

Recent International Developments

by Philip Baker

Thursday, October 4, 2012. 8:30 in the morning. Hynes Convention Center, Back Bay, Boston. What's happening? I don't know. Or, at least, I don't know *yet*.

I know in principle what is happening: That is the date, time, and venue for the Recent Developments Seminar at the 2012 IFA Congress. I know that because I am chairing the panel. However, I don't know what that seminar is going to consist of.

There is a reason why I don't know. That panel is concerned with "recent developments," and by definition, anything that has happened to date will not be a recent development come the start of October. We will know then what is recent and what this seminar is going to cover. We will also know who the panel members are.

The rationale behind the Recent Development Seminar is straightforward. Much of the IFA Congress program is fixed months or years in advance. In the past, this often meant that there is no place on the agenda for a recent and really significant development that all the delegates to the annual Congress would wish to hear about. Now that place is the Recent Developments Seminar.

I know some of the things that are likely to come up in the seminar this year. I keep an eye out for judgments, reports, legislative developments, and so forth that may come home to roost shortly before the congress begins. Last year in Paris, for example, we discussed an opinion (on cross-border exit taxes) from the European Court of Justice that had been handed down (in French, no less) just three days before the start of the seminar. We also looked at a transfer pricing case that even some of the most geeky transfer pricing specialists were unaware of.

What am I watching for this year? The ECJ has at least one judgment in an important tax matter that is likely to be published in September. There is also an appeal pending before the Swiss Federal Supreme Court concerning beneficial ownership in the context of a total return swap. From my mouth to the judges' ears: I hope that judgment is out before the congress.

There are several cases pending in Denmark on beneficial ownership, and one or more is likely to be out before October. There is a constitutional challenge to the retroactive tax legislation in India. There are several reports expected from the OECD (not all of which will necessarily be discussed in the parallel OECD seminar).

Then there are several significant trends around the world that are not currently on the agenda at the congress that we might wish to discuss. The trend to intro-

duce retroactive tax legislation has been seen in more than one country. There is also something of a penchant for the introduction of general antiavoidance rules at present, and it might be interesting to compare and contrast a few of these and some of the case law on them. There is a growing trend to take large tax disputes to arbitration under a trade-related treaty, and we might consider that as a recent development.

The response to tax-structured finance arrangements had led to litigation and legislation in several countries. This seminar might be a good opportunity to report on some of the case law, including the foreign tax credit generator cases. Again, a timely judgment might form a backdrop to this discussion.

Who knows? There might even be some movement in the logjam of reform of the U.S. tax system. If there is (and I am not holding my breath), maybe this is the opportunity to discuss it.

Topicality is the watchword of this seminar — that, plus entertainment for delegates on the last day of the congress. Also, a particularly nervous experience for a chairman who is a Brit in Boston — we all know what happened the last time the Brits were in Boston, and it wasn't a tea party.

So by October 4, I will know most of what the seminar will be about, but not everything. Last year the panel members were asked to bring a surprise — some recent development that even I did not know about and expect. Last year they brought up the Foreign Account Tax Compliance Act and indirect disposals of business interests. I am looking forward to some surprising rabbits jumping out of the hat this year too.

If anyone reading this article has any suggestions for burning, topical subjects, the author would be delighted to receive a heads-up. Who knows? Your topic might be one of those that make it to the agenda for this session.

Philip Baker is with Gray's Inn Tax Chambers in London, a senior visiting fellow at the Institute of Advanced Legal Studies, University of London, and a panelist on Seminar J (Recent International Developments) of the 2012 International Fiscal Association Congress in Boston.

The IFA Boston Congress provides a unique and timely opportunity for examining challenging issues on a global basis. Seminars feature a panel of leading experts, including the author, who will share their practical insights and policy analysis with the participants. Practitioners, policymakers, and students of international tax policy should find the interactive seminar informative and stimulating.