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PANEL 2: SHOULD CORPORATE TAX RETURNS BE PUBLIC?

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DISCUSSANTS: *Allison Christians, Reuven S. Avi-Yonah, Peter A. Barnes*

PROFESSOR DAVID KAMIN: Welcome to our second panel for this symposium event. As Josh introduced me before, I'm David Kamin, a Tax Professor here at NYU. We're now excited to move from a topic about whether corporations should essentially self-enforce on themselves the tax laws to a topic about how the government should enforce the tax laws on corporations, and specifically how information and either making tax returns public or not can be used as a device to help enforce the tax laws.

So to discuss this topic, our paper is by Professor Josh Blank. Josh is a Professor of Tax Practice and Faculty Director here in the Graduate Tax Program at NYU. Josh's scholarship focuses on tax administration and compliance as well as taxpayer privacy. He's one of the leading experts in the country on the issue of taxpayer privacy and whether or not tax returns should be made public. He's done groundbreaking work in that area and that has continued here—where he's expanding his scholarship beyond just individual tax returns to corporate tax returns—and we're seeing how some of Josh's insights into

this area, the degree to which they apply to corporate tax returns. His articles have been published in a number of the leading law reviews and have also been cited in a number of the leading general interest publications and newspapers.

To comment on Josh's work here, we have Allison Christians. Allison is the H. Heward Stikeman Chair in Tax Law at McGill University. Her research and teaching focus on national and international tax law; she's one of the leading experts in international tax law; and she has an emphasis on the relationship between taxation and economic development, and then the role of government and non-government institutions and actors in the creation of tax policy norms. She's written also widely and has a number of important articles on those topics and has published one of the leading casebooks on international tax law.

So our two other panelists have already been introduced, so I will keep that short. Reuven Avi-Yonah obviously was the presenter of our last paper. He's the Irwin Cohn Professor of Law and Director of the International Tax LL.M. Program at University of Michigan. And he is joined by another commenter on Reuven Avi-Yonah's panel, Peter Barnes. Peter is Senior Lecturing Fellow at Duke Law School and has recently retired from General Electric where he was Senior Tax Counsel.

So, I think it's going to be an exciting discussion, and Josh will start us off.

PROFESSOR JOSHUA D. BLANK: Thank you, David, for that ridiculously kind introduction and again thank you to all of our panelists for participating in the discussion. I'll just start by talking a little bit about what's been in the news recently. Increasingly in the last few years, from whether it's the U.S. Senate hearings or to *The New York Times*, there's been a lot of attention on the low effect of tax rates of iconic American corporations: Boeing, Verizon, Mattel. In deference to Peter, I won't mention others. The use of tax shelters—

MR. PETER A. BARNES: [Interposing] March 2011, *New York Times*.

[Laughter]

PROFESSOR BLANK: There are others we've heard about—Black & Decker, UPS, Dow Chemical, Procter & Gamble—who have been involved in tax shelter litigation. Also the aggres-

sive—or, depending on your perspective, creative—use of international transfer pricing structures, which allow large corporations to avoid paying U.S. tax: Google, Apple, Facebook, Amazon, and many others. Some analysts estimate it's over $60 billion a year in lost tax revenue as a result of aggressive transfer pricing. It's extraordinarily difficult to find key tax information in publicly filed documents with the SEC. Policymakers, commentators, scholars have all started to ask again a very familiar question in the U.S.: should the tax returns of corporations be public?

Today, the IRS is prohibited from publicly releasing any of our tax return information. This applies to individuals and also corporations—you can find all of the rules in Section 6103 of the Internal Revenue Code. It wasn't always this way. In 1909, when the corporate tax was first enacted in the United States—at least what's been called the predecessor of the current corporate income tax (it's technically called an "excise tax" for constitutional reasons; that's another issue)—when this tax was originally enacted, part of the legislation provided that the tax returns themselves would be public records, and open to public inspection as such. President William Howard Taft was one of the biggest proponents of this. He said that the publicity feature of the corporate income tax—the corporate excise tax—was really the only thing, quote, "that made the law special" because it aided the government's regulation of large corporations. That lasted for a couple of years until it was repealed.

In 1924, individual taxpayers and large corporations were required to make public the amount of income tax that they paid every year. You can go back and look at newspaper headlines describing Ford and other large companies and the amount of tax that they paid. And again, after about a year and a half, that was repealed.

In 1934, Congress passed legislation that would have required all taxpayers—you, me, and large corporations—to file what they called "pink slips," which would include your total gross income, deductions, net income, tax credits, and tax liability. During the time of this, there was a big trial involving the kidnapping of the Lindbergh baby; people were very worried about their personal safety, and a group of senators was able to move to get that legislation repealed before it ever actually went into effect.

Throughout all of these debates, the participants—whether it's President William Howard Taft or Richard Pomp or Marjorie Kornhauser or Reuven Avi-Yonah—they've all examined the question of whether corporate tax returns should be public from two perspectives. First, they ask how would tax directors and the IRS behave differently if they knew that the public could see these tax returns? Second, they say, how would investors and the public respond if they had access to this information? I believe, though, that there's a third perspective, which hasn't been explored, which is this: How could seeing other corporations' tax returns affect how tax directors pursue their own corporation's tax planning and tax compliance?

In prior work, I've argued that tax privacy serves a strategic publicity function. With the curtain of tax privacy—if we think about how the government interacts with individuals, if we think about the curtain of tax privacy, we only see instances where the government is showing off its tax enforcement strengths. We don't see specific examples of its tax enforcement weaknesses. For example, as we get closer to April fifteenth, we hear lots about high profile individuals who are off to prison as a result of evading taxes. If you go back and take a look at when some of these announcements have happened—Leona Helmsley, Wesley Snipes, Richard Hatch from *Survivor* who won $1 million and forgot to report it—we learn about these events where the government has acted and taxpayers have gone off to prison.

Salient examples like this implicate well-known cognitive biases. I argue that they cause people to develop an inflated perception of the chance of getting detected, of the government's willingness to punish perpetrators harshly, and the chance that it will actually win if there's a controversy in court. If we didn't have tax privacy, though, we could see lots of specific examples of the government's tax enforcement weaknesses that would contradict that perception. So as a result, I argue that when it comes to individual tax compliance, the curtain of tax privacy provides the government with a very significant strategic publicity benefit.

In this project, I ask two questions. Does tax privacy provide the government with similar strategic advantages in the case of corporate taxpayers? And what, if any, corporate tax return information should be public? There are significant dif-

ferences between corporations and individual taxpayers. Nonetheless, as I'll argue, providing the public with access to corporate tax return information would limit a strategic advantage that the government has. The government, I believe, does get a strategic advantage out of the fact that corporate tax managers cannot see the tax returns of their peers, and that strategic advantage actually limits the amount of aggressive tax planning that occurs today.

At the same time though, I recognize—just building off the prior panel—that providing the public with access to corporate tax return information would have a powerful and positive impact on public awareness and debate of corporate tax issues—possibly even legislative reform. The result of my analysis, thus is a set of guidelines that I hope will enable policymakers to consider public access proposals without ignoring the strategic advantages to the government of corporate tax privacy.

Let's just start with a thought experiment for a few minutes. Imagine we were to lift the curtain of tax privacy so that you could see everything. Let's imagine you could see the amount of tax a corporation paid, but also the corporate tax returns, the results of audits. Total public access. Let's just start with that broad hypothetical to think about how that might affect the behavior of tax directors. Now, as I've just mentioned, when it comes to individuals, I believe that tax privacy serves a strategic function for the government. The government publicizes examples of its tax enforcement strengths. We don't see the examples of the weaknesses. That can increase deterrence by causing individuals to overestimate the risk of audit, tax penalties, losing in tax litigation.

The effect of tax privacy in this way on tax directors' perceptions in terms of the risk of IRS detection and enforcement is likely muted compared to individuals'. Let's just think about a few of the key examples when it comes to individuals' audits. Compared to ordinary individuals, corporate tax directors know a lot about the probability of being audited by the IRS. Some tax directors oversee tax departments that are under continuous audit. ExxonMobil, for example, provides office space at its Houston headquarters to thirty-five IRS agents who are there permanently. Corporate tax privacy, as a result, doesn't have a likely effect on tax directors' perceptions of the

risk of detection. They know; they can see the IRS agents sitting right there.

Tax penalties: The IRS and the courts rarely apply tax penalties in the corporate setting. But tax directors engage with the IRS in tax disputes all the time, and they almost always rely on sophisticated counsel who provide written opinions to establish reasonable cause. If we lifted the curtain, that probably wouldn't surprise too many tax directors. They already know this. They are directly involved in negotiating with the IRS. Tax controversies with public access, we could see that tax directors—tax directors could see that the government often settles cases rather than litigates. But tax directors would not be shocked, again, to learn that—again, they're involved in these very negotiations.

So despite all of this, I argue that tax privacy still provides the government with strategic advantages, and I'll describe them in two ways. First, corporate tax privacy prevents tax directors from observing the tax strategies of more aggressive corporations, which could cause these tax directors to adjust their own corporation's tax reporting and planning. I describe this effect as "benchmarking." We can see the benchmarks of aggressive behavior in terms of our peers. Second, corporate tax privacy prevents tax directors from extracting information from returns and other information that could reveal important aspects of the IRS's enforcement tactics. I describe that as "reverse engineering." So let's think about a few examples just to illustrate this point.

Transfer pricing: When two related corporations engage with each other in different transactions, they engage in transfer pricing. There's a potential—in, whenever this happens—for abuse. It's not always abusive, but there's a potential for abuse because the items may not have a market price, especially intellectual property. Today, in a world with tax privacy, it's really difficult to figure out the corporate structure of a major corporation, never mind the transfer pricing arrangements.

On the other hand, if corporate tax directors could see everything, if it was all public, tax directors could determine whether their peers have pursued particular related-party transactions, such as the "Double Irish Dutch Sandwich," which has been in the news recently; whether they had moved

businesses offshore. They could determine whether the IRS challenged these structures. A response by some tax directors may be to take more aggressive transfer pricing positions. Public access would also enable tax directors and their advisors to reverse engineer the IRS's approach to auditing and challenging potentially abusive transfer pricing strategies.

Another example: Disclosure to the IRS. Today, corporations—like many taxpayers, but corporations are really the focus—are required to raise the red flag when they engage in a transaction that might be abusive. The government describes what causes the red flag to be raised, but corporations are required to disclose a lot of information in addition to the tax return itself.

Tax privacy prevents tax directors from reviewing these disclosure forms that large corporations file, whether it's the reportable transaction form or Schedule UTP on certain tax positions. If these documents were publicly accessible, some tax directors could conclude that they disclose too much information to the IRS compared to what their peers are doing. Further, tax directors could observe that peer corporations had indeed engaged in what the government calls "potentially abusive transactions"—for example, the intermediary corporation transaction, but there are many others. It might, for example, be possible to see that a corporation had made several submissions involving Form 8886, the reportable transaction form.

If you could take a look at the Schedule UTP, you could even discover whether the tax directors established a tax reserve as a result of those transactions—in other words, whether they think those transactions are more likely than not to work. One response from the tax director, upon reviewing these disclosures, is that she could conclude her corporation should at least engage in more aggressive (creative) tax planning. Full public access would also enable tax directors to engage with these documents and determine whether the IRS would be more likely to challenge particularly abusive transactions or reject a type of disclosure that corporations have submitted as insufficient.

And last, I'll just talk about tax shelter penalties for a minute. Congress has enacted many new penalties that apply to corporations that engage in potentially abusive transactions.

These include a forty percent strict liability penalty for corporations that participate in transactions that lack economic substance under the codified section that was referred to earlier by Michael Schler, and who don't disclose those transactions. Under current law, tax directors can't see whether any of their peer firms have been subject to these tax penalties. In a full public access regime, tax directors could determine which corporations paid these tax shelter penalties, the circumstances under which they paid them, and using that information, I believe, tax directors could at least get further towards devising steps to avoid the penalties—getting particular types of opinions, establishing certain facts that could allow them to avoid the penalties. All of this would dilute the deterrent value of penalties.

So is the conclusion here that all corporate tax return information should remain hidden, behind a curtain of tax privacy? No. The purpose of this project is to show that there is another aspect of corporate tax privacy. It provides strategic advantages to the government. That's not the only factor that policymakers should consider. I argue that policymakers should review every public access proposal separately, and consider four factors: first, the potential effect on any strategic advantages of corporate tax privacy to the government, which I've just described; second, the extent to which the proposal will expose proprietary information; third, the impact on cooperation with the IRS by corporate taxpayers; and last, the potential effect of public access on public debate and awareness of corporate tax issues.

Again, specific examples—stories—have a much more profound effect on individuals' perceptions than anonymous statistics. If I said the words "Apple"—"Apple Incorporated"—to you, that might mean a lot more than if I were to say, "Consumer Electronics Corporation," at least in your minds. Public access would enable the media to publicize a specific multinational corporation's tax liability, cash taxes paid, the amount of tax it paid to other governments. It would allow the public to observe the extent to which the U.S. subsidized specific corporations' payments to other governments through the foreign tax credit and a host of corporate tax expenditures. There are about 200 billion at least in the Internal Revenue Code in terms of their value.

Our past experience shows that when the public learns about tax issues through specific examples, public debate—even legislative reform—can result. If you go back to the 1980s, before the 1986 Act, Citizens for Tax Justice, an advocacy group, published a list of all the corporations that paid zero income tax using safe harbor leasing and a bunch of other techniques. Congress subsequently passed several corporate tax reform measures including the '86 Act, which repealed *General Utilities* and broadened the corporate tax base.

There's a story that Treasury Secretary Don Regan tells in his book: When he went to go talk to President Reagan about all of this, he said, quote, "Your secretary paid more in federal taxes last year than General Electric"—sorry, Peter—"Boeing, General Dynamics, and fifty-seven other big corporations." And President Reagan responded, "I didn't realize things had gotten that far out of line." And he threw his support behind corporate tax reform.

So just before I conclude with a couple of applications, I just want to contrast my view with the view of many scholars on one point, when I describe something that I think should not serve as a motivation for public access, and that is public shaming. There is little evidence to support the claim that publicity of a corporation's use of aggressive or even abusive tax strategies would result in the type of communal ostracism of corporations, which is the whole goal of shaming. In the U.S., when the press has reported on the corporate tax avoidance strategies of large U.S. multinational corporations, these corporations have not suffered significant drops in stock price, widespread boycotts of their products, calls from shareholders for management reform. I think it's even possible, and there is some evidence, some evidence to this, that public exposure of aggressive tax strategies could send a positive signal—short-term investors, especially, may be attracted to, rather than repelled by, corporations with tax directors that push the envelope.

Why do shareholders and consumers in the U.S. fail to ostracize corporations that have engaged in aggressive tax avoidance? One explanation is that the community in the United States—as opposed to other countries, like the U.K.—views corporate tax planning—I don't want to be too cynical—but almost like a game, where the goal is to pay the least amount of tax possible without violating any explicit tax rules.

Tim Cook, when he testified in front of the U.S. Senate, basically articulated this, he said, "We pay all the taxes we owe for Apple, every single dollar."

Just in the last couple of minutes, if I could just describe a few specific possible proposals on how my analysis would apply. Let's start with complete corporate tax returns. Should these be public? The complete corporate tax return of a large corporation includes not just the Form 1120, but lots of schedules, forms, and other explanatory documents. This I can say, Peter, based on published reports, that in 2010, General Electric's corporate tax return, if you printed it out, would be 57,000 pages. Should all of that be public?

I conclude that complete tax returns should remain private. The negative impact on the strategic advantages of corporate tax privacy is high. In addition, the threat of exposing this information raises a lot of significant concerns in terms of the proprietary information in these documents, and could diminish corporations' willingness to disclose detailed explanations of transactions and tax positions to the IRS. While access to all of this information would result in increased public awareness—possibly debate—I think there are other disclosure possibilities that would achieve these objectives.

Form 1120—just to give another example—another possibility is to require public corporations to file only their Form 1120, without any accompanying schedules, forms, or explanations. Compared to the complete annual tax return that I just described, Form 1120 is quite a bit shorter. I actually have it in my pocket. It is one page. It fits right in my pocket. I can even have this for General Electric. If we only required publication of the form, this is all that you would see, and this particular form would allow you to see tax liability, the amount paid to the U.S., the taxable income, total taxable income as opposed to GAAP. As a result, I argue it should be published.

Advance pricing agreements: Should these be public? Advance pricing agreements are documents that are the result of negotiations between the taxpayer and the IRS that govern the cost methodology, and assure the taxpayer that the government will not challenge for a period of years the methodology. Corporations voluntarily choose to seek these, and as a result, the corporations that seek these and that get them are not likely to be engaging in the abusive transfer pricing strategies.

That feature, I believe, alleviates the potential threat to the strategic advantages of corporate tax privacy. Assuming that granting public access to these documents would not completely kill participation in the program, I believe that, like private letter rulings, these should be public as well.

And last, the Schedule M-3, this is a form that corporations file, which is designed to reconcile book and tax treatment—book and tax income—and they file this on a consolidated basis. The schedule requires corporations also to highlight differences that result from potentially abusive reportable transactions. Mandatory publication of the Schedule M-3 poses minimal risk to the strategic publicity function of corporate tax privacy as long as the corporation is not required to file all of the explanations underlying what's on the schedule. It also—these are aggregate figures—would not expose proprietary information.

This document, I believe, would provide the public with tremendous potential to have a discussion and debate about the differential financial and accounting and tax treatment of large corporations, accounting and tax treatment of large corporations, taxation of corporations with large overseas operations, and the legitimacy of corporate tax expenditures. As a result, I conclude that this schedule (Schedule M-3) should be published as well.

In closing, by considering this question of whether and how corporate tax returns should be public from a new perspective, we can draw two conclusions. Corporate tax privacy can provide the government with strategic advantages, and rather than an all-or-nothing approach, policymakers should consider several guidelines when evaluating different public access proposals. Thank you, and I look forward to your reactions.

PROFESSOR ALLISON CHRISTIANS: Thank you.

PROFESSOR BLANK: Allison.

PROFESSOR CHRISTIANS: Thanks. Well, thank you so much, Josh. I'm very happy to be here and it is always fun to speak at NYU. I'm glad to be back at my alma mater (2003) because it is such a rich discussion and we actually have fun, I think, talking about tax here with a lot of people. You can have fun in small groups in other places, but here you can have fun, and it's a big party.

So Josh has nicely laid out the issue of corporate tax disclosure and has in effect written a defense of corporate tax privacy, albeit a partial defense, in line with his prior work in defense of individual tax privacy. For those of us who read his first paper, I think in a footnote you promised that you would do this, and you have done it, and so that's well done. I mean from an academic perspective we always promise things, but do we deliver? Josh has delivered.

So I'd like to make a couple of observations about the story I think Josh is telling about corporate tax transparency, and I want to offer in response a slightly different story. I think the story Josh is telling is that using transparency as a means to generate the political will for corporate tax reform poses some risk, real risk, to the tax system administration. I think we'll have some discussion about how genuine that risk is and how it should be measured against other risks, like firm competitiveness and proprietary information and so on. But I'll leave that discussion aside for now to focus on the first part of the proposition, and that is what we're trying to do with corporate tax transparency is generate the political will for reform.

Now I should preface this by saying that I am by nature and profession a curious type of person, and I would love nothing more than to be able to pore over the 57,000 pages of some corporation's tax return and totally geek out about how fascinating and intricate the income tax system really is. Right? And then draw some conclusions about how poorly we seem to be managing things, and I would probably end up blaming lawmakers for serving special interest groups instead of the greater good. Moreover, I would really relish seeing what somebody like Kim Clausing would do with that kind of data.

So I am for transparency, and sunshine, and sunlight, and so on and I think if you've read some of my prior work on the subject, you will no doubt be unsurprised to hear me say let's throw back the curtain—or, I think you said raise the curtain—and have a look. Let's call it an issue of accountability and governance, and let's keep lawmakers on their toes by letting folks at this data that lawmakers are so jealously gardening for their own reasons. We humans don't seem to have too much privacy from the government, so let's us get to the business of crowdsourcing, the monitoring of the artificial people among us.

But I keep coming back to the problem of what are we trying to solve here. If the goal is to generate political will for change, then I'm actually not so optimistic that corporate tax return disclosures is going to get us there. Instead I think it will lead us to continue having interesting discussions about whether or not we should be taxing corporations at all, or the variation that we had earlier today, which is how to draw the line between avoidance and evasion. That's to say we've already been taught, even without corporate tax disclosure, to expect that most American companies, especially those with a global footprint, aren't paying much tax anywhere. The jig is already up. This is not a secret. We're not rioting in the streets about it for the most part.

Sure, corporate tax disclosure will confirm what we already know, but I'm not sure if getting all the gory details is going to push the political picture that much further. Maybe it will, because we clearly have an "Overton Window" in which really taxing American corporations is not thinkable. And maybe widespread naming and shaming, or just naming, will move that window. I think it's also possible that the sheer enormity of everything that you're going to see laid bare is going to very quickly lead to resignation and more handwringing, and not so quickly to actual reform. But if we're already at that stage now, we already have the stories—we already know the story. If we're already there, then we don't have to wait for corporate tax disclosure, do we? We can already accept the notion that if we're going to collect more from any taxpayer, corporate or not, what we need is not more public information, but more withholding and more third-party reporting. So let's see if I can unpack that a bit because I know that's to say a lot.

So I think it's worth noting that for the vast majority of people, it is not the case that the income tax system is voluntary. And why is that not the case? It is because for that vast majority, every dollar they earn is reported to the IRS by someone else. And most of these dollars are also subject to withholding, and so you have to work some to get any of it back at the end of the year. And if you are an employee, you won't get much opportunity in terms of base erosion at all; you're basically paying a gross receipts tax. We have made wage earners easy to tax with withholding and third-party reporting. And more or less, gross basis taxation with a few exceptions.

But corporations are different. They are really hard to tax, especially when they are crossing borders. We give them lots of opportunities to carve away their gross and get to a very small net. Withholding and third-party reporting and filing for refunds is generally not the way we get corporations to pay tax. For them, as Reuven said earlier today, the income tax system really is voluntary, and lawmakers have given them a lot of discretion. Transfer pricing is just one very prominent example of this. So maybe you're looking at corporate tax confidentiality as well; it's just too much license to engage in discretion that is only monitored by the IRS, and, gee whiz, who's monitoring the IRS to make sure it's monitoring the corporations as they employ that discretion? Or maybe we're looking at a moment when we say, well, why are we bothering with net income taxation at all—after all—when it generates so many fees for lawyers and accountants, and so very little for government, and we don't seem too exercised about effectively gross basis tax for wage earners, so why are we so exercised about that for corporations?

If any of this is true, then maybe disclosure is a way to have more informed public debate about the income tax system. But if we're having that discussion, then it seems not at all clear to me why we would be limiting the conversation to publicly traded corporations at all, when we are as or more interested in Cargill or SC Johnson or your local mom and pop cash flow all-cash business as we are in Google or Apple, who have at least to tell us a few stories about their tax affairs. And if we have that conversation, you must admit we are limiting ourselves to corporations—that was your point I think earlier—and not looking at other untold billions of dollars that go untaxed because they're not subject to reporting or withholding.

So now we come to the punch line, and that is that it is possible that corporate tax transparency is going to throw back the curtain on one sector of society—publicly traded corporations—but the irony is these are the people, this is the very sector about whom we actually have more information about tax than any other, precisely because they already have disclosure rules. That disclosure is exactly why we already know there's a problem, and yet we have not mustered the will to solve it. GE has been in the news with its zero corporate tax rate for years. Sorry, but it's true. I think little is likely to

change with more info until people start to figure out that what we actually need even more than disclosure—and if we want to make sure everyone is paying their fair share—we the public need to be inspecting the tax returns of independent contractors and small businesses. And yes, and eventually we the public would want to inspect the returns of all the rich people, not just presidential candidates, to see how come they get away without paying any tax when we the wage earners keep paying year in and year out.

Of course we already have drawn the line there—that's your first paper—and declared taxpayer privacy to be a legitimate barrier to public discourse over the minute details of people's financial lives. So the conclusion, I think, we will be eventually forced to draw is that we, the public, haven't really mustered the political will for reform that would lead to more taxation of American companies. And we really can't help the IRS administer or enforce the tax system. In fact, as Josh suggests, we run the risk of undermining that effort, so disclosure might not get us very far at all. What we're going to have to do is start figuring out ways to do a lot more withholding and a lot more third-party reporting, and we are going to have to do that for all of our taxpayers, corporate or not, publicly traded or not. Maybe some or most of us already know that. We didn't need to read the corporate tax returns to tell us that, and we won't know anything new about the corporate tax system when we get that opportunity.

Now I hate to end with the topic of FATCA. For those of you who don't know, FATCA is a global third-party reporting and preemptory withholding regime designed to make sure Americans declare and pay their taxes on income and assets held overseas. It is not a workable system, it's a mess, but think about the design. In theory, it says the IRS could eventually, once all the kinks are worked out and everybody gets onboard, track every dollar ever paid to any American anytime, anywhere. If that's true, if that's even partially possible, we can see the problem here is not at all about capacity. It is purely a question of political will and nothing more, and it never has been.

A parade of stories about offshore tax evaders got the U.S. to adopt FATCA. Yet a parade of stories about GE, Google, and Apple avoiding their taxes has not got the U.S. to embrace corporate taxation. In fact, we seem to be seeing the opposite

response in the base erosion and profit shifting initiative, but that's another story altogether. I'm not convinced, therefore, that corporate tax transparency will lead to more corporate tax. However, I would still love to get my hands on GE's tax return. Thank you.

PROFESSOR REUVEN S. AVI-YONAH: So I guess my reaction to this question is, why not? I've yet to hear a really good reason why these returns should not be made public, at least in parts, and I think actually Josh has got a long way to suggesting that they should be made public in a very large part. And if all the suggestions that he made were adopted, then I think we'll—I'm not sure there's that much left to fight about.

So let me start by discarding a few of the rationales that are usually given for why we shouldn't be publishing corporate tax returns. The first one is privacy. I don't believe in corporate privacy. I think for individuals, I'm perfectly willing to accept, and I believe in, the right to privacy—not vis-à-vis the government of course, but vis-à-vis their fellow citizens. I mean, there's no reason why we should—just like we don't have to disclose our salaries unless you work for a public university like me, we don't have to disclose anything else about our private financial affairs. But that, I don't think, applies to corporations because corporations are not people from this perspective.

So the second one: This whole question about proprietary information, and that, I agree, is a legitimate argument to some extent, and so I would be perfectly willing to accept limits on disclosure just like we do with private letter rulings in order to prevent a disclosure of things that can help competitors.

But now let's get to Josh's favorite argument, which is the strategic advantage argument for the government. So I can see it in the individual context, because it is true that there are so many returns out there that the government can strategically choose to publicize those evaders that go to jail, and that is helpful, and you don't see all the people who get away with it. But in the corporate context, I'm not a hundred percent sure that that's how it works because it seems to me that based on what Allison just said, we actually seem to hear mostly about the corporations get away with it. That is we hear about all the Apples and the Googles and so on, and in fact we hear too

much about them, in some ways, because that gives the impression that all the corporate taxes are unpaid.

The thing that's really striking kind of from an academic and macro perspective is that—and this is something that Peter said last time and it's true—that there hasn't really been recently a major decline in the share of total revenues that is paid by corporations in this or any other OECD member country. It's around ten percent and that's really striking because there's disparity between the macro numbers, which tell a no-decline story, and the micro numbers, when you focus on particular corporations, would seem to suggest a significant decline and not paying taxes.

And I think the answer is that there are a lot of big corporate taxpayers out there that actually pay quite a bit and there is evidence of that. I mean George Yin did a study of all the effective tax rates of the Fortune 500, and he showed that there are huge disparities, but there are quite a bit of them that actually pay pretty high effective tax rates. And those tend to be the ones that for one reason or another find it hard to shift the profit overseas, for example, because they are kind of bricks and mortar types of guys, and Walmart, for example, is a prime example. And they tend to be not very enthusiastic about suggestions for participation exemptions, or territoriality and so on precisely for that reason because it doesn't help them so much, and you can see the corporate world now being split along familiar lines in that context.

So it seems to me that the whole strategic planning thing, from a government's perspective, works the wrong way for corporations. All you hear about is the bad—or I wouldn't say, that's pejorative—the corporations who managed to manage their affairs in such a way as to pay very little tax, and you don't hear about all the other ones that pay a lot, and publicizing everything would in fact, I think, help, by giving the public a more realistic sense of the corporate tax and all of those players that actually pay quite a bit.

And the same goes with benchmarking. I think corporate tax directors already benchmark to some extent because, of course, the effective worldwide corporate rate is published in the financials, and so they look at that. And I'm not entirely convinced that giving them more details would necessarily lead them to be more aggressive because I think that to the

extent that their intent—that they can be aggressive or incline to be aggressive, they already are, and I find it hard to imagine that in this world there are—yes, the GE tax department is the best, no question about it, well known, but nevertheless—I mean, it seems to me that the major, the other big American corporations have somehow managed to come up with the "Double Irish Dutch Sandwich" and other things like that or ways of doing check-the-box. I mean yeah, some of these first, but then other people—somehow it always percolates in the community and nobody really is hiding something dramatic that revealing the corporate tax returns will somehow tell people how to do it, I don't think.

Fundamentally, it seems to me—and this relates also to our previous discussion—it's a matter of tax culture. So in Japan, for example, corporate tax returns were public for fifty years and then they stopped being public in 2004, and there hasn't been a noticeable change in behavior and in payment. And the reason, fundamentally, is that Japanese tax managers are not aggressive. The whole culture is not one of aggressive tax planning, and it doesn't matter from that perspective whether they're public or not. And here, the culture is, at least as we said in the last twenty or thirty years, that they're pretty aggressive, and they're going to be aggressive, I think, regardless of whether they publicize the returns.

So what's the value of publicizing their return? I think the value fundamentally is that this is important information about really important players in the economy, and it's a good idea to let the Lee Sheppards of the world take a look at it because they will be able to tell us interesting things about important things. And the same with the economists who studied this, and the same with even the legal academics who—God knows I wouldn't know what to do with GE's tax returns—but there are other people who would know what to do with it. And so I'm all in favor of publicity in this regard. Thanks.

MR. BARNES: I'm going to try real hard not to rise to the bait. I feel a little bit like the lion in the zoo; they threw a lot of red meat out there, want to see what I'll do. I'm going to behave; my mother taught me very well. My only observation is that it's a great thing that I'm a retiree from GE because if I wasn't I was going to be very soon for participating in this—

[Laughter]

—conference, but I get my pension check the first of each month, and I don't think that's going to change.

I'm delighted to be on this panel as well. In a way, though, it's sad because it suggests that there aren't enough taxpayers to go around. We have to recycle them and put them on each panel. I don't see any taxpayers out there; I'm the only one and so I get put back up here again.

There's a lot in this article, Josh, and I appreciate it—it's terrific. I particularly appreciate your discussion of the continuous audit that faces 800 companies, I thought the number was actually 1,000—I think it has been 1,000 and more in some prior years. This is an important issue, and it's important for the following reason. We throw around the words like "shift the income," pejorative language suggesting that oh, taxpayers are doing this, doing that, doing this, doing that. Every time we say that, every time we use the word, "oh, they just shift the income," we're condemning the IRS and its 100,000 employees as not doing their job.

The major corporations have anywhere from a few to thirty agents who come every day to look at the return, and if there is all this shifting going on, implicitly—whether we admit it or not—implicitly we're saying those agents aren't very good. I don't think that's true. I think those of you who've worked with agents recognize that they're extraordinarily talented professionals. They have a challenge—they do get a 57,000 page tax return, and they do have to make sense of that, and that's big, and that's tough.

But I want to come to the defense of the IRS agents, and I want to counsel all of us to be careful about our language because we're implicitly suggesting that the agents aren't very good, and that's not healthy. It's not true, but it's also not healthy for the tax system.

The second point I want to make is Josh has gone to great, great lengths to say this isn't about shaming. This isn't about shaming. I appreciate the effort Josh, but this is about shaming.

[Laughter]

I worked as a journalist for three years before law school. I worked overseas, I worked for *The Washington Post*, I wrote stories about how the big oil companies smooth their earnings by making different accounting elections. This stuff is hard. This

stuff is really, really hard. And I think the articles that we've all read over the last few years about corporate tax returns and corporate tax payments reflects how hard it is. There are corrections; there are substantial corrections after the articles come out. The idea that by putting out either the whole return—and I'll get back to that in a moment—or selected portions of it, we're going to really get insightful articles—no disrespect to the journalists in the room—but it is not likely in my mind that we're going to get deeply insightful articles.

Let me just ask, how many people here have actually looked at any corporate tax return, I don't care how big? Got a few, got a few. Do you think there's any way that you can really understand what taxes were paid where? What the transfer pricing methods were? It's not in the return. You might be able to take all the 5471s on your overseas corporations, add up income and foreign taxes paid—that is not reflected on the 1120, Josh, because it has no impact on the 1120. These are deferred earnings. Oh, by the way, that's in a foreign currency. It's not in dollars.

With all due respect, you take an 1120, and you can't get very far. I'm not worried about reverse engineering because I don't think anybody can reverse engineer off the return itself. The way the agent makes sense of it is with 300 IDRs. Now a lot of these are form IDRs—the taxpayers know they're going to have to fill them out, but the idea that we're really going to get information, I think is wishful thinking, and so I think what we're really talking about is shaming.

I think if Allison got her hands on that 57,000-page return, what she'd ultimately ask for is a bridge. She'd ask for some kind of M-3 as it were, but an M-3 with a whole lot of details that takes me from A to Z in some way that you could actually make sense of. I don't think that anyone looking at the returns themselves is going to get very far.

So my bottom line—and I'm not done yet, because I've got a couple of other points I want to make—my bottom line is, if what we're concerned about is understanding more about the taxes paid by these things, these corporations, let's skip over this silly debate in my mind about making public corporate tax returns, and let's focus where the meat is, and that's the tax disclosures on the financial statements.

Over the last few years, the tax footnotes have expanded. Increased disclosure has been required. If there's some specific information that we think we need, let's expand the financial footnotes, the tax footnotes in the financial statements. That will give uniform presentations; that will give information that is in a harmonized, consistent manner; that will have the accounting firms serve as policemen to be sure that there's some level of consistency. To me, this question of the public revelation of the tax returns is a distraction and doesn't get us where ultimately we'll go—I'm confident, whether it's two years or ten years—which is increased disclosure in the financial statements.

Finally, let me talk a little bit about transfer pricing. Josh has a very thoughtful, very comprehensive discussion of whether APA material should be made public. And Josh concludes that based on whatever evidence there is—and I've realized he's doing the best he can with what he's got—that he doesn't think revealing all of the transfer pricing information and APA requests would deter taxpayers and it might have some positive impact broadly.

Transfer pricing is a tough, tough area, and I regret that people are so glib about oh, you shift here, you shift there. And I invite Allison, in her sabbatical year, to move to a company and deal with transfer pricing on a daily basis. I think it would be extraordinarily informative and helpful.

PROFESSOR CHRISTIANS: Yeah, I'll take you up on that.

MR. BARNES: Most transfer pricing, the vast, vast majority of transfer pricing, is just trying to survive. You've got a company in the middle of two governments and you've got to be able to tell both governments, "This is okay." And I just think anything that discourages APAs—and to me full disclosure of all your documents would discourage APAs—is a step in the wrong direction because transfer pricing is very tough. It's tough for taxpayers. It's tough for governments. And I don't want to put my thumb on the scale that would make one of our valuable tools, which is the APA, less valuable. Remember, the APAs are extraordinary helpful to the governments. It's an audit before you do the transaction. You tell the government more than you would in an audit, and I don't think for the fact that some other taxpayer may get something out of even a re-

dacted APA is worth diminishing the values of the APA to the system today.

So Josh, I salute you, I appreciate what you've done here. I think we ought to turn our attention away from the question of public disclosure of the tax returns and focus on what is it specifically we think people really, really deserve to know, need to know, and focus on the tax footnotes of the financial statements. Thank you.

[Applause]

PROFESSOR KAMIN: So Josh, would you like to take a few minutes to respond to some of these comments?

PROFESSOR BLANK: Well just a couple of minutes. Thanks for excellent comments. I really thought a lot more about issues just as I was listening to you than I had when I was writing the paper, so I really appreciate all of the feedback.

I guess just a few quick points. One is that even though the comment has been made that tax directors really know what's going on, everybody kind of knows what the games are that people play—that really doesn't account for all of the angst that we constantly hear about from tax directors and their advisors about things like, what is required to be disclosed on these forms? When does this particular non-economic substance penalty apply? The fact that there is that much angst out there and you can read many, many articles in *Tax Notes* about this—lots of conferences where people question the IRS about the uncertainty they face. The fact is that there is a lot of uncertainty about what you're supposed to be doing in terms of the particular forms, what will trigger the penalties, and the transfer pricing world—much of it that exists outside of the APA context—is uncertain.

And so access to corporate tax return information at least in terms of these things that the government requires people to disclose—the content of the forms, if we can figure out information about when the penalties were applied—would provide a lot more information to corporate tax directors than they currently have. And, as I've tried to argue, there's a number of unintended consequences we should think about.

Second, if we just think about the public and what would people see even with just this form, we could determine the amount of tax a corporation paid to the U.S. government. Just to make sure that I call Peter on one comment, you can see

the tax rate of a corporation in publicly filed financial statements, but these are calculated on a global basis using GAAP, not tax, which calculates income in a different way. It includes, for example, tax-exempt interest, whereas tax wouldn't. It doesn't include—it excludes other things. The point is that today you can't actually figure out how much a major corporation like GE or Google is paying to the U.S. government unless it's been voluntarily revealed. Even with this one piece of paper you could find that. You could figure out the corporation's taxable income and have a more accurate discussion of what's the corporation's U.S. effective tax rate. You could figure out—if you took a look at the global taxes that are reported (even though on a GAAP basis) and compare it to the U.S. taxes—how much a corporation is really paying to the U.S. versus what it's reporting it's paying globally, and at least get an approximation of U.S./non-U.S. tax liability.

Third, in terms of shaming, I will dispute Peter's one comment on this. I actually am a very strong opponent of corporate tax shaming. I've written an article called "What's Wrong with Shaming Corporate Tax Abuse." And one comment I would make to Peter is that I actually think that publicizing, even this one document, would be very helpful to GE in the sense that reporters don't understand what this word "net operating loss" is. What does that mean? When I see the list of zero percent taxpayers, I actually, I'm not upset as an advocate, I'm upset as a tax expert. And that—I understand the reporters are ignoring net operating losses and the fact that the corporation isn't actually doing something devious to get to the zero percent rate. But we don't have that conversation today because we can't even see this document, and on one line you would be able to see that.

The fourth thing I'll just say on APAs, I do think we have interesting evidence we can take a look at because in 1999, advance pricing agreements were made public. The IRS conceded the point in litigation with BNA and decided that it was going to be treated just like written determination like private letter rulings. And for about six or seven months, people thought that all of the APAs that had already been entered into would be published in redacted form. It's a small sample, but what we can see from that one period is that participation in the program that year did not go down. It actually—it was

one of the higher years in terms of the number of corporations that sought advance pricing agreements.

The value of these agreements compared to litigation is so significant that, just like private letter rulings, I think even in redacted form, corporations would still pursue them—as opposed to what we currently have, which I think some people have accurately characterized as secret rulings on substantive law from the IRS as a result of requests from specific taxpayers. I think for a number of reasons this does not affect the strategic advantage of tax privacy, and again, to have a more informed debate it would be useful to see that information.

The last thing I'll just say is that as we've been talking about APAs and M-3s and 1120s, this is just a discussion of possibilities, but there are many others. The "pink slip" that was created in 1934 had a list of arbitrary points on there that Congress thought would be relevant; we could do the same thing today. We could think of particular tax expenditure items where it would be relevant for us to see which particular corporations are benefiting from them. We could design the "pink slip" however we want. So the response to the criticism that there's not a lot in the corporate tax return, we couldn't really get what we need—that's not permanent even if we accept that. We could change the form of public disclosure in order to—again, not shame—but encourage a more robust and aware public in terms of discussions of this issue.

PROFESSOR KAMIN: All right, we now have some time for questions.

MR. MICHAEL SCHLER: Yeah, two things. First, one benefit of disclosure that I think hasn't been mentioned is that I think what actually helped the IRS enforce the tax laws because, sure they all in theory know about everything and everybody's tax return now, but that's really thousands of agents out there in the field. And I think if newspapers started discussing some of the things that are in particular taxpayers' tax returns, it would actually get higher up in the national office, and they could actually do a better job of telling agents what to look for and actually what companies to audit that local agents might have missed. Because, I mean, smart people looking at tax returns, even without some of the IDRs, will pick up things that an agent just might not have picked up, so I think that will actually help enforcement.

The other thing, Peter doesn't like calling something "shifting of income." Of course there's shifting of income going on. I mean, why does the Cayman Islands have hundreds of billions of dollars of income somehow? When you're stuck between two governments, it doesn't really—it's not the same thing as between the U.S. and the U.K., and between the U.S. and the Cayman Islands, which is really what we're talking about. And I'm sure that we have these hard—and that doesn't say anything about the hard-working IRS agents, because it's what I was saying before, it's a legal loophole. I mean, it's probably legal to shift, under current law, to shift all the stuff to the Cayman Islands. There's nothing the IRS agents can do about it. That's why we need some reform in the pricing rules.

PROFESSOR BLANK: I guess, just really quickly on the public watchdog point—I'm sure Peter has something to say on the shifting point—but on the public watchdog point, the only response I guess I would make is one assumption baked into that is that the IRS has the budgetary resources to go follow up on all of the leads that would come in if all the tax returns are public and everybody could alert the government of potential malfeasance. Given the IRS's budget, I think that's not realistic today. It doesn't have to be, but that's not the current capacity of the IRS.

MR. SCHLER: Could I just—it might encourage corporations not to be too aggressive if they knew that it might be publicized and get to the IRS that way.

PROFESSOR BLANK: Yeah, I think that one important point to note is that in a corporate tax return, as Peter said, you're not going to see the latest and greatest tax shelter technique, which nobody knows about yet because this company just is the first to use it, because the red flag disclosure forms won't pick it up. I mean, that would be an ideal tax shelter to design. So as far as the public spotting that, the IRS can't spot that. I mean, that's the whole problem. What I do think that you could see are the degrees of aggressiveness, you could see how many Form 8886s a corporation filed, you could match it up to the uncertain tax positions. But as far as the public catching something that the government is not, I don't think that's going to happen from the tax returns.

One thing that the government does is it pays people rewards to inform the government and then if the government collects tax, the government pays a portion of that to the whistleblower. The most famous example from the last couple of years is Bradley Birkenfeld with UBS who went to prison and then collected $104 million dollars from the IRS as a prize for reporting on UBS. So would public access help, especially when you think about the fact that those reward possibilities are out there? I mean, it actually says in the statute if you get the information from the media, you still get a reward, it's just a ten percent reward, but you get a reward.

I mean, my reaction is I think that the people who are really going to provide this information like Birkenfeld are at the company. They have access to the information; they just need an incentive to report it. I don't think that we need to use public disclosure of all tax return information to get those people to come forward. They already have the financial incentive to do so.

Ms. Lee A. Sheppard, *Tax Notes*: One little point, I mean, obviously, I'm in the disclosure business, I want anything and everything disclosed. Fine. I do think, though, if you start disclosing tax stuff that is hard to read, you're going to need some more narrative somewhere—maybe it goes in the financials—because sometimes when you're looking at—let's take the pressure off GE for a second—a big bank, right? The flaky number's not the zero tax number. The flaky number is the earnings number. Oh, you clawed back loan loss reserves, that's not real earnings. And of course you owe no tax on it because you didn't really earn any money, so there has to—and I think you're overestimating the utility of Schedule M-3 as a roadmap to that. There has to be kind of a narrative somewhere where somebody says, "Well, yeah, we told the shareholders we earned money, but if they can't look in those damn footnotes and see what was clawback of loan loss reserves, well that's their problem."

Professor Avi-Yonah: One thing I would say about this discussion of disclosure, I think in a way it's a pity we don't have an economist or an accountant on the panel, because they're the ones who can really read this stuff. I mean there's a huge difference between the articles that somebody like Harry Grubert who has access to the Treasury data rights and the articles that Kim Clausing or Jennifer Blouin or Michelle Han-

lon write. They're all really good economists, but it's just the data you can get with the financials is not the same. They all say that, and I trust my economist co-authors on this one. I think that that's the audience that, more than journalists, more than anybody else, would be able to use the data in a way that are really illuminative and informative.

PROFESSOR BLANK: We actually have with us Professor David Spencer, who teaches Accounting for Tax Consequences in our Program. I don't know if you want to say a couple of words about what you can see or anything of this, but you kind of have been called into duty by one of our panelists.

PROFESSOR DAVID K. SPENCER: Well, a couple of my students are here at my invitation, and I'm glad they are here. We do a two—I created this course with Josh's help that we do now have a two-credit course on ASC 740, on the financial accounting standards that govern taxes. And one thing I will say, which I think is, you all might agree with is, this stuff is really complicated. I actually talk about GE's *New York Times* article and I quip a little bit that *The New York Times*, which I respect a lot, got it completely wrong. It did not understand—

MR. BARNES: [Interposing] Thank you. Can you repeat that one more time? Somebody may have missed it.

[Laughter]

PROFESSOR SPENCER: *The New York Times*, let me repeat it—

PROFESSOR CHRISTIANS: [Interposing] But read GE's response to it and that's equally muddled, so they didn't exactly—

PROFESSOR SPENCER: [Interposing] No, I was about to say, and the second thing I say is the first thing is that *The New York Times*—

PROFESSOR BLANK: [Interposing] I wonder if there's a document that could help us understand—

[Laughter]

PROFESSOR SPENCER: [Interposing] Yeah. That *The New York Times* reporters don't understand how DTAs work, but we spend two credits on this. It's a full two-credit course. We now have, I think about sixty people who do understand this at least, and growing every year. But *The New York Times* did not understand how DTAs work at all, but I also quip that it's not clear that GE's CFO understood whether or not GE had actu-

ally paid cash taxes in the U.S. because some of their responses indicated that they didn't understand how their own taxes worked.

MR. BARNES: Yeah, that shows the danger of tweets. I'm dead serious here. I'm dead serious. The reference is to a tweet. And I think the fact that a tweet can be misinterpreted shows that this is complicated stuff and anyone who tries to simplify it runs a big danger.

PROFESSOR SPENCER: I agree. Now look, there is a—I think something Peter said is worth repeating: that there are rules. I was telling Josh, and Josh and in his paper I think talked about some of the public debate is shaped by what ASC 740 specifically requires. If you look at the repatriation debate, a lot of the reason we have such detailed debate on so-called "trapped overseas earnings" is because the accounting rules require specific disclosure of the amounts and not other items that people might be interested in discussing.

I think as an academic panel, you all might want to march up to Connecticut and talk to the FASB, and I actually think that Josh might agree with you. I would tell Josh that he should agree with you that it's six of one, half a dozen of the other, as to whether you change ASC or require public disclosure of the first page of your 1120—it's going to get to the same amount. I'm not sure there's real objection to it because there are plenty of other documents that the Securities and Exchange Commission, through FASB, requires you to disclose—source documents—and in fact, it's very common; every corporate lawyer knows that the SEC doesn't require you to attach schedules when you are required to attach a material contract, which is why you always draft a contract and put anything you don't want disclosed into a schedule. This is a very analogous situation to what happens in other contexts in accounting. So I'm not sure that there's a real objection to putting the 1120 or the bare 1120 without schedules as an attachment to an SEC document—it's pretty well precedented in other contexts.

But it is very complicated stuff, and I think there's also a muddlement factor. We spend a lot of time on it, and a lot of the answers aren't—I say a lot of times in class, there isn't a correct answer to this. It's an accounting question; you have to make a determination of which way you're going to report it, and I'm not—there are many questions where there is not a

right or wrong policy answer, and there are things that I think cannot be explained without taking an hour to really understand, you know, what is the Zen nature of a reserve—releasing a reserve allowance on a carryforward net operating loss, and the fact that you've booked a DTA, but are now releasing it to switch to AIG.

The New York Times hosed AIG for having this enormous year on a phantom basis, which I do cover in class as well, and I think again the *Times* got it wrong. I think AIG had a very real change that was reflected in a very real paper accounting difference. But these questions do get very complicated. I don't think it hurts—I agree with Josh though, I agree with Reuven as well—what's the harm in releasing a page or two of an 1120? I think if what you're getting at is the public has an interest in, did she pay taxes or not? I mean that's—you can either change ASC 740 or you could just say, hey, put it out there.

Mr. Barnes: [Interposing] I think there is a slight difference. Your point's well taken, very well taken, very articulate. I think where we will end up—and this is personal opinion, nothing more—is I think if you go out five years, there will be additional disclosures and connection with the financial statements. And to me, that gives a better way of creating the bridge, creating the narrative, than having bare disclosure of a front page of an 1120 or something else. So I guess, I just view the return itself as a red herring; let's get change in the accounting statement, change in the required disclosures under the SEC because I think that's where we're going to end up.

Professor Christians: But there is another way, and I think here in, yes, it's mostly economists who have this, but there's also at least one political scientist who's gone into the BEA, that's Nate Jensen, and if you gave Nate Jensen access to tax returns—and you can sign all those things that you sign when you get into the BEA data of confidentiality—then a narrative actually could be possible. And you could actually get someone like Nate Jensen cross-checking because the BEA information is supposedly what American companies really do—the real economic substance of what decisions they're making, and the tax return is something else. And somebody like Nate Jensen or Kim Clausing, an economist, political scientist can develop that and write something up.

But again, these are—what you're talking about with public disclosure is public companies. Why are we talking about public companies? Why are we limiting it to public companies? And no amount of corporate publicly traded disclosure in the SEC is going to solve that problem. But access to tax returns the way we have access to BEA data could do that. And so don't—isn't that something worth exploring as well? Not instead of, because as you know, I want to actually turn, I want to read it. I think I would learn something. I want to be a better academic and be able to say something that makes sense. I can't do that because politicians have decided that they want to keep that information private. Confidential. That's a political decision.

PROFESSOR KAMIN: So to throw a question at the panel, I sort of see two ways the arguments are going. There is a question of how important it is to have data about individual companies, and where you can actually identify specific companies and what they are doing in terms of their taxes. So you could say, if the Citizens for Tax Justice analysis of corporate—how much each corporation pays, which has at times played an important rate in the debate—you could say we want to release information that allows that kind of analysis to be done in a better way. It gives it greater credibility. So that's sort of one set of information. And that will just lead to a list of companies and sort of what they individually do.

The second type of analysis is analysis that will sometimes require the kind of micro data you get only if you're looking at the IRS database, but doesn't actually involve the individual companies themselves. It will instead be the type of analysis you're talking about the Treasury can do, based on when they've got their full statistics of income database. And the response, whether we think whether it's the macroanalysis or the individual company analysis, the response, the policy response to these two things is very different in terms of what—how you actually react to it? Which of these things you think is the most valuable?

So I'm curious, which is most valuable? Is it the ability to actually look at an individual company and say, that's the amount that company is paying, or is it instead the kind of macroanalysis that you can only do if you have a micro database of all the companies put together?

PROFESSOR BLANK: And I think the answer is: both are important. But if we think about the public—and when I say the public, I'm not talking about individuals on the street reading corporate tax returns, but receiving the information through intermediaries like reporters, journalists, and academics. In order to get the public engaged, you need the names. I mean, Michael Graetz said this in his book on the estate tax—I think it's the best way to describe it—"stories trump science." You could, right now, go read on the IRS website last year's individual audit rate, which was about 1.03%. That's not a secret, but again the government uses the examples of people going off to prison who we all know, and that makes an indelible imprint on our minds.

When it comes to public debate and large corporations, again if you go back, I think the 1986 Act is a great example to take a look at, and when people started to hear about Boeing and a number of other corporations by name, that—and also today, if we think about all the stories on Google, Apple, that, I think, is what makes this topic accessible to the public.

To get to your second point though, David, I think that the data is very important, and we have to balance our desire for data against the other potential interests. If we saw every single piece of paper possible, including every internal IRS document, that would be great in terms of data. So I think that the answer is both are important. Some of the proposals could reveal more data, obviously, than others. But as far as the goal, which I think really is at the core of this—not shaming, but public awareness, debate, more accurate discussion of this than just what we see in news reports—I think that you need the names. I think the names are essential.

PROFESSOR CHRISTIANS: Well, that's what Carl Levin said, he said we need the names, we're not getting the names and it was all about names. It's very, very hard to get names and not shame.

PROFESSOR KAMIN: So I think we have time for one or two more questions.

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Editor's Note: The additional Q&A session with the audience members is not reflected in this transcript, and is available on the *NYU Journal of Law & Business* website.