



Are Tax Breaks Fundamentally Unfair? Ctd

Andrew Sullivan | April 18, 2012

A reader writes:

You [say](#) that our current tax system "generates profound cynicism about government". Actually, it's far worse than that. It generates profound cynicism about the rule of law. Why? Simply this: our tax code has become so complex that it is essentially impossible to comply with the law. At best, you can spend a lot of money for someone else to do your taxes. That way, they are on the hook when (not if) mistakes are made - and even experts can count on making mistakes. Alternatively, you wade through the myriad forms, hope you have found all the right ones, and hope that the directions you follow don't result in you breaching the law anyway. Or, at least that you don't "win" the random audit lottery. What happens when you know that, no matter what you do, you will be violating some law that you never even heard of until it lands on you? You don't just get cynical about government; you have a huge incentive to ignore the law whenever it's inconvenient. After all, if you are going to get in trouble anyway, why worry about breaking a few more laws?

Another writes:

Tax lawyer here. Two points: first, you suggest "a complete abandonment of all taxbreaks, except for charity." Why the special treatment for charity?

Because charitable giving is an activity we want to promote? That's no different from the rationale for every other tax incentive. Moreover, the deduction means that when you give to a charity of your choice, I - and all other taxpayers - are effectively

being forced to contribute along with you (whether we like your charity or not). That seems illiberal to me.

It also could be argued that one of the primary effects of the charitable deduction has been to funnel massive amounts of money into pools such as university endowments. Harvard and Yale are sitting on billions of dollars - do they need a government subsidy in order to increase the pile?

Finally, the charitable deduction can be seen as shifting some spending from government-run social programs to individually chosen charities. I know that government programs come in for a lot of abuse, but Medicare, for one, is actually quite efficient. Do the multitude of individual charities actually make more effective use of the money?

My answer would be that because the government is going to have to curtail the welfare state, its support for charitable efforts might be seen as a fair balance. But I'm not wedded to that. If getting rid of every single tax expenditure is necessary to get tax reform, I'd get rid of all of them. Another:

I'm going to keep calling bullshit on your obsession with tax breaks and the complexity of the tax law until I get published.

I am a corporate tax lawyer with 25 years' experience. I can't prove it, but in my experience the vast majority of the complexity of the tax law has nothing to do with tax breaks. It has to do with providing precise rules to deal with an infinite variety of structures and transactions, in the face of taxpayers and their tax counsel who are determined to minimize their tax bill. Rules relating to tax breaks are insignificant in volume compared to the rules relating to consolidated tax returns, corporate reorganizations, foreign tax credits, taxation of the foreign subsidiaries of U.S. corporations (Subpart F) and hundreds of other things.

The Cato Institute article you link to is filled with lies and half-truths (which is about what I would expect from a Cato Institute article on taxes). The "tax rules" do not span 73,608 pages and do not cover nine feet of shelf space. The standard CCH edition of the Code is 5,500 pages long, but that is highly misleading. That volume is targeted at tax practitioners and includes old statutory provisions that have been repealed or revised. Because of the obscure way that the regs are paginated, it is not easy to tell how many pages they are, but I would estimate it at about 30,000 pages, which includes proposed regs and the preambles to regulations. The entire set of

Code and regs takes up about 18 inches on my shelf. To give you an idea about how much the Code and regs have expanded over the years, my set from 1987 takes up around 10 inches.

The volume that Chris Edwards describes in the Cato article probably refers to the bound CCH Standard Federal Tax Reporter, which may indeed cover nine feet and contain 73,608 pages. However, that volume is exclusively designed for practitioners and includes not only the Code and regs, but also commentary written by CCH and annotations from case law.

I also take issue with Edwards' claim that changes to the tax regulations undermine financial planning, business investment and other decision-making in the economy. I would say it is more like the exact opposite. Every tax advisor I know is constantly begging the Treasury to release new guidance, because more guidance creates more certainty. Lack of guidance creates more uncertainty.

The bottom line is that the complexity of the Code and regs is the price we pay for a rules-based self-assessment system where every taxpayer knows more or less exactly what the tax consequences are going to be of every conceivable thing that he could do. The alternative is more like what exists in Europe or, God forbid, Asia. For example, the Swiss tax law could probably fit in my back pocket, but the determination of how much tax a Swiss company pays is largely a function of the company's personal relationship with the taxing authority. It is quite typical for non-U.S. companies to get together with their respective taxing authorities and reach an agreement on how much tax they're going to pay. Until you want to base your tax system on cronyism rather than on the rule of law, you are stuck with what you have in the U.S.