is there any silver lining here at all? Possibly. While the current politically charged environment is fraught with peril for business and policymakers alike, it is not unique to this time period, or to tax policy, nor is it necessarily all bad. A politically charged environment is often necessary to garner sufficient energy to drive change -- especially on a large scale. Indeed, absent sufficient emotional energy and political urgency around an issue, it is often difficult to achieve change quickly. We have witnessed this phenomenon in the context of efforts to implement corporate tax reform in the United States. While policy-makers and stakeholders have been energized about the need for corporate tax reform for over 20 years now, the issue has not gained traction or appealed to public sensibilities.

I think that the current environment, if properly navigated, could present a unique opportunity to make progress on issues that have been stalled for many years now and perhaps put us on the road towards a more comprehensive set of reforms -- at least outside the United States initially, but ultimately in the US as well. In other words, I believe that it is possible to capitalize on the public engagement and the political will for change, to steer and shape outcomes towards more sensible policy results.

To be successful, however, stakeholders (and here I mean business, government policymakers, and academics) need to tread carefully and accept some basic realities and constraints. They can't fight the hypothetical. To this end, I offer a prescription for reconciling sense and sensibility in the context of the current international tax debate in order, at the very least, to mitigate the risk of nonsensical changes to longstanding international standards and ideally to seize opportunities to lay the foundation for sensible and needed reforms.

V. A Prescription for Reconciling Sense and Sensibility

Very broadly, my prescription incorporates the following key components:

- First, understand the public perception, acknowledge its power, and accept the inevitability of change.
- Second, recognize the need for politicians to deliver results in order to neutralize the pressure and mitigate the possibility of "bad law"
- Third, appreciate the value, power and critical role of coordinated action over unilateral action to mitigate negative consequences and achieve sensible results.
- Finally, seize the opportunity to achieve incremental progress that acknowledges the legitimate concerns of governments and stakeholders, satisfies the public and political appetite for change, mitigates against the risks of unilateral actions, and lays the foundation for broader based sensible reforms both outside and inside the US.

Let me elaborate on each of these components starting with the first two. To have a shot at steering the current debate towards sensible outcomes, stakeholders must accept the inevitability of change. Politicians at the highest levels of government across the globe have made a commitment to make changes to their domestic international tax rules to address BEPS and they need to deliver. Stakeholders, both businesses and policymakers, are better off identifying sensible changes that allow politicians to declare victory and free up the experts to focus on technical and policy based reforms rather than political solutions. What clearly will not work in the current environment is staking out positions such as:

- nothing is wrong with the current rules, or
- changes to the current rules cannot properly be made without a lot more time, or that
- none of this would be a problem if the US would just reform its tax system, so we ought to wait for the US to reform its rules and then decide whether anybody else

needs to change

Regardless of the merits of these views, given the current state of play, such views will be ineffective in advancing the policy conversation and will squander limited opportunities to attend to specific issues and practical considerations that are capable of being addressed.

In this regard, the US and global experience with FATCA is instructive. FATCA, enacted in 2010, was a sweeping legislative response to a series of high profile widely publicized cases involving the use of offshore bank accounts to evade US tax. The cases hit the mainstream press, offended public sensibilities, and created a political imperative for change. The scope and consequences of the legislative response, which obligated non-US financial institutions to identify and report information about all US accounts or else be subject to a 30 percent withholding tax on income or gain from their US source investments, angered foreign governments, foreign financial institutions, and US Withholding agents, who were charged with collecting the tax, on numerous grounds including that it would cost millions of dollars to implement, it was extraterritorial, and compliance would require violating local privacy laws.

Treasury and the IRS, the agencies charged with writing regulations to implement the statute, fielded the brunt of these complaints. Because the statute was self-executing, however, there was little that could be done other than to move forward and make the regime workable. In other words, the default options had changed, for both business and government. Making it go away was not an option. The most progress was achieved when stakeholders and foreign government officials accepted this reality and were willing to engage on how the provisions of FATCA could be implemented not on whether they should be implemented.

Even more importantly, stakeholders who focused their efforts on implementation rather than eradication, had a seat at the table and made incredibly valuable contributions to shaping the regulations in a manner that minimized burden and sharpened the policy focus and objectives of the provision in a way that was mutually beneficial to government and business.

As with the FATCA experience, the default option has changed in the context of the BEPS initiative. Doing nothing or making it go away are not options. Politicians at the highest levels of government have made it abundantly clear that they will not accept the status quo, or wait for the US to implement tax reform. Nor are they willing to agree to craft

changes that depend on hypothetical reforms the US might make in the future. Thus, stakeholders must consider options that don't depend on these outcomes. By accepting this reality, stakeholders and policymakers will be able to focus on developing sensible policy solutions and minimizing the damage from expedient political action.

Second, it is critical to recognize the importance of coordinated action over unilateral action. Given the inevitability of change in a number of domestic jurisdictions, and the interdependence of international tax rules, stakeholders are far better off if change is coordinated amongst jurisdictions. Such coordination and collaboration also serves as a check against political expedience and establishes some accountability amongst governments in their approaches to implementation and administration of agreed standards. Here the OECD initiative serves a critical role. While for now there is a political willingness, as reflected in the G-20 support of the initiative, to allow change to be achieved through collaboration and consensus at the OECD, a failure of that effort (in the time period prescribed -- the end of 2015) will lead to unilateral actions by a number of key jurisdictions. This is not a desirable outcome for stakeholders or policymakers.

Here again, the FATCA experience serves as a useful model. Coordinated action on developing an intergovernmental approach to implement the provisions of FATCA not only addressed a number of the short term concerns associated with its implementation, but laid the foundation for the common reporting standard being developed at the OECD for global automatic exchange of information. While businesses are unlikely to ever applaud the introduction of FATCA, most will acknowledge that the fact that it has led to collaboration on the development of a common reporting standard rather than the proliferation of multiple standards and disparate obligations across jurisdictions was a desirable outcome.

Finally, and perhaps most importantly, for the time being, it is critical that stakeholders and policymakers collaborate on policy solutions that recognize the legitimate interests of all constituents, and resist pressures to embark on major paradigm shifts that fundamentally change the structure of international tax rules and standards. To this end, it is helpful to recall some of the foundational principles and the historical evolution of the modern international tax system which are often forgotten in the heat of the debate over reform.

First, subject to their own constitutional constraints, countries have the sovereign right to tax, on a residence and source basis, in whatever manner they wish. Any tax relief granted is a deliberate, self-interested choice, not a divine right, that can't be reversed.

Second, very early in its history, the United States determined that it was in its interest to grant multinationals relief from double taxation. Thus, in 1918, within just 5 years of the adoption of the 16th amendment in 1913, granting Congress the ability to tax income from whatever source derived, the US adopted the foreign tax credit providing a credit against US tax for foreign taxes paid by US multinationals.

Third, very early in its history, the United States also determined that limitations had to be imposed on the grant of relief from double taxation to prevent the erosion of the US tax base. Thus, in 1921, only three years after the enactment of the foreign tax credit, the US adopted a limitation on the foreign tax credit.

Finally, in roughly the same time period, the US and its major trading partners determined that it was in their mutual interests to collaborate to allocate taxing rights among jurisdictions to prevent double taxation and also to protect tax bases. In those original collaborations, in the international chamber of commerce and the League of Nations, the need for source rules, transfer pricing rules, and standards for permanent establishment were recognized.[5]

What follows from these foundational principles is that:

- Multinationals have a legitimate right to be concerned about and seek to avoid double taxation of their income;
- Governments, having made a deliberate self-interested policy choice to cede taxing rights that they otherwise had based on certain assumptions, also have a legitimate right to reevaluate those policy choices, when those assumptions no longer hold true and the policy choices do not serve their original objective (providing relief from double taxation) or result in unintended erosion of tax bases; and
- It is necessary for governments to collaborate and agree on international standards in order to prevent double taxation of multinational income in a manner that does not lead to base erosion.

These foundational principles remain relevant today and should inform the OECD's work on BEPS and the constructive collaboration between policymakers and stakeholders towards sensible outcomes.

Achieving sensible policy outcomes in the time frame prescribed, also requires a focus on incremental changes as opposed to broad based structural reforms. To be effective in

shaping outcomes and mitigating damage, stakeholders need to let go of their idealism with respect to what should be and focus on what can be. This can be frustrating for those to whom I refer as "policy purists," including economists, academics and policy experts who reject the viability of current rules more generally as an adequate basis for taxation and call instead for complete overhauls of the tax system ranging from adoption of formulary apportionment, to the elimination of corporate income taxes in favor of consumption taxes, to other kinds of major surgery. Regardless of the merits of these proposals, they are not practical in the context of the current environment. They require time, political buy-in, and broad based consensus, none of which we have today.

As Thomas Sewell Adams (one of the original architects of the US and international tax regimes) aptly observed about economists in the context of attempting to achieve international consensus on a system of coordinated international tax rules and standards: "The world needs the economist's version of the truth when it is fashioned after mature study. But let the economist cherish no illusion that it will prevail . . . The economist's truth is only one factor in the contest we call taxation."[6] Adam's went on to observe that "[this truth] will have proved more effective, the more completely its author -- the economist -- recognizes in advance its limitations, its functions and the character of the other contestants."[7] He advised policymakers and advocates to let go of idealism and exercise instead what he referred to as "enlightened self-interest" to reach resolutions that balance the competing interests of all stakeholders.[8]

These observations remain true today. In order to seize the opportunity presented by the current environment and mitigate against its risks, it is critical to understand the perspectives and practical constraints of all stakeholders, and collaborate to find solutions that are effective, even if not ideal. Perfect is the enemy of the good here. The best we can and should do is to identify sensible actions that can be taken in the short term, show sufficient progress to neutralize the public outcry, and lay the foundation for deeper broader reforms down the road.

VI. Some Observations About the OECD BEPS Initiative: Achievements to Date and Future Opportunities

I have spent most of the lecture focused on strategies for navigating the current environment in a manner that reconciles sense and sensibility. I want to end by briefly touching on some of what I see as successful examples of this prescription in action in the context of the OECD BEPS initiative to date and the opportunities I see going forward.

Two weeks ago the OECD released reports and recommendations on 7 of the 15 action items identified in its Action Plan to address concerns about base erosion and profit shifting (BEPS) originally published in 2013. These reports represent the consensus policy views of 44 countries and were just presented to the G-20 Finance Ministers last week, and will be presented to the G-20 Leaders in November 2014.

Of the seven action items addressed, the two with respect to which we are likely to see swift adoption and implementation by a significant number of jurisdictions are action item 2, dealing with neutralizing the effects of hybrid mismatch arrangements, and action item 13 dealing with transfer pricing documentation and country-by-country reporting. While initially many were critical of these items on numerous grounds and advocated abandonment of both of these action items for various reasons, it became increasingly clear that both of these topics were high on the political agenda of a critical mass of jurisdictions, so change was inevitable. Constructive stakeholder engagement after the first discussion drafts on these topics were released proved successful in narrowing the scope of both of these proposals in a way that balanced policy objectives with practical consideration. As a result, the report on neutralizing the effects of hybrid mismatch arrangements was modified to apply a bottoms-up approach, rather than a top down approach, and was confined, for the most part, to related party transactions. Similarly, the proposed Country-by -Country report was significantly scaled down and made more user-friendly.

There is important work that remains to be done on both of these proposals in 2015, which will require the same prescriptive approach to constructive engagement by stakeholders. In addition, the remaining items that will be the focus of the OECD's work in 2015 present even more challenging issues to be tackled. A few stand out as presenting unique opportunities, however.

First, the work being done under action items 3 and 4 on strengthening controlled foreign corporation regimes and limiting base erosion via interest deductions and other financial payments, seems like a tall order given that they are fundamental underpinnings of many international tax systems and are typically solely the domain of domestic legislation. In this regard, government officials have said that the focus of the work will be on establishing minimum standards in these areas.

Both of these issues are important components of the US tax reform discussion. While prospects for US tax reform do not seem imminent, it is not inconceivable that progress on

these issues in the OECD, will have an indirect if not a direct impact on US tax reform efforts when we finally get around to it. Several of the approaches to addressing BEPS that were identified in the action plan have already found their way into US legislative proposals for reform. Thus, it would be naive to think that rules and minimum standards relating to CFCs and interest deductibility agreed to and adopted by a majority of the US's trading partners would not inform in some way the US tax reform exercise. Accordingly, the work in this area might present opportunities for stakeholders to participate in laying the foundation of future reform efforts in the United States.

The second area of significant opportunity in the context of the 2015 deliverables, is action item 14 on improving dispute resolution mechanisms, including the possibility of introducing mandatory arbitration. Stakeholders should pay close attention to the development of this item and seize the opportunity to secure improvements in current MAP procedures, including commitments to adopt mandatory binding arbitration on a wide scale. Such an accomplishment would be the ultimate example of a silver lining made possible principally as a result of the current environment and the impetus for change.

VII. Conclusion

I want to conclude by observing that Jane Austen's novel ultimately was not about the triumph of sense over sensibility. Rather it was a statement about the absolute necessity of both ingredients carefully measured and timely infused to reach desirable outcomes. It is an exciting time to be an international tax professional. We live in a world where public passion often fuels political action and can be a catalyst for change. We rarely if ever have the luxury to effect policy changes and enact rules in a sterile environment devoid of politics and emotion and informed solely by full information and carefully considered and thoroughly investigated academic scholarship. Thus, while the current environment, unchecked is a dangerous platform from which to re-imagine the whole international tax system, if navigated carefully, it offers a critical opportunity to reconcile sense and sensibility in a manner that produces results. To capitalize on this opportunity, tax policymakers and businesses require a measure of deliberateness, moderation, and a willingness to understand and be responsive to the sensibilities of the public outrage, while driving sensible outcomes. We the technical experts have the ability to author, and the responsibility to shape the next chapter of the international tax framework. We need to approach the issues accepting the realities of the day and exercising "enlightened self interest" to reach constructive resolution. To that end, I look forward to our paths crossing in active and constructive engagement in this current policy conversation and those still to

come, and I urge and challenge each of us: student, policymaker, academic, business leader, and practitioner to open ourselves up to the possibility of being moved by the passion of each other's sensibilities and checked by the wisdom of each other's practical experience and common sense.

FOOTNOTES

[1] © 2010 Scott Adams Inc./Dist. By UFS. Inc. Dec. 28, 2010

[2] "Australia Targets Multinational Tax Avoidance: Orders Aggressive Audits and Detailed Investigations Into Multinationals' Accounting Practices. Wall Street Journal, Sept. 4, 2014 5:13 a.m. ET

[3] "Heat on Joe Hockey Over Tax Avoidance Deal as Government Prepares to Host G-20," Sydney Morning Herald, September 12, 2014.

[4] *Id.*

[5] See, Michael J. Graetz and Michael M. O'Hear, "*The Original Intent of U.S. International Taxation*," Duke Law Journal, December, 1997.

[6] *Id.* at note 295.

[7] *Id.*

[8] *Id.* at 1095-1097.

END OF FOOTNOTES