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## CANADIAN TAX FOUNDATION

Kebyn Nightingale et David Turchen, « Expatriation: The American's Tax Experience in Canada », *Revue fiscale canadienne*, vol. 61, numéro 1, 2013, p. 1, 40 pages.

<http://www.fcf-ctf.ca/ctfweb/CMDownload.aspx?ContentKey=4fa01c65-281b-437c-8099-bae25c4fbca6&ContentItemKey=11eb8ece-4a53-4f1a-a676-cb888fe67ed5>

Les principaux impacts fiscaux pour les citoyens américains vivant au Canada qui décident d'abandonner leur citoyenneté américaine.

- Seuls deux gouvernements dans le monde — les États-Unis et l'Érythrée — soumettent leurs citoyens à une imposition mondiale complète indépendamment du lieu où ils vivent. Il y a plus d'Américains qui vivent au Canada que dans tout autre pays étranger. Bien que les deux pays aient des régimes fiscaux semblables, il y a tout de même un certain nombre d'incompatibilités. En conséquence, les citoyens américains qui vivent au Canada rencontrent plusieurs obstacles majeurs pour exercer leurs activités ou planifier leurs affaires, comparativement aux citoyens non américains. En outre, la charge administrative imposée par l'Internal Revenue Service des États-Unis est lourde et ne cesse de s'accroître. Une politique d'application de la loi plus musclée ces dernières années a conduit un nombre croissant d'Américains vivant à l'étranger à abandonner leur citoyenneté américaine ou leur statut associé à la carte verte. Cet article traite de l'histoire de ce phénomène et des conséquences fiscales pour les Américains vivant au Canada qui abandonnent leur statut de citoyen des États-Unis.

Alex S. MacNevin, « Comparative Tax Advantages of Canadian Pension Funds as Investors in Real Estate », *Revue fiscale canadienne*, vol. 61, numéro 1, 2013, p. 41, 38 pages.

<http://www.fcf-ctf.ca/ctfweb/CMDownload.aspx?ContentKey=4fa01c65-281b-437c-8099-bae25c4fbca6&ContentItemKey=afa0a5b6-abd3-4a45-b39d-c3fe11fef75c>

Analyse des obstacles potentiels des caisses de retraite et des régimes d'épargne à conditions fiscales avantageuses versus les investisseurs imposables traditionnels.

- Cet article traite de la situation concurrentielle des caisses de retraite par rapport aux investisseurs imposables traditionnels en ce qui a trait à l'investissement dans des biens immeubles. Il analyse l'incidence sur les taux de rendement qui découle des différences dans les règles fiscales s'appliquant aux principaux véhicules de placement disponibles. Un accent particulier est mis sur la société d'investissement immobilier exonérée d'impôt dont il est question à l'alinéa 149(1)o.2), qui est disponible aux caisses de retraite pour les placements immobiliers avec peu d'investisseurs, par rapport aux fiducies de placement immobilier (FPI) intermédiaires. Les FPI sont disponibles pour les placements

immobiliers à grand nombre d'investisseurs par les régimes de retraite et par les investisseurs imposables traditionnels qui investissent directement ou par l'intermédiaire de régimes d'épargne-retraite. L'analyse compare les placements immobiliers avec les rendements concurrentiels qui ont cours quand les placements sont faits par les investisseurs dans des actions traditionnelles du marché boursier. On y présente les résultats des scénarios de base reflétant les conditions d'investissement en Ontario en plus d'une analyse de sensibilité. Les résultats des scénarios de base soutiennent quatre conclusions. Premièrement, les caisses de retraite et les régimes d'épargne à conditions fiscales avantageuses (REER, FERR et CELI) permettent une poussée de 12 pour cent du rendement des placements en actions par rapport aux investisseurs imposables qui investissent directement. Deuxièmement, les investisseurs imposables et les caisses de retraite ont un désavantage fiscal à investir dans des placements immobiliers avec peu d'investisseurs par l'intermédiaire d'une société imposable parce que les rendements nets sont inférieurs à ceux des placements en actions. Troisièmement, les caisses de retraite qui investissent dans des placements immobiliers avec peu d'investisseurs par l'intermédiaire d'une société d'investissement immobilier ont un avantage important par rapport aux investisseurs imposables qui investissent par l'intermédiaire d'entreprises constituées ou non en société. Quatrièmement, les caisses de retraite, les REER, les FERR et les CELI ont un avantage important et équivalent par rapport aux investisseurs imposables lorsqu'ils investissent dans des placements immobiliers à grand nombre d'investisseurs par l'intermédiaire d'une FPI, et les taux de rendement absolus sont plus élevés que les taux que de tels investisseurs gagneraient en investissant dans des actions. L'étude conclut avec un bref examen des facteurs qui pourraient empêcher l'investissement des caisses de retraite dans l'immobilier.

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Cécile Carpentier et Jean-Marc Suret, « Les incitatifs fiscaux pour les anges investisseurs », *Revue fiscale canadienne*, vol. 61, numéro 1, 2013, p. 79, 80 pages.

<http://www.fcf-ctf.ca/ctfweb/CMDownload.aspx?ContentKey=4fa01c65-281b-437c-8099-bae25c4fbca6&ContentItemKey=74d013a0-3326-4d5a-9663-63526a243e00>

Les incitatifs fiscaux offerts aux anges investisseurs n'atteignent pas toujours leurs objectifs et pourraient même être contre-productifs.

- Pour promouvoir le financement des nouvelles entreprises, les pouvoirs publics accordent désormais une attention particulière aux anges, investisseurs privés qui financent directement les entreprises émergentes. En plus de financer les entreprises, les anges peuvent les aider à se développer en raison de leur expérience, expertise et réseau. Des incitatifs fiscaux de nature diverse ont été déployés, ou sont envisagés, dans au moins soixante États dans le monde. Au Canada, cinq provinces et un territoire ont déjà instauré de tels avantages. La conception et l'implantation de programmes efficaces dans le domaine du financement des nouvelles entreprises restent toutefois une opération difficile. Nombre de programmes manquent leur cible ou sont des échecs. L'analyse des possibilités offertes, des modalités des programmes déjà en place et de leurs résultats est essentielle pour guider la réflexion des décideurs publics. C'est l'objectif du présent document, qui commence par une définition précise des anges et par la présentation des raisons qui incitent désormais de nombreux gouvernements à privilégier cette catégorie d'intervenants. Nous proposons un double cadre d'analyse. Le premier est une synthèse des avantages et limites des principaux types d'avantages fiscaux qui peuvent être consentis aux investisseurs pour les inciter à accroître leur activité d'ange investisseur ou à devenir des anges actifs : crédit à l'entrée, réduction ciblée de l'impôt sur les gains en capital, déduction de pertes en capital du revenu imposable. Le second est une analyse des recommandations des spécialistes du domaine en matière de conception de programme. Nous étudions et récapitulons les conditions qui devraient être remplies pour que de tels programmes soient efficaces. Nous utilisons ensuite ces conditions comme une grille d'analyse de programmes types américain, européen, asiatique et canadien. Comme le souligne l'OCDE, les incitatifs fiscaux peuvent avoir des effets négatifs indésirables en attirant des investisseurs qui ne sont pas des anges, et qui n'ont donc pas les qualités requises pour sélectionner et suivre les projets. La revue des programmes destinés aux anges montre que leurs concepteurs ont généralement ignoré ce risque. Nous mettons en évidence un double paradoxe. Premièrement, alors que les crédits à l'entrée présentent de très nombreux désavantages, ils semblent être préférés aux autres formes d'incitation dans la vaste majorité des États. Deuxièmement, il n'existe pratiquement pas de programme qui vise spécifiquement les anges, définis comme étant des individus qui en plus des capitaux sont en mesure d'apporter aux entreprises l'encadrement, les conseils et les contacts essentiels à leur développement. Les programmes ne sont pas non plus conçus pour favoriser le sous-ensemble des entreprises à forte croissance qui sont le réel moteur de la croissance économique. Ces lacunes nous paraissent fort importantes. En particulier, les programmes que nous avons décrits sont susceptibles de provoquer une augmentation importante de la valeur des actions qui réduira le taux de rendement des investisseurs, en raison de l'afflux d'investisseurs peu qualifiés attirés par les crédits d'impôt. Nos recommandations sont présentées en dernière partie. Elles pourront être utiles au

Canada, où de tels programmes existent déjà dans plusieurs provinces et sont à l'étude dans plusieurs autres. Le document est complété par des annexes qui décrivent sommairement la soixantaine de programmes mis en place au cours des années récentes.

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Robert Couzin, « Policy Forum: The End of Transfer Pricing? », *Revue fiscale canadienne*, vol. 61, numéro 1, 2013, p. 159, 20 pages.

<http://www.fcf-ctf.ca/ctfweb/CMDownload.aspx?ContentKey=4fa01c65-281b-437c-8099-bae25c4fbca6&ContentItemKey=168c5ebe-7156-4442-ad2f-63733186a21f>

Suggestions pour remplacer le système des prix de transfert, intrinsèquement voué à l'échec.

- This article is based on a lecture delivered at the NYU School of Law in September 2012. It puts into question the viability of the prevailing model for the allocation of income within a multinational enterprise (MNE), the system of transfer pricing based on the arm's-length principle. The author likens transfer pricing to a scientific "paradigm" as discussed by the historian of science Thomas Kuhn, suggesting that its perseverance is due especially to the entrenched interests of its practitioners in both government and the private sector. At the theoretical level, transfer pricing suffers from a conflict with the reality of the MNE; in practical terms, it is challenged in particular on the grounds of complexity and the attendant cost of administration and compliance. The author briefly canvasses possible solutions to the impasse, focusing on profit splits and formulary apportionment.

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## C.D. HOWE INSTITUTE

Nick Pantaleo, Finn Poschmann et Scott Wilkie, *Improving the Tax Treatment of Intellectual Property Income in Canada*, Commentary No. 379, 25 avril 2013, 24 pages.

[http://www.cdhowe.org/pdf/Commentary\\_379.pdf](http://www.cdhowe.org/pdf/Commentary_379.pdf)

Stimuler les investissements dans la recherche et l'innovation en accordant des incitatifs fiscaux pour l'adoption, la commercialisation ou l'exploitation des fruits de la recherche.

- Policymakers are concerned that Canadian businesses invest too little in innovative processes, on the view that this inhibits productivity, growth, and incomes. The evidence can be found in Canada's low rate of growth in patent registrations and low rates of commercialization of new products and services vis-à-vis other member countries of the Organisation for Economic Co-operation and Development (OECD) and developing economies such as Brazil, China, and India. Some observers express concern over a presumed "innovation gap," and the share of Canadian patents that are held abroad. Canada's apparently lagging performance presents a puzzle with respect to research and development, because its federal and provincial tax systems treat business R&D spending quite generously, as compared with international peers. In this report, we address one policy aspect of these issues: the taxation of the fruits of innovation. In discussing the preferential treatment of income associated with business investment in research and development (R&D) and its commercialization and adoption, we pursue what are sometimes referred to as "pull" factors, which encourage firms to adopt innovative processes. In contrast, "push" factors encourage firms to invest in R&D irrespective of its link to innovation or the adoption of new technologies or processes, as is the current case in Canada. We present an option for modifying – by way of a new incentive model, known as a "patent box" or "innovation box" – Canada's current tax treatment of the income derived from exploiting the fruits of R&D. This would complement and in part refocus the tax preferences that business expenditures on R&D now receive. Under our suggestion, businesses possibly would receive less tax relief for conducting R&D, and more for adopting, commercializing, or otherwise exploiting the output of the R&D process – in short, a pull, rather than a push, into R&D activity.

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## FINANCES QUÉBEC

Québec, ministère des Finances, Statistiques Fiscales des Particuliers – Année d'imposition 2010, mai 2013, 334 pages.

[http://www.finances.gouv.qc.ca/documents/Statistiques/fr/STAFR\\_sfp\\_2010.pdf](http://www.finances.gouv.qc.ca/documents/Statistiques/fr/STAFR_sfp_2010.pdf)

## Statistiques en matière d'impôt sur le revenu des particuliers - 2010

- Le ministère des Finances et de l'Économie du Québec, en collaboration avec Revenu Québec, produit chaque année les statistiques fiscales des particuliers. La présente édition expose les statistiques fiscales en matière d'impôt sur le revenu des particuliers pour l'année d'imposition 2010, ainsi qu'une analyse sommaire réalisée par le Ministère. Les données proviennent des informations tirées de l'ensemble des déclarations de revenus des contribuables québécois à partir des fichiers de Revenu Québec et font l'objet d'une analyse par le Ministère.

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Québec, ministère des Finances, *Un nouveau régime d'impôt minier équitable pour tous – Stimuler les investissements miniers*, mai 2013, 46 pages.

[http://www.finances.gouv.qc.ca/documents/autres/fr/AUTFR\\_NouveauRegimeImpotMinier.pdf](http://www.finances.gouv.qc.ca/documents/autres/fr/AUTFR_NouveauRegimeImpotMinier.pdf)

Les propositions du gouvernement du Québec en matière d'impôt minier.

- La vision économique du gouvernement est claire : les investissements privés sont la clé de la croissance future. La stimulation des investissements privés représente une priorité, dans le cadre de la politique gouvernementale de création de la richesse et des emplois. Cette priorité s'applique en particulier au secteur minier. Dans le secteur minier, la mise en valeur de nos ressources dépend directement de la présence et de la croissance des investissements effectués par les entreprises du secteur, qu'elles soient québécoises, canadiennes ou étrangères, de grande ou de plus petite dimension. Ces mêmes investissements privés jouent déjà un rôle stratégique dans le développement du Nord. Le développement nordique est d'abord fondé sur la mise en valeur et l'exploitation des ressources minières présentes sur le territoire, jouant à cet égard un véritable rôle de locomotive. Les investissements privés dans les ressources minières doivent cependant profiter à tous les Québécois. Il est essentiel qu'ils soient effectués dans le respect de l'environnement, et que les activités minières ainsi financées aient toute la transparence voulue. Le gouvernement met donc en place le cadre et les règles permettant d'y parvenir en définissant un nouveau régime d'impôt minier, grâce auquel les Québécois tireront un bénéfice équitable de l'exploitation des ressources minières – ce régime favorisant en même temps les investissements.

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## ÉTATS-UNIS

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### CONGRESSIONAL BUDGET OFFICE

Edward Harris et Joshua Shakin, *The Distribution of Major Tax Expenditures in the Individual Income Tax System*, Congressional Budget Office, Pub. No. 4308, mai 2013, 31 pages.

[http://www.cbo.gov/sites/default/files/cbofiles/attachments/43768\\_DistributionTaxExpenditures.pdf](http://www.cbo.gov/sites/default/files/cbofiles/attachments/43768_DistributionTaxExpenditures.pdf)

La distribution des principales dépenses fiscales relatives aux particuliers en fonction des quintiles de revenus.

- A number of exclusions, deductions, preferential rates, and credits in the federal tax system cause revenues to be much lower than they would be otherwise for any given structure of tax rates. Some of those provisions—in both the individual and corporate income tax systems—are termed “tax expenditures” because they resemble federal spending by providing financial assistance to specific activities, entities, or groups of people. Tax expenditures, like traditional forms of federal spending, contribute to the federal budget deficit; influence how people work, save, and invest; and affect the distribution of income. This report examines how 10 of the largest tax expenditures in the individual income tax system in 2013 are distributed among households with different amounts of income.

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## THE JOINT COMMITTEE ON TAXATION

The Joint Committee on Taxation, *Report to The House Committee on Ways and Means on Present Law and Suggestions for Reform Submitted to the Tax Reform Working Groups* (JCS-3-13), 6 mai 2013, 568 pages.

[https://www.jct.gov/publications.html?func=download&id=4517&chk=4517&no\\_html=1](https://www.jct.gov/publications.html?func=download&id=4517&chk=4517&no_html=1)

Le rapport du JCT sur la réforme globale du système fiscal américain.

■ On February 13, 2013, Ways and Means Committee Chairman Dave Camp and Ranking Member Sander Levin announced the formation of 11 Ways and Means Committee Tax Reform Working Groups. The mission of each working group was to review current law in its designated area, research relevant issues, and compile related feedback from stakeholders, academics and think tanks, practitioners, the general public, and colleagues in the House of Representatives. This document, prepared by the staff of the Joint Committee on Taxation, provides an overview of the Internal Revenue Code as in effect for 2013 and provides a more detailed description of the Code provisions relevant to the topic area of each working group. The document also summarizes the suggestions for reform and other commentary submitted by the public to the various working groups through our web site. In addition, the document briefly summarizes a selection of proposals to reform the Federal tax system that members of Congress, commissions, and others have presented to policy makers over the past several years.

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The Joint Committee on Taxation, *Present Law, Data, and Analysis Relating to Tax Incentives for Residential Real Estate* (JCX-10-13), 22 avril 2013, 48 pages.

<https://www.jct.gov/publications.html?func=startdown&id=4516>

Analyse des incitatifs fiscaux pour la propriété vs la location d'une résidence.

● The House Committee on Ways and Means has scheduled a public hearing on April 25, 2013, entitled "Tax Reform and Residential Real Estate." This document, prepared by the staff of the Joint Committee on Taxation, provides general background on the tax incentives for residential housing. The first part of this document describes the tax provisions that offer incentives for homeownership. The second part describes the tax provisions that offer incentives for rental housing. The third part provides a discussion of the economic incentives and data related to residential housing.

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## BROOKINGS INSTITUTION

William G. Gale et Samuel Brown, *Small Business, Innovation and Tax Policy: A Review*, 5 avril 2013, 53 pages.

<http://www.brookings.edu/~media/research/files/papers/2013/04/small%20business%20tax%20policy%20gale/small%20business%20tax%20policy%20gale>

Analyse des politiques fiscales d'aide aux petites et moyennes entreprises.

● Small businesses occupy an iconic place in American public policy debates. Numerous and diverse public policies subsidize small businesses, and political leaders of both parties routinely voice their support for the sector. At least part of this support is based on the notion that a healthy small business sector leads to innovation, jobs, and a healthy overall economy. Not surprisingly, however, the economic issues surrounding small businesses and innovation are more complex and nuanced than any iconic designation would suggest. At the core of these issues are the questions of whether and how public policies should subsidize small businesses. On the one hand, economic theory prescribes that well-designed tax and spending programs, in the absence of externalities or public goods, should be neutral among types of investments and forms of business organization, leaving a free market to allocate resources efficiently between small versus large business. On the other hand, small business owners may face special barriers to entry or to firm expansion and many people assert that the small business sector is our principal engine of jobs, growth, and innovation. Either or both of

these situations might justify preferential treatment for the small business sector. Recent proposals by Representative Dave Camp (R-MI), the chair of the House Ways and Means Committee, address a number of issues regarding the tax treatment of partnerships and S corporations. Against this backdrop, this paper aims to provide a clearer understanding of how the federal tax code affects small business.

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## URBAN INSTITUTE

Lisa Clemans-Cope, Stephen Zuckerman et Dean Resnick, *Limiting the Tax Exclusion of Employer-Sponsored Health Insurance Premiums: Revenue Potential and Distributional Consequences*, 8 mai 2013, 11 pages.  
<http://www.urban.org/UploadedPDF/412816-Limiting-the-Tax-Exclusion-of-Employer-Sponsored-Health-Insurance-Premiums.pdf>

Les effets potentiels d'une limitation de l'exemption d'impôt pour les primes d'assurance-maladie payées par l'employeur.

- Serious efforts to forge a budget agreement in 2013 will increase the likelihood that lawmakers will seek changes to tax provisions in order to raise revenue. The exclusion of employer-sponsored health insurance premiums and medical benefits from taxable income could be a target, since this exclusion reduced federal tax revenues by \$268 billion in 2011 alone—by far the largest federal tax expenditure. Moreover, the exclusion disproportionately subsidizes those with higher incomes. Yet proposals to change the tax exclusion of employer-sponsored insurance have provoked intense debate. In this brief, we provide estimates of the revenue potential and distributional consequences of a new policy option. The policy we analyze here would impose a cap, or dollar limit, on the aggregate cost of employer-sponsored health coverage excluded from income and payroll taxes.

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Adam Parachin, *The Charitable Contributions Deduction: A Tax Debate or a Question of Charity versus Government?*, 29 avril 2013, 41 pages.  
<http://www.urban.org/UploadedPDF/412818-The-Charitable-Contributions-Deduction.pdf>  
<http://www.urban.org/publications/412818.html>

Discussion sur la philosophie qui sous-tend la déduction pour les dons de bienfaisance.

- This paper attempts to better understand rhetoric over the charitable contributions deduction, arguing that debate surrounding the deduction is ultimately a projection of more fundamental debates relating to the theme of government versus charity. The phrase "government versus charity" can mean government as opposed to charity or government in opposition to charity. The first sense contemplates the need to choose which of government versus charity should supply a given good or service. The second sense contemplates the ideal regulatory posture of government in relation to charity. Competing views over the charitable contributions deduction often reduce to competing views over these two issues.

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C. Eugene Steuerle, *Reforming Social Security Benefits*, 23 mai 2013, 12 pages.  
<http://www.urban.org/UploadedPDF/904585-Reforming-Social-Security-Benefits.pdf>

Témoignage de Eugene Steuerle devant le sous-comité de la Chambre sur la réforme de la sécurité sociale.

- Reform of the Social Security benefit structure should proceed on the basis of principles and goals related to adequacy, protections in old age, encouragement of work to protect the tax base on which programs like this depend, and equal justice under the law for those equally situated. Many features of current law violate basic principles of public finance without promoting other worthy goals in an effective or well-targeted manner. In his testimony before the House Ways and Means Subcommittee on Social Security, Gene Steuerle lays out how to go beyond the types of options put forward by many proposals under consideration to achieve such reform.

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## CENTER ON BUDGET AND POLICY PRIORITIES

Chuck Marr, Jimmy Charite et Chye-Ching Huang, *Earned Income Tax Credit Promotes Work, Encourages Children's Success at School, Research Finds*, 9 avril 2013, 15 pages.

<http://www.cbpp.org/files/6-26-12tax.pdf>

Le crédit d'impôt pour revenu gagné atteint ses objectifs d'encouragement au travail et d'aide aux enfants.

- The Earned Income Tax Credit (EITC), which went to 27.5 million low- and moderate-income working families in 2010, provides work, income, educational, and health benefits to its recipients and their children, a substantial body of research shows. In addition, recent ground-breaking research suggests, the EITC's benefits extend well beyond the limited time during which families typically claim the credit. The research indicates that children of EITC recipients, for instance, do better in school, are likelier to attend college, and earn more as adults. The Child Tax Credit (CTC), a related credit that's designed to help offset the cost of child-rearing, also plays a major role in helping low-income working families. Specifically, the EITC significantly increases the work effort of its recipients. The EITC expansions of the 1990s have contributed as much to the increases in work among single mothers and female heads of households that have occurred since that time as the welfare reforms enacted in that period, extensive research has found. Women who benefited from those EITC expansions also experienced higher wage growth in subsequent years than did otherwise similarly-situated women. And, by boosting the employment and earnings of working-age women, the EITC boosts the size of the Social Security retirement benefits they ultimately will receive. In addition, the research shows that by boosting the employment of single mothers, the EITC reduces the number of female-headed households receiving cash welfare assistance. The EITC may also improve the health of infants, research indicates. Infants born to mothers who could receive the largest EITC increases in the 1990s had the greatest improvements in such birth indicators as low-weight births and premature births.

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Chuck Marr et Nathaniel Frentz, *Federal Income Taxes on Middle-Income Families Remain Near Historic Lows*, 11 avril 2013, 4 pages.

<http://www.cbpp.org/files/4-14-10tax.pdf>

Le poids des recettes fiscales de la classe moyenne américaine dans les recettes fiscales totales.

- Federal taxes on middle-income Americans are near historic lows, according to the latest available data. That's true both for federal income taxes and total federal taxes. A family of four in the exact middle of the income spectrum will pay only 5.3 percent of its 2013 income in federal income taxes next year. Average income tax rates for these typical families have been lower during the Bush and Obama Administrations than at any time since the 1950s. As discussed below, 2009 and 2010 were particularly low because of the temporary Making Work Pay Tax Credit. Overall federal taxes — which include income, payroll, and excise taxes, and imputed corporate taxes — on middle-income households in 2009 were at their lowest levels in decades.

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Chuck Marr et Chye-Ching Huang, *Tax Foundation Figures Do Not Represent Typical Households' Tax Burdens*, 2 avril 2013, 5 pages.

<http://www.cbpp.org/files/4-2-13tax.pdf>

L'estimation du « Tax Freedom Day » est biaisée et induit les contribuables en erreur.

- The Tax Foundation released its annual "Tax Freedom Day" report today that, once again, can leave a strikingly misleading impression of tax burdens — showing an average federal tax rate across the United States that's likely higher than the tax rate that 80 percent of U.S. households actually pay. To project the day when "the nation as a whole has earned enough money to pay its total tax bill for the year," the Tax Foundation calculates the average tax rate by measuring tax revenues as a share of the economy (similar to estimates of total revenues as a share of Gross Domestic Product, or GDP). In a progressive tax system like that of the United States, only upper-income households pay federal tax

at rates that are equal to or above federal revenues as a share of the economy. Estimates from the nonpartisan Urban-Brookings Tax Policy Center show that low- and middle-income households (about 80 percent of all households) will pay a smaller share of their income in federal taxes this year than the Tax Foundation's average tax rate. The Tax Foundation acknowledges this issue in a methodology paper accompanying its report, noting that its estimates reflect the "average tax burden for the economy as a whole, rather than for specific subgroups of taxpayers." Consequently, those who report on Tax Freedom Day as if it represented the day until which the typical American must work to pay his or her taxes are misinterpreting these figures and inadvertently fostering misimpressions about the taxes that most Americans pay.

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## ERNST & YOUNG

Andrew Phillips, Robert Cline, Thomas Neubig et Hon Ming Quek, *Total state and local business taxes: State-by-state estimates for fiscal year 2011 – July 2012*, 25 avril 2013, 20 pages.

[http://www.ey.com/Publication/vwLUAssets/State-Tax-COST-Report/\\$File/State-Tax-COST-Report.pdf](http://www.ey.com/Publication/vwLUAssets/State-Tax-COST-Report/$File/State-Tax-COST-Report.pdf)

Portrait des recettes fiscales corporatives des états et des localités de 2011.

- This study presents state-by-state estimates of the state and local taxes paid by businesses for fiscal year 2011. It is the 10th annual report prepared by Ernst & Young LLP in conjunction with the Council On State Taxation (COST). Businesses paid \$644 billion in state and local taxes in FY2011. Total state and local business taxes grew by 4.5%, reflecting a 9.8% increase in state business taxes and a 0.8% decrease in local business taxes. In FY2011, business taxes accounted for 45.9% of all state and local taxes. The level of tax collections in FY2011 reflects the positive impact of the economic recovery on businesses and corporate profits, increased production and prices of natural resources subject to state severance taxes, new and expanded taxes levied on health care providers at the state level, and the effects of higher unemployment insurance taxes resulting from continued high unemployment. The state and local business tax estimates presented in this study reflect tax collections from July 2010 through June 2011 in most states. These include business property taxes, sales and excise taxes paid by businesses on their input purchases, gross receipts taxes, corporate income and franchise taxes, business and corporate license taxes, unemployment insurance taxes, individual income taxes paid by owners of non-corporate (pass-through) businesses, and other state and local taxes that are the statutory liability of business taxpayers.



## INTERNATIONAL

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### ORGANISATION DE COOPÉRATION ET DE DÉVELOPPEMENT ÉCONOMIQUES

Hansjörg Blöchliger, Balázs Égert et Kaja Bonesmo Fredriksen, « Fiscal Federalism and its Impact on Economic Activity, Public Investment and the Performance of Educational Systems », *OECD Economics Department Working Papers*, No. 1051, OECD Publishing, 29 mai 2013, 61 pages.

[http://search.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=ECO/WKP\(2013\)43&docLanguage=En](http://search.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=ECO/WKP(2013)43&docLanguage=En)

Analyse des études portant sur les effets potentiels du fédéralisme budgétaire.

- Les cadres budgétaires intergouvernementaux sont habituellement le reflet de choix sociétaux fondamentaux ainsi que de l'histoire, et n'ont pas pour vocation première d'atteindre des objectifs de politique économique. Pourtant, comme la plupart des modalités institutionnelles, les relations budgétaires influent sur le comportement des entreprises, des ménages et des pouvoirs publics et, partant, sur l'activité économique. Le présent document fait une synthèse des études empiriques consacrées aux effets potentiels de la décentralisation budgétaire sur une série de résultats comme le PIB, la productivité, l'investissement public et les performances des établissements scolaires. Ces résultats peuvent être résumés comme suit : la décentralisation, mesurée en pourcentage des recettes ou des dépenses, est corrélée positivement avec le niveau de PIB par habitant. L'impact semble plus marqué pour la décentralisation des recettes que pour celle des dépenses. La décentralisation semble être fortement et positivement corrélée avec les résultats de l'éducation tels que



mesurés par le Programme international pour le suivi des acquis des élèves (PISA). Si les fonctions éducatives peuvent être déléguées soit aux échelons infranationaux de l'administration, soit aux établissements scolaires, les résultats donnent à penser que les deux stratégies semblent également bénéfiques pour les performances des écoles. Enfin, l'investissement dans le capital physique mais, plus particulièrement, dans le capital humain exprimé en part des dépenses des administrations publiques, est nettement plus élevé dans les pays décentralisés.

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*Together for Better Outcomes: Engaging and Involving SME Taxpayers and Stakeholders*, OECD, 17 mai 2013, 95 pages.

<http://www.oecd.org/ctp/administration/Together-for-better-outcomes-Preliminary.pdf>

Créer une relation de confiance et de coopération entre l'administration fiscale et les PME, afin d'améliorer l'observance fiscale.

■ Revenue bodies can benefit in many ways from a more co-operative relationship with taxpayers and stakeholders. This is true for the SME segment, as for larger businesses. Traditional approaches have not always catered well for the needs of the majority of SMEs, who wish to comply. This FTA study explores how engaging and involving SME taxpayers and stakeholders can contribute to improved outcomes and reduced costs. It also identifies a range of other benefits, including fairer competition, reduced compliance burdens, and improved trust. By fostering greater trust between SMEs and revenue bodies this approach can create a virtuous circle that encourages still higher levels of voluntary compliance. The study provides a conceptual framework, a review of experience, and tools and guidance to assist revenue bodies. The study concludes that while there is substantial experience to build on, there also is potential for more systematic, far-reaching and potentially transformative approaches.

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## PWC

PwC, *Navigating the complexity: Findings from the financial transactions transfer pricing global survey 2013*, avril 2013, 270 pages.

<http://www.pwc.com/gx/en/tax/transfer-pricing/assets/full-report-2013.pdf>

Les règles sur les prix de transfert dans plus de 40 pays.

● The transfer pricing of intercompany financial transactions has received considerably more attention in recent years from tax authorities, taxpayers and multilaterals. This is evidenced by the many changes to interest tax deduction legislation globally in recent years. Furthermore, the OECD has addressed financial transactions as one of the key transactions used for base erosion and profit shifting (reference is made to the OECD report "Addressing Base Erosion and Profit Shifting" published earlier this year). Given this fast changing environment, we sought to bring together the country practices to these issues in over 40 countries. This book offers pragmatic guidance to the reader on a range of intercompany financial transactions related transfer pricing issues such as loans, guarantees and cash pooling. This input was provided by PwC offices globally and this book is correct as of 1 January 2013.



## SOCIAL SCIENCE RESEARCH NETWORK

Daniel Jacob Hemel et Lisa Larrimore Ouellette, « Beyond the Patents-Prizes Debate », *Texas Law Review*, vol. 92, 1<sup>er</sup> avril 2013, 71 pages.

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2245691](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2245691)

Politiques d'incitation à l'innovation : miser sur la complémentarité des mesures pour maximiser les impacts positifs.

- Intellectual property scholars have vigorously debated the merits of patents versus prizes for encouraging innovation, with occasional consideration of government grants. But these are not the only options. Perhaps most significantly, the patents-vs.-prizes (or patents-vs.-prizes-vs.-grants) debate has largely neglected the role of tax incentives in innovation policy, despite the tens of billions of dollars spent globally on tax breaks for R&D activities each year. How should R&D-related tax incentives figure into this debate, and what criteria are relevant for policymakers selecting among the various tools? In this Article, we develop a new taxonomy of innovation policies that allows direct comparisons among patents, prizes, grants, and tax incentives. This taxonomy highlights the overlooked efficiency benefits of tax credits: like patents, they elicit privately held information about the expected value of R&D projects; like grants, they reduce the social-welfare costs of frictions in imperfect capital markets. Our taxonomy also sheds new light on non-efficiency dimensions of R&D policy. Grants, tax credits, and prizes generally require all taxpayers to subsidize R&D regardless of whether they use the resulting products, whereas the patent system imposes R&D costs primarily upon the consumers who purchase patented products. In some contexts (e.g., life-saving drugs), the “user pays” aspect of the patent system is difficult to defend on distributive justice grounds. In other contexts (e.g., luxury goods), the “user pays” aspect of the patent system may make patents normatively preferable in comparison to alternative incentive mechanisms. Ultimately, optimal innovation policy will depend on a range of factors that are likely to vary across contexts. For example, grants may be optimal where the government has a comparative advantage in evaluating potential projects, while tax credits may be optimal where potential innovators have private information about project prospects and limited access to outside capital. We argue for a pluralistic approach to innovation policy that incorporates each of the four main incentive mechanisms, and we provide examples of this pluralistic approach in practice.

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Omri Y. Marian, « Jurisdiction to Tax Corporations », *Boston College Law Review*, vol. 54, numéro 4, 5 avril 2013, 54 pages.

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2245802](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2245802)

Remise en question des critères de la résidence des sociétés américaines : les avenues potentielles.

- Corporate tax-residence is a foundational notion in our federal income tax system. Whether a corporation is classified as “domestic” or “foreign” for U.S. federal income tax purposes determines the extent of tax jurisdiction the U.S. has over such corporation and its affiliates. Unfortunately, tax scholars seem to agree that the concept of corporate tax-residence is “meaningless”; Corporations, being imaginary entities, cannot have “real” residence. Moreover, taxpayers can easily manipulate corporate tax-residence tests, and effectively elect where corporations reside for tax purposes. Commentators try to deal with the perceived meaninglessness by either trying to identify a normative basis to guide corporate tax-residence determination, or, by minimizing the relevance of corporate tax-residence to the calculation of tax liabilities. I argue that the search for an independent normative reasoning for corporate tax-residence is largely an irrelevant undertaking, as it ignores the policy purposes underlying the taxation of corporate-entities. I also argue that corporate tax-residence cannot be made less relevant for purposes of calculating tax liabilities. Therefore, I suggest we abandon the normative discussion, and instead I develop a cohesive functional model of corporate tax-residence. Under my suggested model, corporate tax-residence tests are designed to support the policy purposes for which corporations are taxed, and the tests are not independently justified in normative terms. Using the developed model, I review corporate tax-residence determination in the United States, which is based on the place-of-incorporation. I conclude that under a functional approach the United States should reform the way it defines “domestic” corporations for tax purposes, by way of adopting a two-pronged corporate tax-residence test: the place where the corporation’s securities are listed for public trading, or the place of the corporation’s central management and control.

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Frederic Alain Behrens, « Using a Sledgehammer to Crack a Nut: Why FATCA Will Not Stand », *Wisconsin Law Review*, vol. 2013, numéro 1, 9 avril 2013, 32 pages.

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2247615](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2247615)

Les réticences des pays étrangers pourraient compromettre l’application de la loi sur les comptes bancaires à l’étranger (FATCA).

- The Foreign Account Tax Compliance Act (FATCA) became law in 2010 and is an important development in combatting income tax evasion. Under FATCA, American individual and corporate taxpayers must provide

comprehensive information to the Internal Revenue Service (IRS) regarding foreign bank accounts. In addition, a more controversial part of FATCA requires foreign banks to report directly to the IRS certain information about financial accounts held by American taxpayers. These drastic changes in American tax policy are alarming to the international financial community. International banks are forced to implement expensive compliance programs to satisfy the information reporting requirements. An increasing number of foreign financial institutions will no longer want any involvement with American citizens or investments. Furthermore, Americans living abroad might be forced to denounce their American citizenship in order to gain access to insurance and basic banking options. In response to the unilateral imposition of FATCA, foreign governments and banks may lobby for its repeal. This Comment examines factors in the global movement to repeal FATCA and suggests several workable solutions that would be agreeable to the United States and foreign nations. Specifically, this Comment suggests how investment income withholding and increased IRS enforcement actions are a better solution to prevent income tax evasion.

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Ilan Benshalom, « Rethinking the Source of the Arm's-Length Transfer Pricing Problem », *Virginia Tax Review*, vol. 32, numéro 3, 1<sup>er</sup> mai 2013, 35 pages.

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2261599](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2261599)

Une alternative aux standards de transactions sans lien de dépendance dans un contexte de prix de transfert.

- Almost everyone agrees that the arm's-length standard is inapt for sourcing a multinational enterprise's (MNE) income. At the same time, all consider it unlikely that tax authorities will explicitly depart from it any time soon. This essay tries to overcome the policy deadlock by inquiring whether the arm's-length standard could be applied in a more accurate, consistent, and difficult-to-manipulate way. Traditional transfer-pricing scholarship identifies intra-group intangibles transactions and debt-related transactions as the root of the current regime's vulnerability. This essay focuses on financial transactions and takes a new approach by noting that equity (rather than affiliated-debt) investments are the core of the sourcing problem. These equity transactions provide the parent corporation with control, which is antithetical to the arm's length standard. Control implies relatedness; dividend policy of private subsidiaries that is designed to meet the needs of the parent corporation is, therefore, inherently related and cannot be at arm's length. To overcome this problem, the author proposes maintaining the arm's-length standard but applying it more rigidly — that is, to re-characterize intra-group equity investments as long-term subordinated debt (with imputed interest rates). This essay then explains how tax authorities can use this re-characterization to reduce income-shifting manipulation and to simplify many existing international tax arrangements. The proposal offers a relatively cheap, consistent, and accurate way to allocate MNE income, which is the building block in each of the various international tax policies that different countries employ. It should not be seen as associated with any specific agenda with respect to how MNEs' foreign income should be taxed. Instead, the essay offers policymakers a tool that could help them incrementally improve all existing regimes and suggested reforms with respect to the taxation of foreign income.

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Andrea Monroe, « Taxing Reality: Rethinking Partnership Distributions », *Loyola of Los Angeles Law Review*, vol. 47, 23 mai 2013, 61 pages.

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2269091](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2269091)

Les abus des partnerships américains quant aux distributions aux associés; la solution serait de reconnaître de telles transactions comme taxables.

- Partnerships play an increasingly vital role in the federal income tax. Yet partnership taxation is deeply flawed, with complicated provisions that strain the voluntary compliance mechanism on which all federal income tax relies. This article considers one of the most difficult challenges facing partnership taxation: the treatment of distributions. Distributions are ubiquitous transactions that transfer cash or property from a partnership to a partner. Although distributions vary dramatically in their purpose and the kind of property involved, their tax treatment follows a unitary approach. The principle of “nonrecognition” means that distributions do not produce any immediate tax consequences. This nonrecognition premise has caused great abuse and complexity, as partnerships have used distributions as tax shelter vehicles, and the government has responded with narrow anti-abuse “fixes” that are often counterproductive. Calls to reform these anti-abuse provisions have been a constant presence throughout a half-century of tax scholarship. This

article argues that the existing scholarship largely misconstrues the problem with partnership distributions. The core difficulty is the nonrecognition premise at the system's foundation, the very problem that particular anti-abuse provisions were designed to combat. Meaningful reform of partnership distributions thus requires a fundamental rethinking of nonrecognition and its role in partnership taxation. This article offers an alternative vision of partnership distributions, one without the imprint of nonrecognition. It reimagines partnership distributions from a recognition-based perspective, which would ground the tax treatment of these transactions in economic reality. Of particular importance are liquidating distributions that involve the complete or partial termination of a partner's investment in the partnership. Consistent with their commercial substance, liquidating distributions should be treated as taxable exchanges in which the partner receives cash or property from the partnership in exchange for relinquishing her interest in the partnership and its underlying property. Under a recognition-based approach, partnership distributions would indeed look very different than they do today, simpler, more equitable, and more stable.

### Équipe de rédaction du Bulletin de veille

Marie-Pierre Allard, Gilles N. Larin, Alexandre Bertrand, Émilie Dion Roy, Pierre-Claude Laquerre, Arnaud Massé-Roy, Cynthia Morin.