Contemporary Canons of Taxation

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Adam Smith, in his Wealth of Nations, published in 1776, propounded four canons or maxims of taxation. They were:

(I) The subjects of every state ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state.

(II) The tax which each individual is bound to pay ought to be certain, and not arbitrary.

(III) Every tax ought to be levied at the time, or in the manner, in which it is most likely to be convenient for the contributor to pay it.

(IV) Every tax ought to be so contrived as both to take out and to keep out of the pockets of the people as little as possible, over and above what it brings into the public treasury of the state.

These canons, although perhaps sound at the time of publication, now seem outmoded. New canons, maybe of smaller bore but appropriate to the contemporary scene, are called for.

What follows is a first attempt to formulate modern canons by reflecting on more than a half century of experience by the federal government in taxing income. The suggested new canons are put in the form of guides to legislators whose interest in the taxation of income is serious. Adam Smith was able to make do with four canons; unfortunately, ten now seems to be the bare minimum.

(1) Always proclaim, vigorously, that any change is a "reform." A reform generally is equated with improvement of the tax law. Any change you favor is obviously an improvement—otherwise it would not have your support.

(2) A reform proposal appears to be more acceptable if it has been around for quite some time. For some queer reason ideas are thought by many to improve with age. Therefore you should push a reform measure as often as possible, long before it has any real chance of passage. In due course it will be ripe.

(3) Whenever possible a proposed change in the law should carry the endorsement of someone in academic life. In many quarters professors are thought to be independent thinkers rather than partisan lobbyists. Despite all the evidence that this viewpoint obviously does not square with the facts of life today, apparently there are many persons who enjoy being deluded. Accordingly you should line up your academics in advance, making sure that they will educate you

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exactly as you wish to be educated. Full professors usually carry more weight than lesser potentates; and those who have good relations with the press are the best bet of all.

(4) Deferral of tax is very important to taxpayers; it may be equally important to you. A taxpayer usually finds it more comfortable to pay a dollar of tax tomorrow rather than today. You may find it easier to endorse a change but to postpone its effective date for many years. This arrangement may win you friends, both among those who seek the change and those who oppose it, but understand the value of a second line of defense. If you are disposed to favor the former group over the latter one, a convenient choice is to defer the full impact of the change, but to bring it on gradually in increasing intensity over the years to come. This arrangement can always be claimed to have the virtue of easing the transition from the old to the new rule. It is virtually a sure winner.

(5) Always make your proposal as complicated as possible. Do not feel upset, however, if you fail to complicate it enough; you can be sure that somewhere along the line it will be more than adequately embellished. The merits of complexity cannot be understated. Some potential opponents of the change are likely to soften their stand merely because they cannot comprehend the measure. The opposition of many tax practitioners will be softened because they will be taking pot shots at the complications instead of concentrating on the bull's-eye. Indeed, it can be expected that some professional groups will respond by appointing committees charged with seeking ways of simplifying the tax law. By introducing a highly complicated proposal, you will keep the members of these special committees so busy that they will lack the time to grab hold of the jugular in attacking the measure. Moreover, complicated schemes are very congenial to academic types. This observation provides the basis for building a symbiotic relationship: you will find it easier to attract academic support if your proposals are complicated; and the academics you do line up will be encouraged to keep you well stocked on complicated suggestions for change.

(6) It is advisable to create the appearance that the tax law contains special breaks for every taxpayer. The typical person feels good if he thinks that he gets an advantage not enjoyed by others. There is ground to believe that people are more impressed with the fact that they are entitled to a break than with its dollar value. You should not overlook the many opportunities to seed the law with breaks. In addition to improving the disposition of taxpayers, a heavy helping of breaks
will assist you in making the law more complicated.

(7) Try hard to change the tax law often in minor ways and resist making sweeping changes. Annual amendment of the law generates the appearance of great activity and tends to produce a belief in many persons that you are trying to do the right thing. Frequent minor modification of the law has its practical sides: it induces practitioners to take a look at the statute from time to time instead of relying on memory; it makes commercial publishers happy; and it supplies building materials for annual tax conferences. Drastic changes have undesirable consequences: they force some practitioners into semi­voluntary retirement; they spawn a whole new series of tax institutes—many of which turn into perennials; they upset commercial publishers; and they coerce teachers of tax law into revising their class notes. Minor changes enacted over, say, 20 years are better than one sweeping change.

(8) Never argue that a proposed change is fair; instead merely assert the proposition. Arguments about fairness in taxation usually are no more than assertions dressed up in formal garb. If anyone should challenge the fairness of your proposal, rest assured that you can always defend by stating that he has failed to place the issue in a sufficiently broad context. Tax problems never outdistance their contexts.

(9) Sprinkle your proposals with mathematical terms such as ratios or sums, and adjectives such as “reasonable” or “primary.” The former tend to make accountants feel wanted; the latter make lawyers believe they are needed.

(10) Proposals for change should always be accompanied by ghastly long explanations. If you follow the other canons that have been tenta­tively formulated here, it is clear that some sort of explanation surely will be needed. Moreover, if you do not furnish an explanation of your proposal, someone else, not necessarily a friendly party, is likely to seize the opportunity. It is impor­tant to remember that an explanation need not be consistent with the proposal on which it pur­ports to elaborate. Indeed, an inconsistency usually will be resolved in favor of the accompany­ing explanation rather than the enactment itself. If you have a choice between drafting the law and writing the authoritative explanation, it may be prudent to forego authorship of the law and settle for being the anonymous author of the ex­planation.

If, by any chance, these ten canons do not guide your way as a legislator, you can always fall back on that overriding maxim of taxation: When in doubt about a tax, from others make sure it is due!