

THE BROOKINGS INSTITUTION

THE TAX CUTS AND JOBS ACT:  
TAX ADMINISTRATION CHALLENGES

THIRD ANNUAL LUBICK SYMPOSIUM BY THE  
URBAN-BROOKINGS TAX POLICY CENTER

Washington, D.C.  
Monday, April 9, 2018

**Welcome and Introduction:**

WILLIAM GALE  
Senior Fellow and Co-Director  
Urban-Brookings Tax Policy Center

**Moderator:**

HOWARD GLECKMAN  
Resident Fellow  
Urban Institute

**Panelists:**

BARBARA ANGUS  
Chief Tax Counsel, Republican Tax Staff  
House Ways and Means Committee  
U.S. House of Representatives

LILY BATCHELDER  
Professor of Law  
New York University School of Law

MARTIN A. SULLIVAN  
Chief Economist and Contributing Editor  
Tax Analysts

DANA TRIER  
Former Deputy Assistant Treasury Secretary for Tax Policy  
U.S. Department of the Treasury

**Moderated Discussion:**

MARK MAZUR, Moderator  
Robert C. Pozen Director  
Urban-Brookings Tax Policy Center

ERIC SOLOMON  
National Tax Co-Director  
Ernst & Young LLP

\* \* \* \* \*

## P R O C E E D I N G S

MR. GALE: Good morning, everyone. I want to welcome you to the Tax Policy Center's third annual Donald C. Lubick Symposium. Since I usually forget to say this, let me get the most important piece of business done first. If you are tweeting you want to join the discussion at #LubickSymposium.

What I want to do this morning is tell you a little bit about Don and a little bit about our topic this morning. My Tax Policy Center colleague, Gene Steuerle, posted a very moving blog post. We don't usually describe tax policy analyses as moving (laughter), but it was a very moving post on April 6 on the TPC's TaxVox, telling you more about Don, Don's philosophy, his accomplishments, and why we are so happy to host this event.

I'll summarize very quickly. Legend has it that Don started out as a republican but he ended up serving in high positions in every democratic administration since the Kennedys, including serving as Assistant Secretary for Tax Policy on more than one occasion. One of the great quotes of all time for somebody who's thinking about a career in tax policy, looking back on his career Don famously said that each of the times he served was better than the next one (laughter). We've all had that feeling I think. He's worked on tax reform and issues ranging from Buffalo, New York to Eastern Europe. And one of the things we like best about him is that he's a strong believer in what you might call sensible tax policy, more efficient, simpler, fairer tax rules, administrable tax rules as well. He's been a steady voice for sensible tax policy for half a century. And those are commodities that are in short supply right now.

So we are honored to be honoring Don, his wife Susan, his daughter Lisa, who are also here. And I think the quality of the people speaking today testifies to Don's accomplishments and his lasting impact on the tax policy world.

So, Don, thank you for everything you've done, and we hope to maintain those standards.

I guess the staying is now we move from the sublime to the ridiculous. Our topic today is the administrator challenges created by last year's tax overhaul. Most of the attention given to the tax overhaul so far is focused on the impact and the size of the economy, will it grow the economy a lot, will it pay for itself, will it boost workers wagers, who's actually made better off or worse off. And, of course, later this afternoon, CBO will issue its budget estimates of the Tax Act, along with everything else that's happened, including the budget deal.

There is no question though from an administrative view the recent Tax Act raises many complex issues. It creates new definitions, it requires new regulations, it generates new uncertainties. The fact that the bill was both comprehensive and passed quickly also means that there are inevitable errors and inconsistencies that need to be dealt with. So from the point of view of taxpayers, we're going to be confused for years. From the point of view of tax planners, the Tax Act is going to be the gift that keeps on giving.

So we're going to talk about these issues today with a variety of tax experts. We look forward to your inputs and questions as well. Having said that, I'll turn it over to my colleague, Howard Gleckman, who will run the first panel.

Thank you. (Applause)

MR. GLECKMAN: Good morning, everybody, and thank you all for coming. Thank you to Don for all the amazing work you did over your career.

This morning, as Bill said, we're going to be talking about implementation of the Tax Cuts & Jobs Act. It sounds like something only serious tax students care about. But in reality, the process that follows congressional enactment of legislation is where the rubber meets the road; it's where taxpayers really understand what it is that the law did.

No tax bill can answer all the technical issues generated by a change in the law. And there are particularly some special challenges following passage of the Tax

Cuts & Jobs Act. It's created major changes in the taxation of multinational corporations, which is an enormously complex corner of the law under the best of circumstances. It's created a new regime for pass through businesses, such as partnerships and S corporations, it made important changes in the standard deduction, including capping the state and local tax deduction, it eliminated personal exemption, and raised the threshold on the estate tax. All of this has drive state governments to confront important issues of conformity. And it did all this in about six weeks and the great speed of enactment increased the likelihood of mistakes and gaps, but any bill, any large bill, is going to have hundreds of questions that are going to have to be answered.

Now Treasure and the IRS must address all of these issues. On top of that, because the law passed congress at the end of December and took effect the first of January, the Agencies must produce this guidance in a very short period of time. So how will Treasury and the IRS implement the new tax law, how will the process work over the next few years?

To help answer those questions we have four of our nation's top tax experts. They've all had vast experience either on Capitol Hill, or in the administration, or, in several cases, both. Barbara Angus is the Chief Tax Counsel of the House Ways and Means Committee. She also served as International Tax Counsel for Treasury's Office of Tax Policy. Lily Batchelder is the Stokes Professor of Law at NYU. She served as Deputy Director of National Economic Council in the Obama Administration and as Chief Democratic Tax Counsel for the Senate Finance Committee. Marty Sullivan is the Chief Economist and Contributing Editor at Tax Analysts. He previously was a staff economist at Treasury and the Congressional Joint Committee on Taxation. And Dana Trier served as Deputy Assistant Treasury Secretary for Tax Policy during consideration of the Tax Cuts & Jobs Act and immediately after its passage. He's currently counsel at the Law Firm of Davis Polk.

So let me start by asking Barbara to briefly describe the implementation

process going forward. How does all this work?

MS. ANGUS: Sure, thank you. I'm going to take just a minute to give the typical Hill staff disclaimer, that my comments are my own and I'm not speaking officially on behalf of the Chairman or the Committee. And then I also, if you'll indulge me, want to take a minute to say how much I appreciate the opportunity to be here at the Third Annual Don Lubick Seminar. I was lucky enough to have been invited to be at the first one as well and was very privileged to have an opportunity to work with Don Lubick in his most recent stint at the Treasury Department, both when I was on the staff of the Joint Committee and we worked together with Treasury on the '97 Act, and then subsequently when I was in the private sector and came before Don and his colleagues as a stakeholder. And so I think maybe that's part of why I was so eager to accept a second invitation to appear at this conference. And also I share a heritage from Buffalo (laughter), where I was born and raised. And they make hearty stock in Buffalo.

In terms of the question of implementation, certainly a really important question, one that I think sometimes people lose sight of, that legislation is only a part of the tax law. And if you think about it in terms of volume, it is only a small part of the tax law. We just got our new tax codes and I have a nice very thick one volume tax code. We also got our new set of regulations and I have a stack of eight volumes of tax regulations. Now, to be fair, another publisher publishes them in six volumes, but when you think about what may be a paragraph or half a page of legislative text, that often can support tens or a hundred pages or more of regulations. So really important part of the process. And I think as we were working on the legislation, which was many years in the making in the sense that there are concepts in this legislation, big principles in this legislation, that date back to say the first version of the Camp draft in 2011. Other ideas that date farther back as on the Hill as we developed the legislation it was really important to include folks from the Treasury Department and the Office of Tax Policy as part of the drafting work because a very important voice to have in the discussions, but

also recognizing that their participation in that process would be very valuable as they worked on the guidance to come.

And I think the last thing I would comment on is that guidance comes in a variety of different forms. There's the work of the Treasury Department on regulations and on guidance in other forms, notices, revenue rulings. A variety of different forms can be used depending on the particular purpose. We also will have more guidance to come in the form of the Joint Committee on Taxation's blue book that will collect the legislative history of the Act and also provide some further color. Tom Barthold has talked about one of the things that they're looking to do in the blue book is to provide some more examples than were provided in the legislative history. And then another important part of the process is the technical corrections process, something that happens with any piece of major legislation.

And all three of those processes, the Treasury guidance process, the blue book, and technical corrections, sort of work together in that work on one can provide information that leads to a decision to put something in the blue book or to put something on the technical correction list, and vice versa.

MR. GLECKMAN: So, Dana, this process has sort of grown up informally. Can you talk to us a little bit about how this is happened, how this has evolved over time?

MR. TRIER: The process that Barbara speaks of actually goes back a long way. Marty and I both brought our '86 Act blue book and I think that sort of inevitably -- I know a little bit more about it than he does. (Laughter) He's an economist, you have to remember this. But it goes back quite a long, long way. Really, my first blue book that I mastered was the '76 Act blue book, which, you know, goes back quite a bit. The '78 Act blue book I learned.

And what I would emphasize about it is two things. Formally, as Barbara says, they all are related. And it's just like writing an article or doing a structure on a deal

or anything, once you start to implement you see issues that you did not see when you were -- once you start to write or once you start to do regs, or once all the sectors of the American economy come in and talk to you, you start to see issues. And those issues are now in the lap of Treasury, unlike what the situation was up to the end of last year. Treasury and IRS will be the principle work doers. But there is a feedback that is occurring every day, every week, et cetera. And that feedback will partly occur through the technical corrections and blue book process. As Barbara said, we all know from the old days, if you look at the '86 Act blue book it has 202, by my count, footnotes that say technical correction may be necessary. So the technical corrections process is related to the blue book process, which in turn is related to the reg process. So just as Treasury and IRS are doing their work, they're going to be talking and consulting with their colleagues with whom they worked during the legislative process on all this.

And the other thing I would add is that it's not all formal. It would be odd for a Treasury person or an IRS person not to want to know what Barbara and her colleagues thought about an issue, why did you decide not to put this provision in, why did you do that. They're tax professionals. You always want to listen to what other tax professionals say. So this process is formally going to be reflected in technical corrections and the blue book, but there's also a broader formal and informal process that will go on over not just the months ahead, but quite a long time.

MR. GLECKMAN: So, Lily, that raises an interesting issue I mentioned at the beginning, that the timing of this was kind of challenging because the law was effective so quickly after enactment.

So how important is speed, how do the reg writers balance the need to get guidance out quickly with the need to get it right?

MS. BATCHELDER: Yeah. So as you mentioned, this was a bill that was passed inordinately quickly. From the date of first introduction to the date of final passage it was 50 days. And if you compare that to Obamacare, it was nine months. So

this was an incredibly rushed process, and I think as a result this means that there's going to be a huge amount of technical issues in the bill. This is not all a knock on any staff. I think they did an extraordinary job under a very tight timeline given to them by their bosses, but it's just a fact of life that this is a bill with huge fundamental consequences and there's going to be a lot of things that staff simply couldn't have thought through during the process.

And, as Barbara said, there are pieces of the bill that date back to other discussion drafts, but there's also big pieces that had never seen the light of day until 50 days before enactment.

So I think what this means is that in interpreting the bill, and there is always a major role for Treasury and IRS in interpreting any legislation, their role is even bigger in this process, much, much bigger, and has potentially very large revenue consequences. So in my view the best approach would be for Treasury to act, and the IRS, very quickly in issuing a first tranche of guidance that may not cover the waterfront, but interprets the bill, advances broad principles in way that protect the fisc.

There is going to be a huge push among all of the brilliant tax lawyers in the country to identify ways to reduce their tax bills that may or may not have been intended by the bill.

SPEAKER: Going to be? Already are.

MS. BATCHELDER: Yes. So I think it's really important that Treasury gets out very quickly guidance that, you know, maybe initially takes a more conservative approach with respect to protecting the fisc and then, over time, develops a more nuanced approach as they deem appropriate. But if they don't do so it's going to be open season. And it's not going to be all taxpayers that have open season, it's going to be the ones that can afford really expensive, very sophisticated tax advice that will get advice on strategies that potentially comply with the letter of the law but not the intention.

And so my first piece of advice, if I was able to give it to IRS and



Treasury, would be to take that approach. The second would be to do it in the sunshine. So having worked in both the Hill and the Executive Branch, the overwhelming number of people that request meetings, whether it's for legislation or regulatory guidance, are representing, or employed by very large corporations and very wealthy individuals. And you barely ever get a meeting request from someone who has no skin in the game. So I think it's going to be really important for Treasury and IRS to be proactive in trying to solicit advice on how to interpret the law from people that don't have skin in the game. That might be retired practitioners that might be practitioners who don't have a client interest that might be academics. And do that, you know, in public fora so that the people that have skin in the game and have a very strong client interest need to debate what they're advancing with people that don't.

MR. GLECKMAN: So, Lily, this seems like there's a little tension in what you're saying though. So the more you're engaging more people, the slower the process. So how do you balance the need to be transparent with the need to be fast?

MS. BATCHELDER: I think, again, you sort of first put out broad principles of anti abuse, take relatively conservative interpretations, but say you're, you know, this is initial guidance and there's going to be a notice and comment rule making process. And then, over time, if it's considered appropriate, develop some more nuanced guidance. But you don't have to, you know, get to the finish line right away. You can issue guidance that's sort of progressively -- and this is always the case in notice and comment, it's meant to evolve over time. But you can also issue different kinds of guidance that are not proposed regulations as well.

MS. ANGUS: And I think we see Treasury doing that already, very much focused on the need to prioritize the questions that are the most urgent, the ones that they've got the sort of ability to answer even though they're not answering everything in a particular area. And also the form that they use to put out guidance. So we saw notices come out. A handful of notices came out before the end of the year; notices have come

out since then. It is an iterative process and a notice gives -- in some ways it's an extra step in the process, in the transparent process that you talk about because it announces that regulations will be put out that will provide this guidance. So there's an extra step for opportunity for folks to comment.

I think there are lots of questions that people are very much seeking guidance on. And so Treasury is balance the resources and the questions that affect financial statements. That was a focus at the end of the year and the very beginning of the year. And I think we'll see Treasury continuing to do that.

Certainly there is a focus on identifying areas where someone could view stakeholders as potentially taking advantage, and Treasury wants to get guidance out that makes clear to close off any of those avenues. But I don't think that we should discount the importance and maybe the prevalence of the role of guidance in answering questions and applying the principles that are in the tax law to very specific fact patterns or to circumstances that are --

MR. GLECKMAN: And in ordinary business.

MS. ANGUS: Right. That are not the usual, that may not be the sort of broad -- but a narrower set of circumstances. I believe that many of the people that are seeking guidance are seeking answers to questions. And so I don't think that we should think about the guidance process as a rush to cut off potential inappropriate behavior, but really the guidance process very much is about ensuring that people have the answers that they need.

MR. SULLIVAN: Well, can I go to Lily's point on transparency? Congress is notorious for being secretive when they're developing these policies. And I think especially in this informal process where there's no formal procedures, that they really have to take conscientious steps to be more open. So people come in and there are all these meetings and there's all this discussion, but none of it's in public. We don't know who's meeting with whom, we don't know who's representing congress, we don't

know who's representing Treasury, we have no record of the Treasury meetings, we have no record of the congressional meetings. And there are billions and billions of dollars on the line. I can name three or four provisions that are billion dollar issues that are going to be in the regulations.

And I think, you know, on the tradeoff between speed and transparency, I think transparency gets not too much attention. And I think that really would be helpful if that would change.

MR. GLECKMAN: So, Dana, you've been in the trenches very recently on this. What do you think about this idea of more transparency in the regulatory --

MR. TRIER: Well, I think one has a big issue with transparency. I think that it's difficult before the -- as I know very well, it's very difficult for Treasury before guidance comes out to talk about it in public. It's just a fact. It's partly the nature of the discussion, but it's also partly because, you know, things will be mangled inevitably in the press discussion, et cetera. So I think that to a large extent what's being relied on here I don't think is something where it's going to be at all possible on May 1 for a Treasury person to get up and say we've talked to the following ten groups and this is what we're thinking about. I think what we're ultimately relying on is the proposed regulation process. The process where you're going to promulgate regs. So Barbara --

MR. GLECKMAN: And get comments.

MR. TRIER: And get comments, have a full airing, have the Lee Sheppards of the world who have taught themselves a lot of tax. And I put Marty and Howard in this, saying oh, those proposed regs will permit this or that group to do things that were not anticipated by the legislation.

Barbara said much of what I was going to say. I think if you go back literally to your basic point, there is no possibility of providing early guidance on all this legislation. So the very first thing Treasury and IRS did is the PGP and to decide which --

MR. GLECKMAN: Could you just say what PGP is?

MR. TRIER: The Priority Guidance Plans. The Priority Guidance Plan is in effect what we used to call the Business Plan. I mean in Eric's day I think you would call it the Business Plan. Eric was, among other things, Deputy Assistant Secretary for Regulatory Affairs. And it has a June 30 fiscal year. So the very first thing Treasury decided and IRS decided, working with Bill Paul at the IRS, is which of these provisions, when are we going to be promulgating early guidance on. And then sort of backing that up, early guidance really means mid-summer. And they may not make it until late summer as a factual matter. Then what comes next?

So, for example, going back to Barbara's point, the transition tax notices, because of the reporting effect and because speaking of becoming immediately effective, some of that law is effective before the year, had to be done first. So there was, as you know, a notice before January 1 that was issued. And the international people from Treasury had to focus on that. There was just no question. And that's inconsistent with doing things like the guilty, the other attributes of the international regimes. So pass throughs is on the early guidance. There's three components to the pass through guidance. Carried interest, which is a less central aspect of the legislation, whatever you think of that provisions, it's less central. That's not on the early guidance.

So to fulfill Lily's objectives, the very first thing they have to do is prioritize.

MR. GLECKMAN: Triage.

MR. TRIER: Mm-hmm, triage.

MR. GLECKMAN: But it's interesting. So one of the -- probably the first example of guidance was this issue involving prepayment of property taxes.

MR. TRIER: That was on the IRS side.

MR. GLECKMAN: Right. But there was a hard deadline, right. I mean people had to know the answer by December 31.

MR. TRIER: Yeah, mm-hmm.

MR. GLECKMAN: Or January 1. And the IRS just dropped it. I mean they just did it. There was no discussion as far as I know with anybody. They just said, this is what we think. And it was an enormously controversial decision. People are still arguing about whether the Service was right about it.

MR. TRIER: Sure.

MR. GLECKMAN: So what do you do when you have this -- you get these hard deadlines, you've got this need for transparency, you have all these advocates who all want to be heard, how do you balance all that?

MS. ANGUS: I think the process that has been in place for many, many years, long tradition at the Office of Tax Policy, I think is built for this kind of situation and for building transparency into it. So I think Dana is exactly right. The Business Plan -- I can't get used to PGP -- the Business Plan is the first indication of plans to issue guidance in an area. That's an invitation for stakeholders to send comments in about what that guidance should or shouldn't say. And many stakeholders take that opportunity, both those who represent companies, those who represent trade associations the various bar associations, all sorts of different stakeholders will submit comments there, which is a transparent process.

Then one could imagine that the regulations that will come out won't be the first proposed regulation, wouldn't always be something that goes from beginning to end. When you look at the kinds of guidance that issued after the '86 Act, I remember spending an awful lot of time with some regs that were in Q & A form. (Laughter)

SPEAKER: The golden parachute.

MS. ANGUS: I was a very young associate, I remember those regs. But they were very useful. It was an efficient way to answer some questions. And I would expect that the Treasury Department will use all those different avenues to get information out to then solicit more comments through that back and forth process.

MR. TRIER: Let me give two examples of this kind concretely. One of

the big issues, which of course people here have written about, is going to be describing the specified service, trade, or business.

MR. GLECKMAN: I figure I would put in a plug, Marty's got a very good piece this morning in Tax Notes about -- 12 ways people can gauge --

MR. TRIER: Twelve different ways. First of all, I can say this now, that's going to be a thankless task, to specify that. But there's actually just no choice but for Treasury to do the best it can, Treasury and IRS, get out proposed regs, have a very wide discussion. Part of what's going on when you think about that is that if anybody that's ever been in Treasury sort of realizes that the country is unbelievably complex. And you will affect a number of things.

MR. GLECKMAN: Just so folks now what we're talking about, the statute says that you will not qualify for the pass through deduction, or certain parts of the pass through deduction, if your business whose principal assets are the reputation or skills of the owners or employees. And I posit to you that the Treasury has to define what principle means, what asset means, what reputation means, and what skills means to make this work.

MR. TRIER: Well, what they have to do, as much as anything, is determine what the role of that provision is vis a vis other specific things.

MS. BATCHELDER: Perhaps it would be appropriate to talk about when the entire statute says, since it gives a list of things that are specified services, and that's the catch all at the end. It's also not new language, it's language that's been in the code for a long time, something that I think is often used as things are reformed in the tax code to see if your putting -- when you're putting a new rule in a natural tendency of the drafter sand of policy makers is to look to existing rules because then you can bring any existing learning or understanding of those rules that this is an example of a provision that came from existing law. The wage limitation that is part of the pass through provision also came from old section 199, where there was some guidance.

So, again, that doesn't eliminate the need for Treasury to address these things.

MR. GLECKMAN: Well, actually it brings home the part -- Barb you're referring to Section 1202. So it existed in prior law. It's been in law -- I can't remember, 10-15 years.

MR. TRIER: And an antecedent of it, 448.

MR. GLECKMAN: Right. But there is still no clarification of -- that provision was rarely used and that actually proves the point. There's been no clarification of what those words mean to this day. So even though it's been in the statute for, I don't know how many years, we've gotten very minimal guidance, just some technical advice memorandum, and private letter rulings and so forth.

MS. BATCHELDER: Part of what I'm suggesting is let's say it's this issue -- I mean we could list 50 different issues that are like this, where there's some history about a lot of lack of clarity. It might be the case that after 10 years Treasury and IRS are going to figure out that the appropriate approach in 100 borderline cases is 20 of them are allowed to claim the pass through deduction and 80 aren't. And right now it's crystal clear that two should be able to. I'm saying right now put out guidance saying two should be able to and we're going to figure out whether the other 18 should over time. But if you don't do that then you're going to have all 100 claiming right now and these are generally going to be the most sophisticated, large, wealthy individuals and corporations claiming the deduction when it's really not appropriate.

MS. ANGUS: Guidance is an iterative process.

MS. BATCHELDER: Exactly, yeah.

MS. ANGUS: It always has been. And so there are -- when you look at sort of any area, there's areas of the law that haven't changed from a statutory perspective, sort of over many years never changed, but there were iterative regulations. That's one of the values to having important things addressed in regulation because

there's the ability to adapt to developments in the economy, to changes in technology, to all sorts of things.

MR. TRIER: Changes in tax planning. You know, that you then perceive at the end. I don't think anybody at Treasury and IRS would disagree with you, Lily. The thing that you have to be careful about, though, it just depends on the provision. I mean I'm going to take 163(j) which is the limit on the interest deduction. We won't go into the fine -- so we now have a notice, the notice covers like five topics. There are a large number of other little topics out there. I guarantee you, the people at the Treasury and IRS know 95 percent of those topics. They know it by seeing the panels, they know it from their private experience, et cetera. But one of the things that you always learn the hard way is, is that if you answer until you understand the gestalt, until you understand how it all fits together, it's very dangerous to answer right out of the blue one of those issues.

In the case of the transition tax issues, this is the repatriation, the deemed repatriation that occurred. Treasury had no choice. Treasury and IRS had to answer many of those questions in the notice format early. But that's actually a pretty uncomfortable situation because they're answering those questions before they've done a comprehensive proposed reg package, as to which the way everything fits together is clear. So there's tensions here. I think on the pass through thing, they know it's important to get their early. Early for them will mean late summer. It won't satisfy your greatest desires. And everybody knows that what they issue will not be the last word, but it has to be issued in order to get the dialogue started. And that's part of the iterative process that Barbara discussed.

MR. GLECKMAN: Let me ask each of you. I did a blog post last week about this, and Lily has alluded to it, and it's this issue of how taxpayers respond to this uncertainty. And in the blog post I wrote I had talked to a couple of practitioners who were very worried about the race to the bottom, that you're going to get very aggressive



taxpayers and very aggressive practitioners, who are going to push the envelope and maybe push beyond the red line. And that by the time Treasury catches up to this, it's going to be years, and they will have at worst -- and I just wanted to get your response to how much of a concern that is.

Let's start with Barbara and kind of go down.

MS. ANGUS: Well, certainly, there are always people who take aggressive positions.

SPEAKER: Particularly the economists. (Laughter)

MS. ANGUS: That's true of old law and new law. I am a firm believer that most taxpayers want to comply with the law, and so they're looking to make interpretations based on the law and the legislative history, sort of all of the tools that are at their disposal. That's why they're asking questions, because they want more guidance to provide more certainty. But I'm a believer in the system.

MR. GLECKMAN: Lily, how about you?

MS. BATCHELDER: I think this is an enormously important issue. Again, I think, and to a large extent because of the speed in which this bill was enacted, the revenue consequences of guidance and regulation are going to be much larger than we have seen at any time in -- well, in my tax history. So what I think that means is that, again, Treasury and IRS need to be taking relatively conservative, quick positions and then considering whether to loosen them over time.

So, you know, we saw a recent article in the *Wall Street Journal* about crack and pack strategies with the pass through deduction. And that businesses are going to split their, you know, clearly services incomes into a separate business from their less clearly services income so they can claim the pass through deduction on that, or they're going to put them together so that overall it's considered eligible for the deduction. I think that's an area where Treasury and IRS should take a pretty aggressive anti abuse stance, that a lot of this is not going to work. And then over time what that will

do is mean that people aren't going to incur a huge amount of planning costs when they're not clear that they work. They're just going to interpret it more conservatively initially and then over time Treasury can say, okay, in this situation we think that strategy really does work, that was intended by congress. But take a sort of first cut that weighs the fisc more heavily, which have the added advantage of not creating opportunities for the taxpayers that can afford the most sophisticated tax advice to aggressive and people who cannot not be aware of those strategies.

MR. GLECKMAN: Marty, how about you? How worried are you about this?

MR. SULLIVAN: I just want to take a step back. The 600 pound gorilla in the room is the 21 percent corporate tax rate. And all the practitioners I've been talking to are all -- it's all -- everybody's saying wait and see, we've got to wait and see. We don't know what to do. The critical decision about whether to become a pass through or to become a C corporation, which was always difficult, has now just been made exponentially more difficult. So if you want to be a pass through, of course you're only subject to one level of tax and potentially to the pass through deduction. That's good. If you want to be a corporation --

MR. TRIER: Let's say it's 29.6.

MR. SULLIVAN: Thank you. That's pretty good.

MR. TRIER: Just to illustrate your point, versus 21.

MR. SULLIVAN: Versus 21. Now, of course, there's a host of other things, non tax and non tax issues. And what the business community is doing is they don't -- well, and also because the pass through deduction is scheduled to expire at the end of 2025, why should I change my business form until I have the regulations. So contrary to people --

MR. TRIER: Howard's article.

MR. SULLIVAN: -- doing tax planning before the regulations come out,

they're waiting for the regulations to come out so they have some certainty on how to proceed. Now, whether you want to call it tax planning or, you know, the negative connotation. You say people are trying to comply and they just don't know what to do.

MR. TRIER: Let me just add one thing. I did read your piece, Howard. I actually think, in my world at least, the world is what Marty is describing. In other words, it's affected by the *Wall Street Journal* article. So I happened to have a conference call with a client the day of the *Wall Street Journal* article. And I expressed my concern -- this is maybe what Lily is asking for -- but I said, in your situation, given those articles, even though your facts are quite robust, there will potentially will be an impetus for the Treasury and the IRS to exercise what reg authority they have in the most conservative -- and I'll call it blunt -- I don't like the word conservative -- but in the most blunt way without reference to new facts. So that, in fact, what I see is instead of a rush to the -- now this may be the kind of people that would call me or call David Polk -- but what I see is instead a concern moving forward on crack and pack and all that kind of thing. But even, you know, a concern that their existing arrangements, which happen to involve multiple entities, and which happen to involve entities, some of which would qualify for the pass through deduction and some of which not, they're worried that there would be a global aggregation rule that would affect that.

So I think that this is going to be a very, very tricky reg for the IRS.

There is no question --

MS. ANGUS: Significant change in the law to --

MR. TRIER: The 21 percent is a significant change.

MS. ANGUS: 21 percent is a significant change, it has significant implications internationally to have a rate that is more in line with the rest of the world. Providing a new regime for pass throughs, to provide a -- to maintain more of a level playing field between the pass through form and the corporate form was an important objective in tax reform. When you look back at the '86 Act, that had dramatic implications

for choice of entity.

MR. TRIER: And a huge amount of activity between '86 and '88, or there were a tremendous number of Sub S elections, there were a tremendous number of spinoffs, where one corporation would make an S election and one corporation would not. My friend, Lou Freeman, wrote an article for the University of Chicago I think in 1987 referring to the phenomenon as the methodical disincorporation of America. Whenever these core tax rates and the balance among them changes there's going to be planning. And they're going by -- I use the more -- I call planning the -- you know, Eric and I and people like us --

MS. ANGUS: Is it planning or is it -- it's also an opportunity. And I was on a panel recently where someone expressed concern about the fact that it used to be very clear if you started a business, you knew how you wanted to structure that business, and now there are these new options. I think that one ought to look at that in some ways importantly as more opportunities, as more flexibility, to be able to choose the form that makes sense for the business instead of tax driving the form. So, after the '86 Act there was a significant disincorporation. The pass through --

MR. TRIER: That was a good thing.

MS. ANGUS: The pass through format is not always the easiest format to conduct business in. It creates complexity; you've got businesses that have huge compliance departments because they're issuing so many K-1s. For some of those businesses the more natural business form, if the tax law hadn't put a thumb on the scale, might well be a corporation. We now have a situation where some businesses can think about becoming a C corporation with a 21 percent rate. I think that's planning that people should be thinking about doing.

MR. SULLIVAN: I'm thinking about becoming a C corporation.

(Laughter)

MR. GLECKMAN: So, Marty, while you're thinking about that --

MR. TRIER: I was a C corporation at one time. Dana L. Trier, PC. I was the chairman and the board. (Laughter)

MR. GLECKMAN: Marty, let me ask an economist -- I want to ask an economist question. This is your big chance, you're surrounded by lawyers. So if you and Dana are right, and the big issue is not the race to the bottom, but the big problem here is that people are slowing down their decision making.

So Kevin Hassett argued the other day that the regulatory issues will have no effect on his economic growth projections. Sounds like from what you're saying, that it may. So tell me what you think about that.

MR. SULLIVAN: Well, I think we have -- this tax bill has a lot of good features, the lower rate, expensing, tightening up on interest deductions. There's just a tremendous number of excellent features. But one thing it does have also is incredible uncertainty and incredible administrative costs. And it's due to the sources of -- of course uncertainty is what businesses hate most, especially when doing long-term planning. Now, the uncertainty is a product of hasty -- the legislation was crafted very quickly, it was done in a partisan manner. Now, that doesn't mean it's bad. I mean the 1993 Clinton tax increases were partisan. But it just means it's unstable. If there is a change in power in 2018, 2020, you have to take that into account as a possibility. I'm not predicting or, you know, forecasting or anything, but people have a real concern, is the rate still going to be 21 percent in 2020.

MR. TRIER: I mean people are making a guess actually. They usually say we'll assume it's going to be 25.

MR. SULLIVAN: Yeah, just to be safe. Now, the other problem, even if you don't have a change in power, is you have unprecedented high levels of federal debt. When George Bush did his tax cuts in 2001 we were headed to 0 federal debt. We are now at 77 percent and going that way. And the numbers are going to come out at 2:00 o'clock today. Everybody should take a look at it.

And then there's the built in instability of a law, which is the expiring provisions. So there's a lot of uncertainty hanging over this, and that detracts from all of the benefits that are in the bill. And if somehow we could remove that uncertainty, that would make the bill better.

MR. GLECKMAN: So, Barbara, I have to give you a chance to respond. I suspect you've got --

MS. ANGUS: Well, thank you for your comments about the bill. There are a lot of significant advances in the bill. It's also the biggest reform that we've had in many years. Yes, there were lots of bills between the '86 Act and this bill. But I don't think that there was one of this magnitude. And so previously in my career I had the opportunity to work on regulations related to legislation that I worked on a couple of times. When I went to Treasury after having been on the Joint Committee staff, and then working on some legislation while I was at Treasury and then the regulations. And it's a big and important job and it's one that needs to be approached with great care. And for a bill like the '86 Act, for a bill like this, it's a multi prong job. So it involves not just one area but many areas. So for the Office of Tax Policy it will be all hands working on it. I think there are -- the more certainty that can be provided through guidance, through the blue book, through technical corrections, the better. Chairman Brady also has said since the beginning of the year that he views himself and the Committee as in receive mode for those who want to come in and talk about any of those issues, as well as stakeholders who want to come in and talk about further refinements that can be made. Certainly addressing the temporary aspects of the bill is a key thing. Many want to see those provisions made permanent to provide just the certainty that Marty is talking about. And sort of willing to hear about other refinements that people believe could be made that would further the objectives underlying the bill.

MR. GLECKMAN: So that would be a second bill? Not a technical correction.

MR. SULLIVAN: I think it's an important distinction. So there's two things on the table, a second bill and a technical corrections bill.

MS. ANGUS: That's right.

MR. GLECKMAN: Yeah.

MS. BATCHELDER: So I just want to push back a bit on the notion that there's no race to the bottom that's going on or going to happen.

MR. GLECKMAN: Thank you, Lily.

MS. BATCHELDER: I think there are definitely people who receive advice, as Dana is suggesting, that there's so much uncertainty, you shouldn't take an aggressive position right now. There are taxpayers that care about the reputational effects of -- if they are found to have been too aggressive tax wise. There's a lot who just don't want to adjust their earnings if they're subsequently told that they took too aggressive a tax position. But there are a lot of taxpayers that do not get this advice and that care more about the expected value of taxes they pay. And so if there is the possibility of an aggressive tax position, they're not sure they're going to be audited, they're not sure whether they will prevail or not. The worst that's going to happen is they'll pay penalties. Those tax payers have huge incentive to go for that race for bottom unless and until there is guidance that says, you know, we're closing the door. We may open it a bit for you later on, but right now we're taking the blunt approach and saying that this kind of strategy is probably not going to work.

MR. SULLIVAN: In the *Wall Street Journal* article they were quoting some Dallas attorney, and he said I'm going to split my law firm into four lawyers which will not be qualified under Section --

MR. TRIER: I would say that was a dumb guy to say that.

MR. SULLIVAN: I was going to say that first. (Laughter) And he was going to split the other part into the administrative portion, which would be eligible for the pass through deduction. And I had the same reaction, which was that's very extremely

(inaudible).

MR. TRIER: And, Marty, that particular aspect of the article that bothered me as tax planner because if you see that kind of disaggregation, as I call it, you call it -- professors call it crack -- and I don't -- then there's more likely to be a more blunt reaction to it, which would be affect the kind of things that I'm being exposed to, which are actually quite nuanced and in several cases preexisting. And, you know, they're a preexisting relationship.

So just go to the PGP -- we're sorry for the term of art -- there's three pass through reg projects, one of them is anti abuse. I always gave the potted plant speech when I was at Treasury. The people who are writing this, these articles about being concerned about the abuse, they're assuming that you have a bunch of nerds in Treasury that are not responsive to the kind of planning that they understand before they got to Treasury. I mean, you know, the people who are in Treasury have done up C structures, multi entity structures. They're entire career --

MR. SULLIVAN: They're very cool, they're not nerds. (Laughter)

MR. TRIER: I don't know about them being -- but you're assuming no Treasury response.

MS. ANGUS: So does the Dallas attorney think that the Treasury and the Hill doesn't read? (Laughter)

MR. TRIER: Right from the beginning, though, on multiple different things that people will say well this is illegal. But, of course, the IRS doesn't have enough funds. I mean I don't know that you can assume widespread illegal conduct like declaring -- in Dan's article -- declaring yourself an independent contractor. I don't know that that's going to work out well for the employees of David Polk, for them to wake up and declare themselves independent contractors.

So I think Treasury has a big issue with respect to the regs. I actually think the issue is more subtle, and which is the subtle question of what should be



permitted even conceptually as opposed -- I don't think anybody would think that the Dallas law firm with the bookkeeping should be permitted. And the question is how do you frame regulations that deal with that without dealing with other --

MR. GLECKMAN: Well, let me raise a couple of other issues. The first one I want to talk about is -- and Barbara alluded to it when she talked about possibly a second tax bill. Chairman Hatch has been quite explicit -- he did it at a Tax Policy Center event, he's done it at hearings -- quite explicit that where there is uncertainty it's not Treasury's responsibility to clarify it, it's congress' responsibility.

MR. TRIER: He didn't quite say that.

MR. GLECKMAN: Well, okay. What was your interpretation of what he said? (Laughter)

MR. TRIER: He did say in his --

MR. GLECKMAN: I'm referring to his letter actually. His letter said the best --

MR. TRIER: What the Chairman said was, "Where things are potentially unclear in the TCJAA, congress should be the one to determine and explain what was intended".

MR. GLECKMAN: To me that sounds pretty explicit. So, Lily, what's your take on that and where does that leave us in this process of trying to get regulations out relatively quickly.

MR. TRIER: You came from Senate finance, Lily, explain this.

MR. GLECKMAN: You used to work at this (inaudible). Explain that.  
(Laughter)

MS. BATCHELDER: I don't think that is generally the case. I mean there certainly are when you draft and pass legislation things that are not, you know, totally clear in the statute, and there are colloquies on the floor, and there's legislative history that exists saying this is what we mean, this portion to be interpreted. And I think

that's something legitimate that should really be taken into account in the guidance. But if congress was silent, I don't think congress can just announce this is how we think it should be interpreted without passing new legislation. So I'm sure congress can pass some new legislation, but I don't think ex-post they can say this is what we intended without some record of that happening before the bill was passed.

MR. SULLIVAN: It's important to think about that for a second because of course you want to consult with congress and what they thought about. But who are you speaking to in congress? Are you speaking to a staff member, are you speaking to one member, are you speaking to a majority? I mean the only way congress really can speak formally is by passing legislation. And so until they pass -- I mean we want to -- of course you want --

MR. TRIER: Well, also there's a legislative history.

MR. SULLIVAN: Yeah, right, absolutely. And it ultimately comes down to statutory -- what we haven't talked about yet -- ultimately this is all -- well, there's a big circle around it by the courts. The courts are going to ultimately decide and statutory interpretation -- gosh, I'm the only economist up here -- but the -- only --

MR. TRIER: You've gotten way beyond your economic -- I mean you're doing stuff on interest allocation.

MR. SULLIVAN: You read half an article about statutory interpretation and you realize it's totally an arbitrary area. And so this is ultimately all a haze because if -- and it's interesting to notice one thing, if the Treasury takes a taxpayer favorable position in a regulation, it will never be challenged in court, it just goes away. And so life is easier for everybody. If, on the other hand, Treasury takes an aggressive stand where the statute may be ambiguous, you're going to have court challenges. And it goes to court and then you're going to have statutory interpretation, which is going to be very arbitrary.

So there's an asymmetry here in the process. If it's a taxpayer favorable

regulation, it kind of goes away. But then, on the other hand, we're losing revenue. So it's something to think about.

MR. GLECKMAN: So, Barbara, I want to ask you about this.

MS. ANGUS: And I would come back to the importance of the Hill and Treasury partnering. That's something that happened throughout the process of developing the legislation. It was happening at the level of the Chairman and the Secretary and the NEC Director. It was happening at the staff level with the Office of Tax Policy. And, in my experience, it's something that has long been part of the legislative process at times when people don't really realize it. And something that I remember back from my days in the late '90s on the Joint Committee staff where there were always folks from Treasury as part of that process. It ensures that they are there as the legislation is being developed, that they have first hand view as to what congressional intent it as it's memorialized in the statute and the legislation. I think it's appropriate for those conversations to continue. But they are about what is on the written page.

MR. SULLIVAN: Absolutely.

MR. GLECKMAN: So, Barbara, let me just ask you; I just want to follow up on that and then let Marty jump in. How far can this sort of informal process go in the absence of statutory language or legislative history? I mean that seems to be the question here. So if you have something that just wasn't clear at all in the legislation. So, after that, how far can you go? How much influence --

MS. ANGUS: Well, that's a matter of interpretation and I would think that if I was thinking about it from a regulatory perspective with a Treasury hat on it, I'd think about if this was an issue that was not addressed, so a corner that was not addressed in the statute. What is the answer that's most consistent with the other parts of the statute? I mean there's lots of things that you bring to that question that are written on the page. And I think that that's the exercise that Treasury goes through in issuing interpretive regulations. And part of that discussion may lead to identifying that there is a need for a

technical correction. And so as --

MR. TRIER: Or to the extent possible, blue book, further explanation in the blue book, or something --

MS. ANGUS: That's right. And the blue book can provide additional color, the blue book is not legislative history itself, and so all it can do is provide additional color, but it does in the form of more examples, or just a little bit more explanation. It often does, as Daniel pointed out in the '86 Act, identify that a technical correction may be needed in this situation, and technical corrections themselves are merely reflections of congressional intent.

And then there is potential for future refinement, which would be a change in the law.

MR. GLECKMAN: Marty? You were going to jump in?

MR. SULLIVAN: I just want to make one point. Remember, the regulations aren't scored. So when you're on the Hill and you pass a taxpayer favorable statute, the estimators score it. When you write a taxpayer favorable regulation, it just goes into the ether in terms of the fiscal effects.

I just wanted to make one point. Back in '86, maybe you remember this, after the conference committee met, we were drafting. After the conference committee met, we were drafting and we were making -- you know, I was at Treasury at the time -- we were making very big decisions.

MR. TRIER: I have seen very big decisions made post mark up. You know, if you're honest, I've seen discussions, -- negotiations go on before the press release that describes what happens in mark up. So.

MR. SULLIVAN: But my point is just because I was in the room doesn't make me an authority on that particular provision.

MR. TRIER: That's true. And it is difficult to come to grips with the informal aspect of this. But wearing my Treasury hat for the moment, and I said this

earlier, you know, I want to talk to Barbara about it because she's another smart tax person with lots of experience who was involved in the process. And I don't think the equivalent of me in Treasury is bound by what Barbara says, but they cannot help but be educated by that conversation, just like I would talk to any number of my peers about how Davis Polk is going to come out on an opinion on the pass through provisions.

MR. GLECKMAN: So you would disagree with Senator Hatch?

MR. TRIER: I found --

MR. GLECKMAN: Be tactful.

MR. TRIER: I think the world of Senator Hatch and I think the world of Don Lubick. (Laughter)

I mean, honestly, I think there are people that I think a lot of over time and will always value. But on this one I think he was, you know, a little in front of his skis. The way I would say where he's relevant is when they are a very important part of the interpreting what they do, but they need to put that down in the legislative history. That's how that process works.

MR. GLECKMAN: So I want to give you all a chance to ask some questions, but I have one other issue I want to ask each of you about very quickly. And there's now another player who may get involved in this, and that's the Office of Management and Budget. There's an interesting debate going on inside the Administration about OMB's role, OIRA's role in this.

Let me ask each of you two questions, and you can give me very short answers. First of all, does OMB have the legal authority to do this, and, second of all, should it do it?

MR. TRIER: Let's ask Lily first. She was in charge of that, right?

(Laughter)

MS. BATCHELDER: I'm not in charge of this.

MR. TRIER: I thought you were going to discuss it.

SPEAKER: Yes and no.

MS. BATCHELDER: I am not in charge of this issue, but I tend to think it's an unwise move. I think I would defer to people who thought more deeply about the legality, but I haven't seen anything suggesting that OIRA clearly cannot review tax regulations. But I'm not sure it makes any sense, and I would tend to lean towards the view that it doesn't. First, they don't have any tax experts on their staff right now. They could hire some.

MR. TRIER: They are going to hire some. I can show you the ads.

(Laughter)

MS. BATCHELDER: Yes.

MR. TRIER: I responded to a couple. (Laughter) Just to check it out. I wanted to know what their health plan was.

SPEAKER: Not as good as yours.

MS. BATCHELDER: So, you know, Treasury and IRS have decades and decades of experience on thinking through tax regulations and guidance and OIRA doesn't. They don't institutionally. And I'm just not sure what they would add to the process.

MR. TRIER: And the individuals don't.

MS. BATCHELDER: Yeah. But the second thing I would add is I think this is going to slow the process. And I also think it raises really difficult conceptual issues for OIRA because taxes -- generally OIRA doesn't count transfers as a social benefit. So the whole thing is cost benefit analysis at OIRA. And generally if you take one dollar from one person and give it to another, they treat that as a wash, even if the one dollar is taken from a billionaire and is given to someone earning poverty level wages. And one of the biggest purposes of tax policy is to take one dollar and use it for government social programs that hopefully has a higher return. In terms of your social welfare analysis, to use an economics term. And that's just not something that OIRA has

done historically. And so they need to sort of not only hire a bunch of tax experts, train up their managers who are not tax experts to supervise those tax experts, but they also have to sort of rethink the conceptual foundations of their analysis.

And then the further thing that I'm worried about, as we started out talking about speed, that this is another roadblock in the regulatory process that if it was going to really add something important, sure, add it. But I don't yet see what is the important way that they will contribute to and improve regulations beyond the work that Treasury and IRS have historically done.

MR. GLECKMAN: Okay. Barbara, do you think that OIRA can serve a constructive purpose here?

MS. ANGUS: I think the OMB has always had a role in all regulations, including in tax regulations. I think it's an important role. The role that it played in tax regulations has been different than it does in some other regulations. And I guess I should that with respect to tax regulations that most tax regulations are interpretive. There are only a couple of instances that I can think of of legislative regulations. The consolidated return regulations might be legislative.

MR. TRIER: 385.

MS. ANGUS: 385 might be.

MR. TRIER: Debt equity.

MS. ANGUS: And so I think it's natural that the role of OMB may be a little bit different with respect to tax regulations than it is for other regulations. Another role that I can imagine that OMB plays in other regulatory spaces is when you have a regulation that has multiple agencies involved. And that isn't the case with respect to tax regulations.

MR. TRIER: Most tax regulation.

MS. ANGUS: So they don't need to be -- there doesn't need to be an arbiter sort of balancing the interests of different agencies. Although occasionally there

are tax regulations that touch some other regulatory space, and I could imagine and believe that someone that is overseeing that, that's an important role to play. I think that the process has worked well with respect to regulations and it's important for that to continue. You've got to have the substantive expertise and then there's sort of some big picture aspects that come in, and some of those come in through the OMB process.

MR. GLECKMAN: Great. Okay, we have about 15 minutes. I'd like to give you all an opportunity to ask some questions. Please wait for the microphone and let us know your name and please ask a question, don't give a speech.

Yes, sir?

MR. EVANS: Good morning. My name is Norman Evans. And perhaps my question might be a little more nuts and bolts than was intended by this forum, but my question is, can someone please comment on or explain what the IRS is doing with regard to withholding? Because it seems that before the new Tax Act withholding was calculated according to the number of exemptions claimed, but now that there are no more exemptions it seems the IRS is basing withholding on what is now called allowances. Each allowance -- suspiciously each allowance seems to be the same amount, \$4150, that exemptions were going to be before the new Act was put into place.

So can someone comment on what determines the number of allowances a taxpayer is able to claim, and what is the best way to get guidance in this area?

MR. GLECKMAN: Barbara, do you want to tackle that?

MS. ANGUS: I would make a couple of comments. So Treasury put out new withholding tables in January. Treasury puts out new withholding tables every year, because even without legislative change there are changes through inflation adjustments and elsewhere that require new withholding tables. The withholding tables key into the W-4s that taxpayers file, that historically have been based on the number of exemptions. Treasury and the IRS worked this year in order to avoid a situation that would require all



employees and employers to immediately and at the same time file new W-4s. They were able to take the new system and adjust the withholding tables to align with the new system, and then have indicated that they are continuing to work to issue new W-4 forms for the future that will make further adjustments into the future. The IRS long has had a withholding calculator on their website and they have just updated that withholding calculator, and I think the IRS has been quite vigilant in putting out fairly frequent notices in all different forums to encourage people to use the withholding calculator on their website to check what was effectively the reporting that someone had done on their W-4. You often have situations where someone's life circumstances may have changed, they may have had a child, or they may have had a child graduate and finally leave home, and they may not have remembered to adjust their withholding. And so the IRS has I thought really seized the opportunity of these changes to put out far and wide the information that people should be thinking about those adjustments.

MR. GLECKMAN: Other questions? Let's give somebody else a chance. Yes, ma'am?

MS. COUSAR: Hi, Catherine Cousar, Committee for a Responsible Federal Budget. So you've discussed a lot today the speed at which the bill came out. So, in a perfect world, how long would it take to draft a tax bill that wouldn't raise as much uncertainty when released?

MR. GLECKMAN: The perfect tax bill. Marty, you want to give us a guess of how long it should take congress to draft a tax bill?

MR. SULLIVAN: Well, we know the history of the '86 Act. In fact --

MR. TRIER: With 202 technical corrections.

MR. SULLIVAN: I'm going to check that. I'm going to check that.

MR. TRIER: It's probably 204.

MR. SULLIVAN: But certainly more time and care was taken before the '86 Act to make that legislation. And I certainly think he needed more time. Now, how

much more time is another question. But I would think there would -- you would need public -- I think vetting -- having private sector come in, not just on the general concepts, but on the specific details, because tax law is about details, it's not about generalities -- and have them coming in and vetting the process would have helped a great deal. But there just wasn't time.

MS. ANGUS: But it was an important part of the process that began with the first roots of discussion of tax reform many years ago. It worked through the discussion drafts that were put out on the House side, both tax rating committees had working group processes on tax reform that got lots of comments on the House side, there was the blueprint for tax reform that also generated a lot of comment.

MR. SULLIVAN: From whom?

MS. ANGUS: And -- from you, Marty, and from many others. And so all of that was an important part of the process. I do think it's true that no matter how long one takes over legislation there will be -- one, there's always the need for regulatory guidance because that's an important part of the tax law and there seems always to be the need for technical corrections and for further guidance in the blue book. The '86 Act is one example.

MR. GLECKMAN: And in fairness, as an observer of this, it seems that no matter how long congress takes, there's that period just before the bill passes where it is a mad scramble and --

MR. TRIER: It's a very important comment. First of all, I want to -- you really do have to get away from the narrative of six weeks because, in fact, much of the structure and the legislation, it doesn't mean that I like this process, so I'm not going to go all the way, but it is much longer a period of time than that. Much of the drafting that I saw once I got here July 10 actually had been going on during the pendency of the Ryan-Brady legislative action. And, of course, there were multiple drafts from the Camp experience.

The other thing I would say, lobbyists are actually important because you become -- they're part of -- you know, if you're an economist you would look at it as part of the information system. It's only through them that you start to learn about a lot of the technical issues and the issues on the interface between tax law and real communities. And, in fact, during the entire summer there were people coming in assuming correctly that parts of Camp were going to be revisited in the repatriation aspects and other aspects in talking about those technical issues. So it really wasn't six weeks. Do I love the process that did occur? I don't happen to love it. But it's not quite as extreme as people are making it out.

And the other thing, the point that Howard made, when general utilities was repealed it was based upon a relatively short discussion. There had been academic discussion, but a relatively short discussion in Senate finance after a description of what it mean by Roger Mentz. The Gucci Gulch book says that not a single Senate finance member knew what Mentz was talking about. And we are still sorting out exactly what the repeal of general utilities meant.

So you always have this process where the last three to five weeks will be rushed and there will be collateral damage that comes from that three to five weeks.

MS. BATCHELDER: I think it is fair to say that the not even ideal, a reasonable timeline for a major, major tax reform is way, way, way longer than 50 days. So, yes, there were discussion drafts, but there was never a discussion draft of the beat that raises over \$100 billion. There was never a discussion draft of the pass through provision that was introduced in the Senate with a special asset test. And, you know, just to give an example that, you know, is maybe from personal experience. So this group of 13 tax professors that wrote this paper. And we thought we were going at lightning speed, but after the Senate bill came out on November 9, we got out a paper talking about all of the huge issues that this bill was arising.

MR. TRIER: You mean the second.

MS. BATCHELDER: The Senate bill. And it had already passed the Senate within a month. Then, after the conference agreement was released on December 15, we got the revised paper out 3 days later, and it was passed 4 days later. So these were things that pointed out major revenue consequences of the bill, like all of the treatment of state and local tax deductions, and how the states might, you know, try to have an end run around that. And in a normal process you would have much longer. I mean if we even just use Obamacare as a standard, which was criticized as being incredibly rushed, that was nine months from introduction to final passage. That gives a lot of time for people to give input on, you know, not just glitches. But I agree, lobbyists have a role in pointing out things that are unclear. So does the general public, so do tax experts that don't have any skin in the game. And there just wasn't the time to get that feedback, let alone incorporate it both in the legislation, and I would also point out in the revenue estimates of the legislation.

So it doesn't appear that JCT -- and this is not anything to blame JCT about -- incorporated the potentially vast revenue consequences of what state and local jurisdictions are doing. And if we had a longer process they would have been able to see how real a strategy that was and incorporate that into their revenue estimates.

MR. GLECKMAN: Okay. One more -- Marty, go ahead.

MR. SULLIVAN: I just want to emphasize that the pass through deduction is an entirely new way of doing things. We have never before in the history of the income tax tried to separate wage income from capital income. And so it's not like another energy credit or something, it is a fundamental change. And I don't think we ever had a hearing on it, you know, on this type of approach that was eventually implemented.

MR. GLECKMAN: Okay. Yes, sir?

SPEAKER: You guys did a great job on this.

QUESTIONER: All right. Thank you very much for this informative discussion. My name is Jeff Crousny. And I guess I wanted to sort of follow up the

responses from that previous question with respect to the fact that both Barbara and Dana offered the idea that the likelihood of a supplemental bill will occur with respect to the overall comprehensive tax bill.

So my question with respect to the schedule then, knowing that the midterms are coming up in November and the likelihood that the tax bill was passed as a result of political issues this past year, what is the likelihood that a supplemental bill will actually take place, and, as a result, knowing that the midterms are in November, the likelihood that something is going to take place or more information will occur between now and November?

MR. GLECKMAN: Well, Barbara, let's give you a crack at that. We're going to have second tax bill this year?

MS. ANGUS: Certainly something that is being discussed. I think that there are many who are part of the process that would say that they don't want to wait another 31 years before having more tax reform, that continuing to refine the tax code is something that should be a constant focus.

MR. GLECKMAN: Lily, I'll ask you. Again, as a representative of the United States Senate, since you work there, there's obviously a lot of talk in the House about doing a second bill. Do you think there's any chance that the Senate's going to pass another tax bill this year?

MS. BATCHELDER: I think it's highly unlikely. So I mean, first of all, just to clarify, there is, as we've discussed, a big difference between technical corrections and second tax bills. So technical corrections are things that don't score, they don't have revenue consequences. You know, an example might be where the statute says multiply by two in one place and three in another place, and there's extensive legislative history that they meant two, and people that knew that would -- it would be very clear, but someone that reads the statute would get confused. And that would have zero score. So that kind of thing, I don't know if there will be a technical corrections bill, but there's not

going to be any score.

Something that does have a score, I do not see the democrats signing onto something that's losing revenue. And it seems like a lot of the requests are for revenue losing changes, not revenue gaining changes. So I think that's pretty unlikely.

MR. GLECKMAN: Marty, what do you think?

MR. SULLIVAN: Well, just remember you need 60 votes in the Senate, and it's an election year.

MS. BATCHELDER: Yeah.

MR. SULLIVAN: So I'd say there's no chance.

MR. GLECKMAN: Dana, is there a chance?

MR. TRIER: I'm skeptical.

MR. GLECKMAN: Okay. Okay. We are out of time. I want to thank this terrific panel, Barbara, Lily, Marty, and Dana, for a really illuminating discussion of a very important issue. So thank you all very much. Thank for being --

MR. TRIER: A very confusing discussion.

MR. GLECKMAN: A round of applause. (Applause)

(Recess)

MR. MAZUR: Okay. Let's get ready for the second portion, today.

Okay. So I'm really happy to be here today with the second portion of the Lubick Symposium. We had a great panel discussion for the first part, very illuminating. And I'm happy to be here today with Eric Solomon.

Eric, former Assistant Secretary for Treasury, former Deputy Assistant Secretary for Treasury, former head of Corporate Tax at IRS. Couldn't ask for a better person to be here to talk about administrative guidance in the Tax Cuts and Jobs Act.

And Eric, you work for Don Lubick?

MR. SOLOMON: Don Lubick hired me. I'm eternally grateful. In 1999, Don hired me as a senior advisor in the Office of Tax Policy, and I stayed there for almost

10 years.

MR. MAZUR: And I heard a few minutes ago that Don said it was the best hire he ever made.

MR. SOLOMON: That's very kind. Thank you.

MR. MAZUR: But you have a ton of experience in administering tax law, and now that you're in the private sector, have a different perspective on things. But one of the important things I think about administering tax law is to figure out who's involved in the process and how do you go about weighting the different participants in the process. Do you have some thoughts on that?

MR. SOLOMON: There are so many stakeholders in this process. We're going to spend our time this morning, I think, talking really about the nuts and bolts of the regulatory process. The way I look at the regulatory process, there are really four very important aspects of it.

First is, the policy. The substance of the rules that you're going to write. And you have to decide of course what format it's going to be in, whether it's going to be in regulations or notices or revenue rulings. But the policy, the substance, of course, is extremely important.

Secondly of great importance is the administration. You don't just write rules, they have to be administered. So part of the process is that you have to understand how it might be administered. And of course, this requires a lot of coordination with the IRS.

Third, there are many different procedures that you need to carry out, for example, to get a regulation out. And just to list some of them, the Regulatory Flexibility Act, the Paperwork Reduction Act, the Congressional Review Act, the Administrative Procedure Act, and of course, there are always of authority under Chevron and Mayo.

And then, fourth, which I think we'll talk about a lot, is all of the various stakeholders. There are so many different stakeholders in the guidance process. And

that of course includes the public, and of course, includes others like the Hill.

So those are, I think, the main areas of focus. They all need to be taken into account, and there are many, many different stakeholders. Do you want me to go into it?

MR. MAZUR: Sure, why don't you just tell us who the stakeholders are?

MR. SOLOMON: Okay. Well, what I did was, every single participant in this process, and that's in the regulatory process, that includes the IRS as well as the Office of Tax Policy, and includes many other people. And each person has a web of relationships. There are so many participants in this process, so many cooks in the kitchen. And every single person involved in this process has a web of relationships that he or she has to deal with.

For example, when I was at the IRS, I ran the Corporate Tax Division. And running the Corporate Tax Division, I created what I call hub and spokes. So the individual, me in this example, had to deal with all sorts of other people when I was at the IRS. For example, the Commissioner's side, dealing with those people to administer the law. I had to deal with other divisions like pass-throughs or financial institutions or products. I had to deal with the Chief Counsel, Deputy Chief Counsel. I had to deal with the field part -- the field litigators who might have to deal with the regulation.

When I was at Treasury, it is a different hub and spoke.

MR. MAZUR: A bigger wheel?

MR. SOLOMON: It's a much bigger wheel. And I identified at least -- and I have a little drawing here. I identified at least 10 different kinds of stakeholders in the regulatory process. So writing regulations is not just sitting down in a room with a few people and sitting at a computer and typing out a regulation.

It is a long process of interaction. And the interaction is extremely useful. That's how you write a better regulation. That's how you do better tax policy. It's instrumental to trying to get it right. And all these players are very important and all these



players contribute a lot to the process.

MR. MAZUR: We heard a lot in the first panel. We were talking about talking with staff on the Hill or talking with lobbyists or talking with practitioners. This is a way to get a sense of what the issues are. Are those all parts of your wheel?

MR. SOLOMON: Absolutely. I'm going to start with the IRS because in any kind of guidance, the IRS is a partner, a very close partner. And what's interesting is

--

MR. MAZUR: A partner to Treasury.

MR. SOLOMON: A partner to Treasury in the guidance process.

The IRS folks often have a lot of institutional knowledge. They have knowledge of issues of administration of law. It is incredibly important to interact very closely with the Office of Chief Counsel and the Commissioner's side with respect to guidance.

One perfect example right now is on the international provisions which are right now the highest priority in terms of guidance with respect to the Act. And of course, the ACCI, the Associate Chief Counsel International, Marjorie Rollinson and her team, are very much involved. And they have experience of years and years and years of dealing with these issues like on foreign tax credits or other issues that are related. Subpart (f) that are related to these rules. So it's very important to interact very closely with them.

And that's all the divisions. Like 199(A), which is the small business deduction. It's going to require with the pass-throughs groups and many other groups at the IRS. Again, they have lots of institutional knowledge and experience.

Also with IRS is the Commissioner's side. The Commissioner's side is very important. Again, it goes back to this point about administering the law, how the law is going to be administered. For example, Forms and Publications. You've got to deal with the folks in Forms and Publications with respect to guidance because that's where

the rubber is going to meet the road, when people are starting to fill out the returns, particularly on the individual side.

And I've got to tell you, the people that do the forms are amazing. How you translate an Internal Revenue Code that is this tall into forms and publications that people can read and, hopefully, understand. It's a very important job.

And I always thought, you know, among the people that I admired, first I admired the legislative drafters on the Hill. You know, working with legislative drafters like on the 2004 Act, being in some of the drafting sessions, you're just amazed how much they know and how they can draw on different parts of the Code. I also have a lot of admiration for the people who do the forms and the publications, because they have to translate this stuff into things that ordinary taxpayers like me can understand.

And also the systems. The IRS has to work on systems. With the IRS's limited budget, the IRS has to work on technological systems to help administer this. And that's all very important and a big part of it. So the IRS, I put being extremely important.

Second, but moving around my wheel, at Treasury, of course, what I call the front office, okay. That would be the Secretary or the Chief of Staff. They have to know what's going on. Now, you have to give them the heads-up as to what the Office of Tax Policy is doing, the big issues, let them understand the big issues, make sure it's consistent with the policy of the office. And it may be the Secretary may be interested on particular issues. It may be more that you're dealing with the Chief of Staff. And it's going to vary.

All these things that I'm discussing are going to vary depending upon the administration, depending upon the individuals, their personalities, and on the particular issues. So the front office is critical.

Third, you've got to deal with the General Counsel's Office. The General Counsel's Office plays an incredibly important role in all of this because the General Counsel's Office sort of has the big picture view of what's going on at Treasury and in the

administration. And the General Counsel's Office can be extremely helpful to give you guidance, to give you good practical guidance of what effect your guidance is going to have.

Then you've got to deal with other offices in Treasury. For example, Domestic Finance could have an interest in what you're doing. I had the privilege for many years to be working on the New Market's Tax Credit. A New Market's Tax Credit was run pretty much out of Domestic Finance.

MR. MAZUR: Largely as a spending program?

MR. SOLOMON: Yes. I'm looking at Chris Smith over there who knows well that -- and Chris was in the Bush Administration, and he knows well that Domestic Finance was a big player in New Markets Tax Credit. So you've got to deal with other offices.

Then, extremely important is Public Affairs and Legislative Affairs. You know, during my time as Assistant Secretary, we coordinated extremely closely with both Public Affairs and Legislative Affairs, even regarding the guidance process. Public Affairs because Public Affairs is your link to the outside world, and they are sensitive to what the reaction might be. They are incoming for communication, outgoing for communication, so working with Public Affairs was extremely important.

Leg Affairs was, of course, important to deal with the Hill. The Hill was a very important stakeholder in all this. And Leg Affairs, again, plays a very important role as a communicator, but also as a buffer. I always appreciated when I had a buffer of some sort, whether it was Public Affairs or Legislative Affairs.

Then of course, the public. You know, the public could be big business, small business, individuals, the public at large. And you have to understand the issues that you have and what effect it might have. And again, it's all about communication. All of these roles are about communication with all the various stakeholders. And it's very important throughout the process to listen to all the stakeholders because, you know,

each of us comes from our paradigm, from our own framework, and to listen to others and hear what they have to offer to the process is extremely important in trying to get out a good guidance.

And then, you can't forget foreign countries. Now generally, on all the domestic stuff, I didn't have to, you know, deal with the foreign countries very much. But for example, these international provisions, I think there's going to be a big concern by foreign countries. And keeping foreign countries in the loop, having to deal with the OECD and the European community is going to be extremely important. Also the WTO. You know, the question has been raised whether certain various provisions here are necessarily, like the FDI, is consistent with our various obligations, so that's going to be an issue.

MR. MAZUR: And you've lived through some of that before, right?

MR. SOLOMON: I lived through some of that before. And the question is whether we have enacted -- the contention would be, though I know the Hill considered this and considered it very closely. We have previous experience with DISC, FSC, and ETI as whether they're illegal export subsidies. So that's going to be a question that I'm sure the legislators took into account and Treasury has to think about.

And also, the Hill. You've got to think about the Hill. I know there's been coordination with the Hill regarding this bill, a lot of conversation with the Hill about what they were thinking about, and that includes Joint Committee. It includes the Senate Finance Committee staff which is going to be very important to this bill because it was largely a Senate Finance Committee bill. And it also includes the Ways and Means Committee staff, so there's got to be a lot of coordination there.

And then the 10th stakeholder, and I'm sure I'm forgetting some, is OMB, the Office of Management and Budget, the Office of Information and Regulatory Affairs. You know, the question is what role OIRA plays and OMB plays. My experience dealing with OMB is largely in the budget, you know, the annual budget, whether it's a green

book or a blue book. I can't remember what color it is now.

MR. MAZUR: Depends on the administration.

MR. SOLOMON: It depends on the administration. But the revenue proposals dealing with OMB. I dealt with OMB in the budget and isolated issues. And now there's a discussion of what the role of OMB will be going forward, and we can talk about that more.

So those are all the different stakeholders. So you think writing a regulation is so easy, or writing other forms of guidance is so easy. It's not so easy. And a large part of the job is not only think of trying to get the rule right, it's also trying to learn as much as possible and communicate as much as possible with all the stakeholders in order to get the input and to think about that input and try to write the right rule.

So that's a long answer to short question. But what I wanted to convey was the nitty-gritty of the process of writing guidance. And it varies, again, whether you're doing a regulation, whether you're doing a notice, whether you're doing revenue rulings. And then there's guidance that the IRS does on its own. We cannot forget that there's guidance, informal guidance, that the IRS does on its own.

For example, the private letter ruling process that goes on at the IRS. Now a private letter ruling is only effective for the taxpayer that it involves. But on the other hand, we practitioners, we read all those PLRs and we try to figure out which way the IRS is going.

There are also internal things, like field service advice, that's given on issues in controversy. There are also generic legal advice memoranda that the IRS writes. And you have to understand that's all, in some ways, part of an informal guidance process that all of us on the outside, we look at very closely and very carefully to try to understand which way the law is going.

So it's not easy. A lot of players. A lot of this job is working through the process to try to get the right result.

MR. MAZUR: Okay. So in my research for today, I found a quote from you that said, "The regulatory development process is like an elephant going through a snake." What exactly did you mean by that?

MR. SOLOMON: Well, what I meant by that, and I think -- yeah, it was at a conference earlier this year, I think I said that. What it's really all about is, the guidance process is very important. The output of the guidance process is very important.

And what it requires is the participation of high level officials at the IRS, including the Chief Counsel, and Treasury, the Deputy Assistant Secretaries and the Assistant Secretary to sign off on all of this stuff because, one, all of this stuff has widespread implications for many different kinds of taxpayers. And there has to be consistency in approach.

And therefore, you have many, many people, both at the IRS and at the Treasury developing this guidance, but ultimately, it needs to be signed off by those people who are higher in the chain. And so various parts of the guidance, you can't just say, well we'll just let you do this guidance and go off on your own. It all has to be part of a whole. And therefore, there are many participants in this process, but ultimately, it has to be signed off by folks who are in more senior positions.

And you know, just so you understand the process a little bit more how it works, the IRS has the Office of Chief Counsel, it also has the Commissioner's side. The Office of Chief Counsel has lawyers and branches that report to the Chief Counsel. What happens is, and Dana referred to it on the last panel, how the priorities are selected. You start by picking the priorities. And the PGP, which is the guidance plan, every summer, there is a discussion of what's going to go in the guidance plan. As Dana pointed out, the guidance plan starts on July 1st, basically, and goes to the following July 1st.

MR. MAZUR: Updated quarterly now.

MR. SOLOMON: And they're updated --

SPEAKER: And very important as a result of tax reform.

MR. SOLOMON: Exactly. There are 18 projects as a result of tax reform that have been added to the PGP. And that sets the priorities for the Office of Chief Counsel and the Office of Tax Policy. Then for each priority, you have working groups. And they'll be a working group from the IRS along with the Treasury people.

Just so you understand the numbers. At Treasury, there are about 90 to 100 people in the Office Tax Policy, about evenly split between the economists and the lawyers. And just as a generalization, the economists often know as much or more about various provisions than the lawyers do.

For example, on the individual side, I always found things about earned income tax credit, low income housing tax credit, things focused on individuals, the economists are an incredible resource in addition to their economic understanding.

MR. MAZUR: No treasury market for attorneys in earned income tax credit work, huh?

MR. SOLOMON: There are a lot of valuable things that --

SPEAKER: It shows economists aren't that smart.

MR. SOLOMON: This is very important stuff. In any event, there are working groups both at the IRS and Treasury. Treasury, it's generally one or two or three people because the staff, for example, of the International Tax Counsel is like 10 people. The Office of Benefits Tax Counsel is five or six people. At the IRS, the International Division probably has 50 or 60 or more lawyers. And so they work in teams.

Generally, what happens is they identify the issues, they have lots of meetings, they create drafts, they brief the issues up the chain. Generally decisions are made on the big issues. The drafting teams, which is often the IRS folks working with the Treasury folks, create drafts of these things and they work their way up through the chain. So there's a whole process of creation of this.

And then what happens is, either through individual briefings or joint briefings, decisions are made. Often, the Chief Counsel, the Assistant Secretary, and the

Deputy Assistant Secretaries are involved, and the decisions made and the guidance is drafted, and it goes through multiple drafts with lots of inputs from all the stakeholders.

MR. MAZUR: So we heard the previous panel talking a little bit about the priorities that the Treasury and IRS should have for guidance coming out to implement the Tax Cuts and Jobs Act. What's your sense on the top priorities for that guidance?

MR. SOLOMON: Well I agree, generally, with the priorities that they have. What I find so very interesting about this bill is this bill is a very instrumental, fundamental change to our international tax provisions. And I was involved, I had the opportunity to participate somewhat in the 2004 Act, which had in fact, reminiscent provisions. I mean, there's 965, 199. So you know, this is déjà vu all over again.

For 965, the Treasury and the IRS were involved in writing notices about 965. They never did regified.

MR. MAZUR: 965 was?

MR. SOLOMON: That's right, Barbara was the lead on the 965.

MR. MAZUR: And what was Section 965?

MR. SOLOMON: 965 was the elective repatriation provision and --

MR. MAZUR: They had a repatriation holiday in 2004, and now it deemed repatriation --

MR. SOLOMON: Exactly. Now it's mandatory. Back then, it was elective. And a lot of the issues were about there were limitations in the statute about what you could use the money for. And that's really the core of the uncertainty was about then. So there were various notices about what the money could be used for. And we can have a whole discussion about the success or not of that provision in terms of reinvesting those funds into the U.S. economy.

And Section 199 which was the domestic production deduction was also in 2004. But one difference between 2004 or not, when we did guidance in 2004, and as



Barbara could attest to, it did not consume the entire guidance process. It was a smaller bill. Therefore, there were these selective projects that worked alongside all the other projects in the guidance plan. I would say now that this current bill is eating up a whole lot more resources, and understandably so, because this is a much larger bill.

MR. MAZUR: And a top priority for the administration --

MR. SOLOMON: Absolutely.

MR. MAZUR: -- to get this implemented in a way that is along the lines of what the intent was.

MR. SOLOMON: I know. It's very important. I mean, there are a number of things you have to take into account. And you asked me, specifically, what my priorities would be, the same that I think that the administration has selected. 965 because 965 is this year. 965 is the mandatory repatriation. You've got to do that. You've got to do it quickly.

MR. MAZUR: And companies need to know how much they need to bring back in and when to pay it over.

MR. SOLOMON: Exactly. I mean, there are a lot of complicated issues. You've got to know how much you owe.

MR. MAZUR: You even have to know what's cash and what's non-cash.

MR. SOLOMON: You have to know what's cash, you have to know what's non-cash, you have to know what the total amount that you need to bring back. You have to have rules about when you have to pay the tax, on and on and on. And you know, you've seen the notices. There have been three or four notices already. At some point, they expect to put them in proposed regulations, which is going to be perhaps 100 to 200 pages long just on this one provision.

Others are GILTI, the GILTI provision, which is the Global Intangible Low Taxed Income provision which some say is really a minimum tax. In some ways, that is going to be a bear. There's a lot of complexity there.

The BEAT which is the Base Erosion and Anti-Avoidance Tax. That is the denial in essence. The corporate alternative minimum tax was repealed, but in essence, the BEAT is a corporate alternative minimum tax. What it does is, it's an alternative tax base in which you add back certain outbound payments to related parties that are deductible to the payer.

MR. MAZUR: So the BEAT goes on.

MR. SOLOMON: So the BEAT goes on. That's right. Is that Sonny and Cher? I live in Sonny's old house, so just a connection there.

Section 163(J) is going to be very important. That's the limitation on interest deductions, and of course, 199(A). And in the prior panel, there was a discussion of 199(A) which is the deduction for pass-throughs. You know and there was that whole discussion in the last panel about the timing of how fast the guidance has to go out. That's an important part of the decision-making process for the Treasury and the IRS because in determining what the flavor, what kind of guidance you're going to put out, you have to take all sorts of things into account.

And some of the factors you have to take into account when you're deciding, okay, I decide this project's an important project. We've got to do this project. Well, okay, we're going to do this project, but what form is this project going to be in? And so I think of various factors that one has to take into account deciding what this project is going to be. And I have at least four factors I would take into account in deciding what form this project is going to take.

First, and most important, is notice and comment. Public comment is an essential part of our process. It's embodied in the Administrative Procedure Act. Treasury and the IRS, of course, take it as an extremely high priority. But public comment -- putting out guidance that you have the opportunity to get public comment is extremely important.

Now, on the other hand, but there's a tension between waiting for public

comment and getting guidance out because speed is very important.

MR. MOON: And often, you have like a 30 or 60, 90-day comment period.

MR. SOLOMON: Exactly. Exactly. You might put out an advanced notice of proposed rule-making in which you ask for comments. And then, when you put out a proposed reg, you would have a comment period. Even a temporary regulation has a comment period. But the public comment, you have to deal with, also at times, you want speed. And the last panel had the long discussion about well, what's going to happen in the interim? How are taxpayers going to plan? Is this going to give the opportunity for aggressive taxpayers to take positions? So number two is, how fast do you want to get the guidance out?

Third: another factor is the breadth of coverage. You've got to decide, you know, how broad you want it to be. Are you going to cover the world? Are you going to try to cover every single issue? Or are you going to cover the most important issues?

And then finally is finality. A rule that applies. A proposed regulation is not effective. Now the IRS has internal guidelines, internal memoranda, that say that the IRS generally can't argue against its own proposed regulation if it's taxpayer favorable. But more generally, you want to have a rule that's effective.

And so when you're deciding what guidance you're going to put out, you have to take all these things into account and you have to weigh all these things. And that was decided for the 965 mandatory repatriation notices that the fastest way to do it is through a notice.

In other situations, you use notices in emergency situations. Notices were used, for example, in 9-11, in Katrina, 2008, notices because things had to be done immediately. There was no time to get through the entire process. So every single fact situation requires an analysis of what's the most appropriate way to do guidance.

And then you have many choices of guidance. You could do notices, for

example. And notices generally say well this is what we're going to do and this is what the effective date is going to be. They are, you know, often try to be somewhat comprehensive, but most of the time, notices are on individual issues. You know, this is the most important issue, we've got to get guidance on this most important issue. We've seen it on 965 where they hit on very important issues.

We saw the notice on 163(J) which is the 30 percent limitation on interest deductions. And we saw there an announcement that 163(J) will be determined on a consolidated return basis. And so that notice is much more of a specific, a few particular issues, whereas 965 is trying to cover more issues.

So you've got notices. Then you've got proposed regulations. And again, proposed regulations, you put out a proposed regulation, you ask for public comment. As you know, there's a public comment period for proposed regulations. But generally, you've got effective date issues.

You know, in a proposed regulation, generally, the IRS and Treasury, if they're going to do a proposed regulation, they may say it's proposed to be effective immediately, but that can make a mess.

Generally with a proposed regulation, you seek to have it effective when it's finalized. Because if you have a proposed regulations, particularly in a really hard area and you put out a proposed reg and you propose it to be immediately effective, and you know that there's going to be lots of comments on it --

MR. MAZUR: And you may want a change.

MR. SOLOMON: Yeah, you may want to change it, and then what do you do in the interim? So generally, a proposed regulation is going to be effective when it's finalized.

Then there are temporary regulations which are immediately effective. They're accompanied by a proposed regulation that goes with them. Again, a temporary regulation, you're going to do it because you've got to do it because you need

immediately effective rules. But you always run the risk that you're going to end up changing your temporary regulation.

And then you go through the notice and comment process, and then you have a final regulation. And the final regulation is generally effective when it's finalized, or for taxable years beginning after it's finalized.

And those are some of your choices. You have revenue rulings. You could always do revenue rulings, again, working with the IRS. All these things are done with the IRS. But a revenue ruling generally is a particular fact situation and you're saying, this is the IRS position on a particular fact situation. Now my personal view is that, in terms of authority and binding effect on taxpayers, a revenue ruling is just a statement of the IRS position on a particular issue, particular fact situation.

A revenue ruling always starts with the facts, then has a discussion of the law. So a revenue ruling is a statement, in essence, the IRS's position. There's been debate in the courts about what binding effect it has. A regulation, now that has a binding effect of law.

So these are just some of the issues that you would have to take into account in deciding what kind of guidance and among the different priorities of public comment, speed, breadth of coverage, and finality that you have to take into account in deciding. And you've got to deal with all the different stakeholders.

MR. MAZUR: So it's almost like there are three or four things you want, you can't have all of them, so it's like, speed, public input, comprehensiveness, pick two.

MR. SOLOMON: Yeah, pick two or three, but you do your best on all of them.

MR. MOON: So do you think that IRS Chief Counsel and Office of Tax Policy have the necessary resources to develop and publish guidance on the Tax Cuts and Jobs Act?

MR. SOLOMON: Again, the IRS and Treasury could always use more

resources, but again, because we have this process that requires high level officials to sign off on it, that is always going to be a limiter in the process. And I'm not suggesting changing that because I think it's very important that the high level officials have an overall view of what's going on.

MR. MAZUR: But we're short a couple of high level officials in the administration.

MR. SOLOMON: We are short a couple of high level officials. But I also want to put an emphasis on the IRS and its resources. You know, we've been focusing on the guidance process. To me, I think the important thing is that we've got to be looking forward to is, for example, the IRS.

The IRS used to have over 100,000 people. Now it's like 70 or 75,000 people. The sheer number is not, you know, so important, as the people that are there that they have experience. And a lot of people are going to be retiring. So having people at the IRS who have the experience and the capability to administer this.

So if you ask me the question about resources, that's I think the way I would focus more, is making sure that the IRS has the experienced people to be able to administer the tax law.

MR. MAZUR: So we'd sign you up for a bigger budget for the IRS?

MR. SOLOMON: You'd sign me up for a bigger budget for the IRS? I would generally favor a bigger budget for the IRS. But of course, very much with, this is what the money's going to be used for. This is how it's going to be allocated. We have service, enforcement, technology. And so it's very important that the funds be used in the best ways possible.

For example, there are specific funds that have been most recently about carrying out, executing the new bill. And I think that is very appropriate.

MR. MAZUR: So how long do you think this guidance process for the Tax Cuts and Jobs Act is going to last?

MR. SOLOMON: Oh, it's going to go on for years. I mean, really many of these issues are very difficult issues. On the last panel, I think Dana made the comment that this is going to go on for years for all these issues.

It's an iterative process. So there's going to be a lot learned. So this process is going to go on for years.

In addition, you have all the other unanswered questions that we have in the Internal Revenue Code. Our economy is extraordinarily complex. The Internal Revenue Code is extraordinarily complex. And so this process of trying to answer all the unanswered questions, obviously, is an unending task. For the short term, I think this bill is going to pretty much use up all the oxygen for a while. At some point, it will decrease. But again, it's going to continue because it is an iterative process. And then there will be all the other issues that need to be resolved and that have been put aside for the moment.

MR. MAZUR: One of the things that the previous panel talked a little bit about was the complexities in the U.S. economy and how different industries have quite distinct characteristics. And one thing I was struck by working in taxes, there's basically an infinite number of transactions people can enter into. But Congress passes a law and it is kind of high level, and it's up to Treasury and IRS to kind of drill down and cover all those possibilities.

And here, we have some big consequential changes in the Tax Code, it seems like you're starting from scratch in some areas to (inaudible). But it is not a ton to build on.

MR. SOLOMON: Well I would also say for taxpayers it's that way, too. You know, for taxpayers --

MR. MAZUR: Well good for you --

MR. SOLOMON: Taxpayers are trying to figure out what this law means. I think we're in a period where you know, again, in the business community, the 21

percent rate is obviously a very important change, but all sorts of other stuff went with it.

You know, a 21 percent rate. We've moved sort of to a quasi-territorial system. And there's so many issues that taxpayers and their advisors need to think about in GILTI, in BEAT, in 199(A). And I think right now we're in the stage where everybody's still trying to figure out what it all means. And also Treasury and the IRS are trying to figure out what it all means.

And I think what we're going to have is a period of time now while all this guidance is being worked on and even perhaps even a longer period of time on areas for which there won't be guidance in which taxpayers and their advisors are going to be left on their own to decide what this means. Now whether this creates opportunity -- there was a debate on the previous panel of whether this creates opportunity for aggressive behavior. All I'm going to say about that is there is uncertainty. Taxpayers are going to have to take positions. Advisors are going to have to advise them on the positions.

In addition, you have to remember the financial statement implications of all of this. People are going to have to decide, for example for publicly traded companies, what effect it has on their financial statements. And on your financial statements, you have to decide whether, for example, a position is more likely than not.

And so the accountants are going to be involved in this. And I think we're going to have a period of time where taxpayers, their advisors, preparers of financial statements are going to have to be making decisions about what this law actually means.

MR. MAZUR: And there will be jobs for those people as part of the Act.

MR. SOLOMON: Yeah, I'm not worried about tax professionals.

MR. MAZUR: I tend not to worry about them either.

MR. SOLOMON: Yeah, I'm not worried about tax professionals having something to do. I mean, this -- it is very busy. Now it can be dislocating.

I remember in the 1986 Act, I was an associate at law firms in the '86



Act. I was not in the government. The biggest bill that I experienced in the government was 2004.

But I remember the 1986 Act. It is dislocating for everyone. For example, I was a corporate and a partnership practitioner. As a corporate practitioner, general utilities was repealed. They changed all the rules about taxation of corporations and whether corporations can dispose of assets tax-free, and it led to the disincorporation. And so none of our clients wanted to be corporations anymore. Everybody wanted to be a partnership.

And rules had to be written. Congress came back and put in 7704, which is the rules for publicly traded partnerships. There were all sorts of transactions. And then there were various general utilities issues that came up because then taxpayers figured out ways to avoid the corporate level tax. There were mirrored transactions. And so in --

SPEAKER: (Inaudible) again, the subject of legislation.

MR. SOLOMON: Which was again the subject of legislation. And you know, as Dana pointed out, we're still trying to figure out what general utilities repeal means, and it's now 32 years later, we're still trying to figure out what general utilities means.

And it required regulations. We had regulations in the consolidated return area. And I won't bore you with the details, but there's a long history of these regulations called lost disallowance which, under the consolidated return regulations, you could basically avoid corporate level taxation.

So Treasury wrote rules to prevent avoidance of corporate level taxation and consolidated returns. And all I can say is, those regulations are still being modified to this day.

SPEAKER: There is still a reg project.

MR. SOLOMON: There is still an open reg project on lost disallowance.

It's still going on.

And, you know, one other thing about the iterative nature of the process. I can only tell you how iterative the process is. That is an example. There are a number of regulations that it took several iterations to get them right, or to get them better. There was one regulation --

MR. MAZUR: I had to work on some of yours.

MR. SOLOMON: You had to fix some of mine. Well I could talk about some of the ones of mine that had -- I left a large inventory for you, Mark, to fix. But the regulations in the spin-off area, Congress enacted a law in 1997 about acquisitions after spin-offs. And it was basically a statute that codified a judicial doctrine.

And so we had to write regulations basically trying to codify a judicial doctrine -- what's called the step transaction doctrine -- and we had to write regulations. And it took us at least three tries to get that right. Again, that is closed at this point.

So the process is iterative. The short answer, it's going to go on. The question is whether these Jobs Act regulations are going to basically be the main event for how long, and then will the rest of the guidance that's necessary -- when will it be done?

MR. MAZUR: So one of the questions that came up in the last panel had to do with the Office of Management and Budget in its role in the tax regulatory process. You've been there. What do you think the role should be for the Office of Management and Budget in the regulatory process?

MR. SOLOMON: Well there were a lot of great comments about the role of OMB. You know, as everybody knows, there was Executive Order 12866 --

MR. MAZUR: Everybody knows that.

MR. SOLOMON: Most of the geeks. And there are very few geeks in here. I'm the main geek. There may be a few others.

But in general, tax regulations, they were still subject to it, but in a much

more limited fashion. And now the question has arisen, well should OMB play a larger role? Should this Executive Order be revisited? And what role should OMB play?

As I said, all of this regulatory process, the point of my remarks is that it's all about communication. It's all about getting information from other people. It's all about getting input from others who are part of the process. The question is what is the value? Where in that circle, that wheel that I have of all of the different participants, is there a place there that OMB can add to what is already there?

It's going to depend. It will depend upon what ultimately OMB's role will be. The question is, if OMB has a bigger role, would that role be actually to read the substance of the hundreds of pages of regulations that I know are going to come out on GILTI?

Or is OMB's role going to be a role, for example, trying to figure out what the costs and benefit of this regulation might be upon the economy or on particular businesses? Exactly how you do a cost-benefit analysis for a regulation would have to be worked out. So that's one possible area that OMB might be able to play a role.

Another area they might be able to play a role is coordination with the other agencies. There are a lot of issues that work across agencies. Not all of them, but there are a fair number that work across agencies. You know, I had the opportunity, for example, I had to work with transportation on some issues, energy on some issues because, as you know our tax code is actually a vehicle for social policy and economic policy. It's not just to raise revenue.

So OMB can help coordinate that. For example, on benefits issues, issues having to do with benefits. You know, you've got labor, you've got PBGC, you've got Treasury, you've got IRS, OMB can help coordinate that kind of stuff. And it also depends on the people that you get at OMB. Are they going to be, you know, senior people? Are they going to be more junior people? What experience are they going to have? So you have to take all these things into account.

I mean, my hope would be that ultimately if OMB does play a bigger role, that it's a role that is specifically defined to assist in the facilitation of getting regulations out and that it's within certain timeframes so that it doesn't significantly slow down the regulatory process.

MR. MAZUR: Is there concern that would politicize the process, having a White House agency involved in tax regulation?

MR. SOLOMON: Again, there are political people in my wheel. There are political people that are involved throughout this process. So, you know, the Secretary's political, General Counsel's political. I could just, you know --

MR. MAZUR: The Assistant Secretary?

MR. SOLOMON: The Assistant Secretary's political. So, you know, whether it adds another political layer, I think the important thing is to figure out how to add to the process.

One, what would the role be? And how would it add to the process? You know, one thing is, also you don't want a situation where there's another player. You want to focus the public comments on Treasury and the IRS as opposed to, you know, the public necessarily having another major player in the process through which they could make comments. I think the notice and comment process is better if it's focused, localized in Treasury and the IRS.

MR. MAZUR: Okay. Let's switch gears for a little bit. Tax is an interesting career choice. How did you end up doing tax instead of something else?

MR. SOLOMON: Well, my professional baseball career was limited -- it was cut short because of my lack of height. But truly, I mean it fits with my personality. You know, I'm not a litigator. I sort of spend time thinking about issues, and that's how I got into the tax world. I always loved the puzzles.

MR. MAZUR: It is like a big puzzle.

MR. SOLOMON: It's language. It's the interpretation of language. It's

like Latin. You study Latin and, you know, every word has a relationship to every other word, and you have to understand the role that that word plays in the context of all the other words. It's just like translating a language.

It is a language, and that's what it's all about. And it's kind of cerebral and puzzle-oriented and you're trying to solve problems. And that's how I got into the tax law. And that's, I'm sure, how many of you became interested in the tax law.

MR. MAZUR: But you also have an effect on millions of people's lives, businesses, aspects of the economy. So there's some gratifying aspect so that you tell yourself, at least, that you're doing the right thing and you're kind of helping out in that sense.

MR. SOLOMON: I would ask the same question of you. You know, you were a very long time in the public sector in the government. You know, now you serve in some ways in a public role serving the public. You know, I would ask you that question.

I mean there is a certain satisfaction from trying to do the right thing with other committed people in a team situation where you're trying to reach the right answer and you're trying to help. And help, whether it be individual taxpayers or business taxpayers, you're actually trying to give something back to the system, you know, for those of us who've been so lucky to have that opportunity.

MR. MAZUR: So what's like the most gratifying thing you did when you were doing in tax policy world?

MR. SOLOMON: The two most gratifying things, and the two most challenging things, was, number one, was tax shelters. And number two, was --

MR. MAZUR: Stopping tax shelters.

MR. SOLOMON: Absolutely.

MR. MAZUR: Okay.

MR. SOLOMON: Absolutely. Yes.

MR. MAZUR: Okay.

MR. SOLOMON: That was number one. And number two was, you know, the stuff in the emergency situations, whether it was 9-11 or Katrina or the financial crisis. I think those were the most gratifying.

The tax shelter situations, I was in private practice and I was so glad that Don hired me because it gave me the opportunity on an issue I had great passion about. And I was seeing what effect it was having on our tax system. Just the insidious effects on the tax system, on advisors, on taxpayers, and --

MR. MAZUR: We had people at the time saying that you were a chump if you weren't part of the --

MR. SOLOMON: Oh, absolutely. I could spend a whole lot of time talking about, you know, some of the various situations. But I was given the opportunity by Don to come into Treasury, and that's, you know, one of the primary focuses I had both in the Clinton administration and in the Bush administration.

SPEAKER: As I recall, they hired you because you were a Latin major, I think, graduate.

MR. SOLOMON: Exactly. It's all about language. It's all about words. But that was perhaps the most -- and that was a multi-year thing. You know, there were the disclosure regulations, there were the listing notices, there were the -- yeah, and the disclosure regulations was about -- you know, 6011, 6111, 6112 -- about taxpayers and their advisors.

Then there were the listing notices which I thought were the most effective aspect of the tax shelters because it said we know what you're doing. We're on your case. And it also required disclosure.

Now interestingly enough, most of the time, the listing notices stopped the transactions. There were some exceptions. For example, on the intermediary transactions, we'd put out a listing notice and they kept going, and so we had to do the

listing and so then we did the listing notice two or three times because we didn't get it exactly right. It was overbroad. But nevertheless, I thought the listing notices and the disclosure regulations were very important because not just for their substance but for the deterrent effect.

Also, circular 230. And you know, you talk about the stakeholders in this and the guidance process, circular 230 regs aren't tax regulations. And so, you think, well, you know, the Commissioner's side may not have a big interest in these kinds of things.

Let me tell you, Commissioner Everson and I were literally face to face trying to negotiate over those regulations about what went into those regulations in 2004, 2005. So on every one of these guidance projects, you have different stakeholders who play a different role.

MR. MAZUR: Yeah, they get different weight --

MR. SOLOMON: They get different weight.

MR. MAZUR: -- at different issues and --

MR. SOLOMON: And so on that one, I was dealing directly with the Commissioner trying to negotiate that and then it took, you know, we put it out, and it took several years for it to be, in my view, fixed, and you know, made more of a principles-based approach as to opposed to a rules-based approach.

MR. MAZUR: So one last question before we open it up to the audience. When you're not doing tax stuff, what do you do for fun?

MR. SOLOMON: I'm in the mountains hiking or I'm on my bicycle. Those are the things that I enjoy most. And history, of course.

MR. MAZUR: Okay. Well, let's open it up to some of the people in the crowd. Let's see, right here.

MR. SOLOMON: Phil West.

MR. MAZUR: Get a microphone here. Please identify yourself and ask

your question.

MR. WEST: My name is Philip West.

MR. SOLOMON: Phil West.

MR. WEST: Without being too provocative, going back to the OMB question. You know, in Don's most recent tenure, the Deputy Secretary and then Secretary often referred to the Office of Tax Policy as Treasury's treasury within the building. And what he meant by that was, the Treasury Department in the Cabinet was the department that got the most deference. And within the Treasury building, the Office of Tax Policy was the office that got the most deference.

In thinking about how this is going to play out with OMB, in your view, to the extent people feel uncomfortable with that, to what extent -- is it just, you know, the tax guys thinking we're the smartest guys in the room? Or to what extent is it that we are the smartest guys in the room?

MR. SOLOMON: I guess partial reaction to that is, I know I'm not the smartest guy in the room. And that's in fact why I put so much emphasis on learning from other people as part of the process.

In terms of, you know, I guess, as I said with respect to OMB, I think it's going to all depend upon what role OMB's going to play. And if it's a role that helps in this process in particular areas, for example, coordinating with other departments, other agencies, I think that can be a helpful role. I think the most important thing is to make sure that whatever's decided is constructive for the process.

MR. MAZUR: I guess one of the things you think about is comparative advantage, and who has the comparative advantage in interpreting tax law? And you'd have to say pretty much the people who live that and do it for a living and have done it for a long time.

In some cases where there are large interpretative things, so for instance, Dana, in the previous panel, mentioned the debt equity regulations where there



hasn't been any guidance for 60 years on debt equity. Maybe there is a role for a disinterested observer to look at this and say, are you getting about right? But for things when really it's just about interpreting the statute, it seems to me that you want to defer to the experts on that and make sure the process is done in an open and fair way and then kind of get out of the way.

MR. SOLOMON: Yeah, I completely agree. On the technical issues, the Treasury and the IRS have years and years of expertise. And so, yes, it's going to be very important that whatever this role is, it's very clearly defined. But I would think that on the technical issues, it should be left to Treasury and the IRS to make those calls.

MR. MAZUR: Okay. We had a question in the back.

MR. STAVRIANOS: Hey, Mike Stavrianos. Thanks very much for your comments. I really enjoyed them. You mentioned some of the challenges that the IRS is likely to face having the resources needed to deal with the administration of the new law.

If you were to look into your crystal ball at the year ahead and see the guidance that's going to be issued, the positions the taxpayers will ultimately take, what would you expect to be some of the biggest service and enforcement challenges that the IRS may face?

MR. SOLOMON: So I've done all the talking. Mark was an Assistant Secretary --

MR. MAZUR: I'll go first, and let Eric go second.

MR. SOLOMON: Let Mark take it from here.

MR. MAZUR: On the going forward, you have the filing season coming up in 2018 which is going to be just huge, right. There's going to be a lot of changes to the law for 150 million Americans who are going to have to look at their tax obligations and see, to a large extent, they're not what they were the year before.

And most people doing their taxes kind of figure that next year's going to be like last year. And so there's going to be a big change for them. So in terms of the

service side, I think the IRS is just going to have to get out in front and explain to people that here are the changes coming, here are the things you are going to see that are different, really staff up on the telephones because people are going to have to call in with questions. Also, do a lot of outreach to practitioners and other kinds of groups so you can do things on a wholesale basis rather than a retail basis.

But this is going to be probably one of the most challenging filing seasons that the IRS is going to have in a decade or more coming up just because widespread change. And so that's one big, big area.

I think we didn't talk about that in the previous panel because it was mostly focused on big structural changes in the law --

SPEAKER: (Inaudible) discussed the forms which are being --

MR. MAZUR: But Eric did. Exactly.

SPEAKER: -- that are being done now. So it's a very complicated issue.

MR. MAZUR: Your turn, sir.

MR. SOLOMON: Yeah, I agree. I mean, some of the challenges are going to be -- I think, generally, the challenges are going to be not just from this law, but generally, the enforcement of the law. I mean, that's the three things I mentioned: taxpayer service, enforcement, and technology.

And you can go through each one of these and identify the challenges that are going to exist with respect to these.

Taxpayer services. You know, Mark referred to answering the phones. You know, how do you communicate with taxpayers now? Doing it by phone, you know, is very important for that touch for taxpayers to feel that they have the ability to communicate with their government. So services are going to be very important.

MR. MAZUR: But they may not be by phone, right.

MR. SOLOMON: Exactly.

MR. MAZUR: You can imagine transforming to a different way to communicate.

MR. SOLOMON: That's exactly right. At some point, we may transform to another way of communication. But it's very important that we have the contacts between taxpayers and the government because taxes, as you know, are a taking of property from people in our country, so it's very important to have that communication so that taxpayers feel that they have the opportunity to talk to their government. So taxpayer service, being able to file returns, having a good filing season, those are very important.

In the enforcement area, my personal view is, to some extent, you need to have a cop that's on the beat. Now whether or not -- you know, you need to have a situation where taxpayers are reminded of their voluntary obligation to pay their taxes. But you do need that as well.

And then technology. To me, technology is critical. Other countries I am told -- I'm not an expert on this -- have various techniques that are ahead of us in terms of their technology. So all three of those things are going to be extremely important going forward.

You know, to a degree, the new tax bill changes that, but these are long-standing issues that the IRS is going to have to continue to focus on.

MR. MAZUR: Okay. Another question right next to you.

MR. WENTWORTH: Hi, Eric. Hi, Mark. David Wentworth, Taxpayers for Common Sense and the World Bank. You mentioned tax shelters in your past. In effect, that the new tax law probably opens up lots of new tax shelters. Can you comment on those?

MR. SOLOMON: Do you want to answer first?

MR. MAZUR: I'll take a shot at it, yeah.

MR. SOLOMON: Yeah, I've been doing the talking. You do some.

MR. MAZUR: So the new tax law does a couple of things. One, I think it takes on the multi-national side, a lot of things that multi-national firms could do last year, no longer available next year, or this year. And so it just means there's going to be a whole new range of tax planning opportunities there that we're just beginning to understand what they are. And I think the previous panel talked a lot about some of the possibilities.

Other types of things that you may see is on the special rate for pass-throughs. Big discussion on the last panel as to where the lines are going to be drawn there. And that's one where, I think if the Treasury and IRS draw those lines tightly, less of a scope for tax shelters than if they're drawn more loosely or not drawn at all.

A third area, and this is one I think Eric eluded to a little bit, was in the case of the limit on itemized deductions, state-level taxes in particular, you see state governments trying to figure out workarounds for this. And this is something we have seldom seen in the past where you've had state governments trying to help their taxpayers find a way around the law. That's a different new dimension of things.

MR. SOLOMON: Yeah, just to add with regard to tax shelters. There are lots of uncertainties. There may be aggressive planning. There are a couple of things though that I think are helpful. I worry about this issue all the time, you know, about our tax system and collecting the taxes.

A couple of things that are different than the 2000 tax shelters. Number one is, in the 1990s, 2000 shelters, they marketed shelters. There was a lot of marketing. And I don't see the extent. Right now, I don't see the marketing coming back the way the tax shelters were marketed in the 2000s, both individual and corporate. So I worry about the marketing aspect of it, but I don't see that trend yet. Now individually crafted aggressive positions, that is always a possibility, and we'll just have to see how that plays out. That's number one.

Number two is also on financial statements. I think the financial

statement issues are much more in focus now for large companies that the audit firms, basically, to give clean financials have to conclude at a certain level at least more likely than not that a position works so that there are also new inhibitors in the system itself. So I think those are helpful things.

But yes, we always have to keep our eye on aggressive behavior. But a couple of the circumstances I think are slightly different now.

The one other thing I want to mention, Dave, you asked about tax shelters. I would also -- the tax gap.

MR. MAZUR: Yes, the tax gap.

MR. SOLOMON: The tax gap, right.

MR. MAZUR: A scarring memory for you.

MR. SOLOMON: A scarring memory for me. My nomination got held up over tax gap issues. But the tax gap, you know, reporting, compliance, non-reporting, these are very important issues and they continue to be important issues. I would say between 83 and 85 percent of taxes are reported correctly. You do have to be concerned about non-reporting. And those issues are old issues and we're going to have to continue to face those.

I don't know that the bill has necessarily any effect on that. But in terms of our overall tax system, we do have to worry about people's faith in the IRS, their faith in the tax system, their faith that their money is being used wisely. And so that's an issue that we can't put aside.

MR. MAZUR: And one thing that the tax gap literature shows us is that better information reporting helps improve compliance. So taxpayers try to be compliant, but if you send the information to them and to the IRS, they really try to be compliant.

MR. SOLOMON: Right. There's withholding. Withholding is the most effective, the highest percentage. Then reporting is effective. And then, where there's no reporting, that's where you get into the issues.

Now again, the tax gap is a very difficult issue because there have been various proposals over the years to tighten up reporting. And some of those proposals have been enacted and then repealed. You know, issues about reporting are very sensitive issues. But we're going to have to continue to face issues.

Now technology could help solve some of these problems. Technology can be part of the solution.

MR. MAZUR: Well in fact, one of the things that was passed, probably when you were in the administration, was reporting for debit and credit cards. And part of the idea was that you're moving to fewer cash transactions, moving more to electronic transactions, get that information reported. It's harder for the restaurant or whatever the small business is to say, you know, my receipts are X when their credit card receipts are higher. So at least one step in that direction.

MR. SOLOMON: Right. Exactly right. But these are very sensitive issues. But anyway, not just shelters, but tax gap is a very important issue.

MR. MAZUR: How about one last question? Right up in front.

MR. SOLOMON: Joe.

MR. GUTTENTAG: Hey on procedural issues. About 60 years ago --

SPEAKER: Say your name.

MR. SOLOMON: Joe Guttentag.

MR. GUTTENTAG: Joe Guttentag. I'm retired. About 60 years ago, we established an international side at the Treasury and the IRS. So we had the domestic and the international. Over the 60 years, now, most of our biggest taxpayers are heavily involved in the international side and the international and the domestic are more related than they were.

Do you think we should be taking a look at how both the IRS and Treasury are organized in that area to see whether we could make some changes that

might make us more effective?

SPEAKER: Sounds like our conversation.

MR. SOLOMON: Exactly. Dana and I have had this conversation.

You know, with globalization, for example, you know in private practice, no transaction that I work on fails to have international implications. Every single one has international implications. And slowly over time, these offices have been working closer and closer together.

My view is that some point, just like on the Commissioner's side at the IRS, the LBNI, the Large Businesses International, is one enterprises.

MR. MAZUR: Recognizing that pretty much all large businesses --

MR. SOLOMON: Are international. That's exactly right. And I think we are heading in that direction. The question is whether there are more steps that can be taken. You know, one example is cross border transactions, whether they should all be done in one office at the IRS on the lawyer side.

Now on the Commissioner's side, there are what I'll call integration issues between the domestic and the international. But over time, those are going to have to be worked out because I completely agree with you. Our future here in the United States is global, not limited to the United States. And in fact, this tax bill, you know, the old tax law was 1962 reflected a completely different world where the United States was much more manufacturing, much more business here.

This last tax bill reflects that our world here in the United States, whether we like it or not, has become global and our institutions, I think, need to evolve to reflect that point.

MR. MAZUR: Okay. Well thank you very much, Eric. Please join me in thanking Eric.

MR. SOLOMON: Thank you, Mark.

MR. MAZUR: Thank you all for attending.

\* \* \* \* \*

ANDERSON COURT REPORTING  
706 Duke Street, Suite 100  
Alexandria, VA 22314  
Phone (703) 519-7180 Fax (703) 519-7190



## CERTIFICATE OF NOTARY PUBLIC

I, Carleton J. Anderson, III do hereby certify that the forgoing electronic file when originally transmitted was reduced to text at my direction; that said transcript is a true record of the proceedings therein referenced; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and, furthermore, that I am neither a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Carleton J. Anderson, III

(Signature and Seal on File)

Notary Public in and for the Commonwealth of Virginia

Commission No. 351998

Expires: November 30, 2020