E.U. STATE AID

E.U. TARGETING UNITED STATES COMPANIES?

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Background – State Aid

U.S. companies

- Apple (Ireland)~ $8 billion
- Starbucks (Netherlands) ~ $30 million
- Amazon (Luxembourg)
- McDonald's (Luxembourg)
- PepsiCo (Luxembourg)
- FedEx (Luxembourg)

European Companies

- Fiat (Luxembourg) ~ $30 million
- Ikea
- Anheuser-Busch InBev (Belgium)

Something is wrong here…

U.S. Reaction

- Senate Finance Committee hearing on “International Tax: O.E.C.D. B.E.P.S. and E.U. State Aid” (December 1, 2015)
- Comments of Robert Stack, Deputy Assistant Secretary for International Tax Affairs at the U.S. Treasury Department:
  - Appear to disproportionately target U.S. companies;
  - Potentially undermine U.S. rights under its bilateral tax treaties with E.U. Member States
  - Takes a novel approach in applying E.U. State Aid rules and apply that approach retroactively, rather than prospectively
  - Results in E.U. taxation of historical earnings that, under internationally accepted standards, no E.U. Member State had the right to tax and
  - Could give rise to U.S. companies paying E.U. Member States billions of dollars in tax assessments that may or may not be creditable foreign taxes, resulting in U.S. taxpayers “footing the bill

U.S. Reaction (Cont.)

- Letter by bipartisan group of senators from the Senate Finance Committee to Treasury Secretary Jacob Lew (January 15, 2016):

  > We recognize that the EU Commission believes it is on solid ground in pursuing these cases and enforcing EU competition law against its EU member states…It alarms us, however, that the EU Commission is using a non-tax forum to target U.S. firms essentially to force its member states to impose taxes, looking back as far as ten years, in a manner inconsistent with internationally accepted standards in place at the time. By all accounts, these cases have taken the member states, companies, and their advisors by surprise.

- Suggest that in view of the E.U.'s "discriminatory or extraterritorial taxes" the President, upon his retaliatory authority, should consider invoking a rule on doubling of tax rates on citizens and corporations of certain foreign countries

Fight of the Century

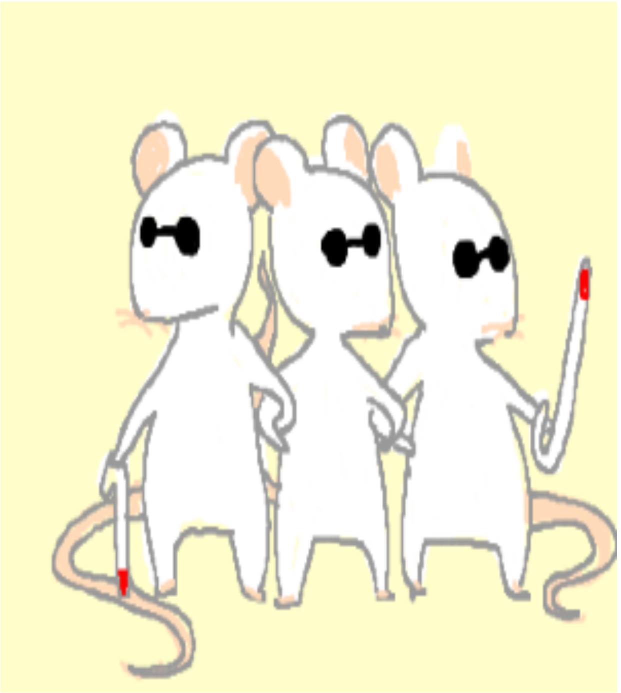
U.S. Reaction (Cont.)

- Response to bipartisan letter by Ann Wall, Assistant Treasury Secretary for Legislative Affairs (March 2, 2016):
  - We are reviewing this [retaliatory authority] provision and its history closely, and we are continuing to consider all modes of engagement to convey our strong view that European officials should reconsider their approach to the issue.

Robert Stack meeting with three European Commission officials (January 29, 2015):

- U.S. entities singled out in State Aid investigations

"And when all else fails....."



U.S. Reaction (Cont.)

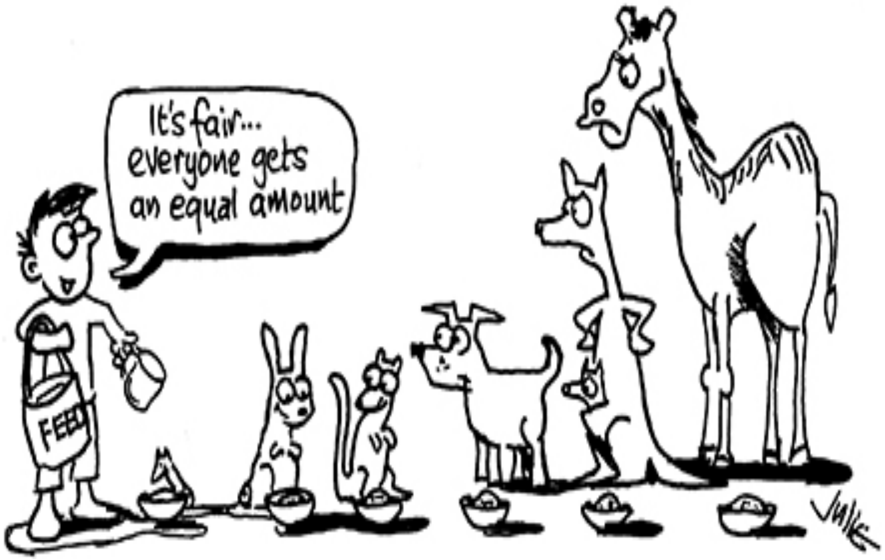
- Treasury Secretary Jacob Lew's letter to European Commission President Jean-Claude Junker (February 11, 2016):
  - Commission's "sweeping interpretation of the EU legal doctrine of 'state aid' threatens to undermine [the progress of state governments working together]…to curtail the erosion of our respective corporate tax bases."
  - To the U.S.'s disappointment, the Commission "appears to be pursuing enforcement actions that are inconsistent with, and likely contrary to, the B.E.P.S. project."
  - Reiterating the views expressed by Deputy Assistant Secretary Stack Lew concludes: "Treasury department is not alone in this view. Many Members of our Congress have strongly echoed these concerns, and have urged Treasury to take strong action."

European Commission

- Response by European Commissioner for Competition Margrethe Vestager to Secretary Lew on behalf of President Juncker (February 29, 2016):
  - The European Commission promotes the B.E.P.S. project;
  - Of the 170 decisions for recovery of taxes only a handful are U.S. based;
  - The State Aid rules allow E.U. Member States to tax profits and do not undermine tax treaties;
  - Arm's length principles cannot give multinationals a more favorable tax treatment than stand-alone companies.

European Commission (Cont.)

- European Commissioner Margrethe Vestager's three-day visit to Washington D.C. including a meeting with Treasury Secretary Jacob Lew (beginning of April, 2016):
  - European companies are not worried about potential retaliatory measures by the U.S.
  - Restates that cases so far only involved a handful of U.S. companies.



U.S. Multinationals under E.U. Scrutiny

- Hearings by the European Parliament's Special Committee on Tax Rulings (T.A.X.E.) on March 14 and 15, 2016:
  - C.E.O.s of Apple Inc., Google Inc., McDonald's Corporation, Starbucks Coffee Company*
  - C.E.O.s of Fiat Chrysler Automobiles* and Inter Ikea Group
  - Officials of Andorra, Cayman Island,* Isle of Man, Channel Islands, Liechtenstein and Monaco

- Delegation of the T.A.X.E. 2 Committee to hold meetings with Treasury, Congress, Senate Finance Committee on May 16, 2016

- * Declined the invitation

E.U. State Aid from a U.S. Perspective

- Non-tax forum to reallocate past profits?
- E.U. State Aid interpretation compatible with O.E.C.D. B.E.P.S.?
- Are U.S. companies really favored by international tax system? Or is it just different accounting rules?
- Repayments of State Aid eligible for foreign tax credit?
- Can income tax treaties with E.U. countries be relied on?
- Can tax rulings throughout the entire E.U. be relied upon?
- E.U. countries (Ireland, Netherlands, Belgium) aligning with the United States?

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