

Why not Tax Corporations (Especially in the post-BEPS Era)?

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Introduction – The Corporate Income Tax

- Virtually universal
- Corporate legal personality
- Lack of coherent basis / controversial
- Politically charged
 - Redistribution
 - Typical discourse
- Inherently complex
 - Requires anti abuse rules to pierce the veil
- Revenue impact
- BEPS
- Sometimes it is important to do the right thing!

The Incidence of the Corporate Income Tax

- Harberger – fully borne by capital owners (static/closed economy)
- More modern analysis
 - Different effect in the short v. long term
 - Cannot be described simply a redistributionally coherent
 - Different components have different distributional effects
- Worldwide capital v. domestic shareholders
 - Sanchirico
- Labor
- Consumption

The Basic Discourse

- Corporate personality humanized – right and obligations
 - Benefit theory
- Practical solution in lieu of an individual income tax
- Corporations as real entities distinct from their stakeholders
- Politically feasible redistribution device
- Tax foreigners
- Administratively efficient – deep pockets
- Regulate large corporations
- Reduce power of corporate management

Response

- A simple benefit theory of the corporate tax would simply never lead to the unified taxation of corporate income
 - Cannot apply benefit theory to individuals as we cannot clearly map the incidence
 - The fact that corporations exact rents beyond what an aggregate of individuals would is not helpful, since, again, the incidence question cannot be answered
- Real entity / regulations arguments fall as a 0% tax would suffice for these purposes
 - Does
- Distributive benefits questionable
- Simple ability-to-pay argument does not stand as cash does not mean ability-to-pay whatever way defined

Response (Cont.)

- Tax because we can – that would result in taxation of foreigners or non voters, but there are good reasons also not to tax them and many resources invested in attracting their investments
 - Corporate tax too crude a device to finetune the balance
- Tax because others tax – again the question is how to tax foreign individuals without deterring them from pulling investment out
- Corporate tax as a back-stop for the individual income tax
 - Indefensible since we have the same issue with transparent business entities

Why Not Tax Corporations

- Distorts allocation of investment between corporate and unincorporated sectors
- Affects the decision to incorporate
- Distorts financing decisions
 - Including dividend payout policies
- Distorts (final) investment decisions by corporations
- Costs
 - Complexity
 - Corporate governance – tax adds power to management
- Minor revenue raiser

There is an Alternative

- Rate reductions and integration are used in diversion
- Convert to a collection mechanism to maintain regulatory and administrative benefits
- Most of the corporate income tax is paid by large publicly traded corporations anyway
- For them mark to market a much simpler alternative
- Other corporations face look thru rules anyway

BEPS

- All about the corporate income tax
 - But no discussion of the tax itself
- Corporate residence ↔ value creation
- Hybridization
- Interest deductions at the corporate level
- CFC
- Patent Box discussion
- PE
- TP