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# Denver Journal

## OF INTERNATIONAL LAW AND POLICY

VOLUME 6 NUMBER 2

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### INTERNATIONAL ASPECTS OF THE TAX REFORM ACT OF 1976

#### TAXING BOYCOTTS AND BRIBES

..... *G. C. Hufbauer*  
*J. G. Taylor* 589

The authors examine the tax penalty provisions of the Tax Reform Act of 1976 and the Export Administration Act Amendments of 1977 in relation to U.S. persons who "participate in or cooperate with" international boycotts or bribery. The article discusses the various types of international boycotts and the penalty, computational, and reporting requirements imposed on participants as clarified by the Treasury Guidelines and Revenue Procedures. The authors conclude with a discussion of the novelty, complexity, and potential impact of the legislation.

#### TAKING SIDES: AN OVERVIEW OF THE U.S. LEGISLATIVE RESPONSE TO THE ARAB BOYCOTT

..... *John M. Tate*  
*Ralph B. Lake* 613

The current legislative scheme in opposition to the Arab boycott is generally directed against the Arab League countries' secondary and tertiary, indirect forms of boycott. Provisions in the Tax Reform Act of 1976, recent public disclosure requirements, and sections of the Export Administration Act of 1977 all aim to discourage U.S. exporters from taking boycott-related action. The dilemma facing the U.S. taxpayer in attempting to comply with these legislative enactments is presented, along with a discussion of the advisability of even having such legislation.

#### THE TAX REFORM ACT OF 1976: TREATMENT OF FOREIGN INCOME AND EFFECTS ON U.S. DEVELOPMENT OF FOREIGN MINERAL RESOURCES

..... *William J. Nolan, Jr.* 635

The author discusses the significance of the extensive legislative changes embodied in the Tax Reform Act of 1976, as applied to U.S. mineral resource corporations. Many of the changes will result in a substantial increase of overseas business costs through repeal or modification of tax credits and the elimination of certain positive incentives. The loss of special treatment for capital invested in less developed countries and treatment of certain foreign capital gains as domestic will tend to discourage the development of foreign mineral resources and lessen the ability to compete in foreign markets.

**IMPACT OF THE TAX REFORM ACT OF 1976 ON AMERICANS  
WORKING ABROAD**

..... *Marianne Burge* 647

Section 911 of the Internal Revenue Code dealing with the exclusion granted to U.S. citizens for income earned abroad was substantially altered by the 1976 Tax Reform Act. Burge discusses the changes and analyzes their additional cost impact on taxpayers and employers' tax reimbursement plans. She cites particularly the virtual repeal of the exclusion, the increased costs to employers of doing business abroad, and the problem of making a tax-saving election under section 911 for employees who may be transferred to other locations.

**TAX REFORM ACT OF 1976: CONTROLLED FOREIGN CORPORATIONS**

..... *Richard W. Graham* 661

The author focuses on those sections of the Tax Reform Act of 1976 which affect subpart F and section 1248 of the Internal Revenue Code. The 1976 Act has changed some of the rules for taxing a U.S. shareholder's foreign earnings from a Controlled Foreign Corporation. He discusses the changes in the treatment of year-to-year income from shipping, insurance, earnings invested in U.S. property, and Export Trade Corporations. He also explains how the 1976 Act has broadened the powers, described in section 1248, for taxing the disposition of a U.S. citizen's foreign corporation stock as if it were a repatriation of tax deferred earnings.

**FOREIGN SITUS TRUSTS**

..... *Mark S. Caldwell*  
*Peter B. Nagel* 675

Recent amendments to the Internal Revenue Code culminate longstanding efforts by Congress to curtail the use of foreign situs trusts. Provisions of the Tax Reform Act of 1976 deem income earned by a foreign trust with U.S. beneficiaries to be earned currently by those persons who transfer property to such a trust. Changes in the throwback rules, including the possible imposition of a nondeductible interest charge, now render foreign trusts considerably less attractive than their domestic counterparts. Finally, the section 1491 excise tax provisions now impose a maximum capital gains rate tax on the transfer of appreciated property to a foreign trust.

**STUDENT COMMENTS**

**PARENS PATRIAE ANTITRUST SUITS BY FOREIGN NATIONS**

..... *Russell L. Caplan* 705

The author explores the *parens patriae* suit as an alternative means by which foreign governments can bring antitrust actions on behalf of their citizens in United States courts. The historical development of *parens patriae* is traced to show the legitimacy of this type of action. The author proceeds to discuss the problems encountered by a foreign government in its efforts to sue American antibiotic manufacturers. The conclusion is that a *parens patriae* suit is the most effective means by which a foreign country can prosecute its action.

THE PITFALLS OF ACT OF STATE ANALYSIS IN THE ANTITRUST  
CONTEXT: A CRITIQUE OF HUNT V. MOBIL OIL

..... *David K. Pansius* 749

International antitrust issues pose perhaps the greatest challenge to the act of state doctrine. On the one hand, courts are understandably reluctant to prosecute complaints alleging restraints on U.S. foreign commerce when the acts of foreign sovereigns are integral elements of the cause of action. On the other hand, a blanket refusal to investigate antitrust claims when sovereign acts are involved will unduly preclude review of illegal private conspiracies. Much of this tension arises from the mistaken notion that courts cannot investigate private acts motivating a sovereign's anticompetitive determinations — the act of state doctrine grants no such immunity from review. Rather, the act of state doctrine only protects private anticompetitive acts compelled by the sovereign himself. Consequently, barring an exception such as the *Noerr* doctrine, a private actor will be liable for conspiracies to force government action injurious to his competitors.

**BOOK NOTES**

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