

SPOTLIGHT ON COMMITTEES: COMMITTEE ON VALUE ADDED TAX AND OTHER CONSUMPTION TAXES

by Alan Schenk, Detroit, MI, Victoria Perry, Washington, DC, and Reuven Avi-Yonah, Ann Arbor, MI

In 1970, President Nixon considered the possible introduction of a value added tax, with the revenue to be rebated to the states that replaced part or all of their property tax used to finance education. Reportedly, President Nixon was advised that he could not propose a VAT at that time because the tax was unfamiliar to the tax professionals and the public. In 1971, the Section of Taxation appointed a special committee to study the VAT. The special committee later was converted to the Committee on Value Added Tax and then renamed the Committee on Value Added Tax and Other Consumption Taxes to reflect the fact that our charge went beyond VAT to other consumption taxes that were being proposed at the federal level.

Although the U.S. does not have a VAT, nearly all other countries of the world do, and VAT therefore constitutes an important part of the tax burden borne and the tax planning undertaken by major clients of many members of the Section. While U.S. lawyers would normally engage local counsel in tax planning in other jurisdictions, some basic knowledge of the subject, including trends and current issues, is nonetheless important.

For the past 34 years, the Committee served as the only Section committee with expertise in VATs and other proposed federal taxes on consumption. Our Committee has been used as the resource to educate Section members and to respond to Congressional and other proposals for a broad-based federal tax on consumption. The core, long-standing members of the Committee have published numerous books and articles dealing with VATs and other consumption taxes, and have experience assisting developing and emerging market countries in drafting national and subnational VATs, and organizing the implementation and administration of those VATs. Some members have firsthand experience complying with foreign VATs and serving as experts in international arbitrations involving VAT.

The Committee has published four articles in the *Tax Lawyer*, starting in 1972. In addition, in 1989, it developed a model VAT for the U.S. that was accepted by the Council of the Section. In drafting the model VAT, the Committee started with the European-style, credit-invoice VAT bill introduced by House Ways and Means chairman Al Ullman in 1979 and again in 1980. This model was introduced in Congress in 1991 and again in 1995 by Senator Hollings. The Hollings VAT was designed to raise revenue to finance either deficit reduction or national health care, or both.

When Senator Roth proposed the Business Transfer Tax in 1985, the Committee prepared an analysis of this VAT, which relied on company records, unlike the European VAT, which relies on invoices and is based on transactions. The Committee has presented a mini program on VAT and discussed VAT at a plenary session of the Section. Before the Committee's charge was expanded to include other consumption taxes, the Committee was part of a Section task force in 1996 to examine a myriad of consumption tax proposals introduced in that session of Congress. The Committee also developed a set of consumption tax principles that can be used in the development of a federal tax on consumption. These principles were adopted by the Section at a plenary session in January, 2000. We have presented several programs with foreign VAT experts and members of our Committee, at the invitation of Congressional committees, have testified on fundamental tax reform, including the role of VAT and other consumption taxes.

In the past several years, there have been a number of dramatic (even radical) tax proposals by members of Congress and others to shift from our reliance on taxes based on income to taxes based on consumption. They include the adoption of a federal VAT or

other broad-based tax on consumption to replace some or all existing federal taxes. In the 108th Congress alone, the following proposals were introduced:

1. Representative John Linder's National Sales Tax (a retail sales tax) (H.R. 25 Fair Tax Act of 2003).
2. Representative Nick Smith's Flat Tax (H.R. 3060 Tax Simplification Act of 2003).
3. Senator Phil English's Simplified USA Tax Act of 2003 (H.R. 269) – like the two-part USA Tax Act of 1995 introduced by Senators Nunn and Dominici.
4. Representative John Dingell's Credit-Invoice VAT (H.R. 15 National Health Insurance Act of 2003) to finance national health care.

In addition, Professor Michael Graetz proposed the removal of 100 million taxpayers from the income tax rolls, with the lost revenue to be recouped with a European-style VAT. Another round of intense discussions of this subject may begin when the commission examining the federal tax system reports to the Secretary of the Treasury in mid-2005.

Whether our tax practices are limited to American clients or include businesses engaged in international operations, it is imperative that we learn about VAT and other proposed federal taxes on consumption. Increasingly, American lawyers are not able adequately to advise their clients in drafting contracts or planning international transactions without a basic understanding of these taxes. In addition, we may be called upon by our clients to examine the impact of a U.S. VAT or other consumption tax on them.

The Committee will keep the Section informed about developments in this area, with mini-programs and analyses of new proposals for a federal tax on consumption. We invite other Section members to join our Committee. ■