



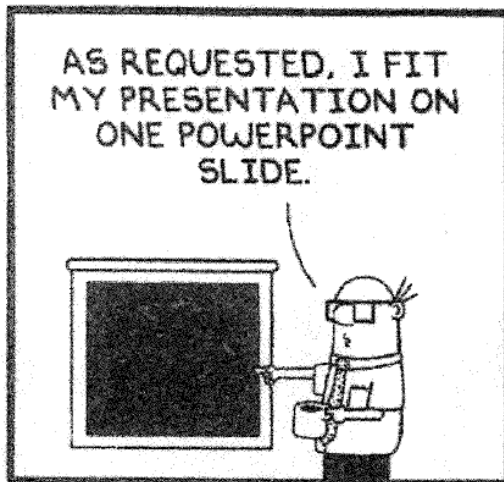
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**U.K. STATE AID LAW ASSOCIATION /  
BERLIN ROUNDTABLE ON EU STATE AID LAW**

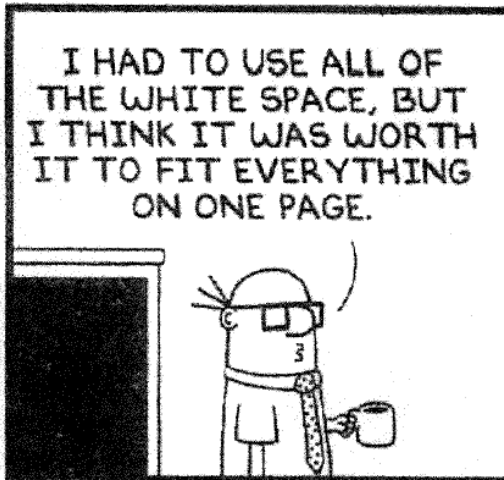
**LATEST DEVELOPMENTS IN STATE AID LAW**

# **State Aid and Taxation: The View from the U.S.**

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**JONES DAY**

# I. THE U.S. VIEW OF THE STATE AID CONCEPT

## A. Does not exist in U.S. Antitrust Law

1. Closest analogy = (Inter-State) Commerce Clause of the U.S. Constitution (Art. 1, Sec. 8, cl. 3)
2. See DaimlerChrysler Corp. v. Cuno, 547 U.S. 332 (2006)
  - a. Taxpayer challenge to Ohio State tax exemption (real estate taxes)
  - b. Decided on procedural grounds lack of standing by taxpayers

## B. Therefore an “alien” concept



## II. THE U.S. ORIGINS OF THE INITIAL CASES

A. U.S. Senate Hearings -- May 2013

B. U.S. Tax Law

1. CTB vs. CFC

C. Note also:

1. The critiques of Starbucks in the U.K.

2. The Labor Unions' critiques of McDonalds



# III. CONCERNS OF U.S. COMPANIES

- A. Can they still place reliance on tax rulings?
- B. “Retroactivity”
- C. Viewed as “penalties”
- D. Will funds reclaimed be creditable?
  1. Do the U.S. MNC’s have sufficient excess tax base to use any eventual foreign credits
  2. Potential timing constraints



# IV. CONCERNS OF THE U.S. TREASURY

- A. Obviously resulting from “lobbying”
- B. Impact on the fisc if tax credits must be accorded
  - 1. Therefore cautious public remarks and use of terminology

# V. RETALIATORY ACTION

## A. I.R.C. § 891

1. “Rediscovered” by Prof. Itai Grinberg, Georgetown University Law School (Jan. 2016)
2. “Whenever the President finds that, under the laws of any foreign country, citizens or corporations of the United States are being subjected to discriminatory or extraterritorial taxes, the President shall so proclaim and the rates of tax imposed by sections 1, 3, 11, 801, 831, 852, 871, and 881 shall, for the taxable year during which such proclamation is made and for each taxable year thereafter, be doubled in the case of each citizen and corporation of such foreign country.”



# V. RETALIATORY ACTION

3. Can it be applied?

4. Will it be applied?

a. Pressure from Congress

b. Perception = 80% (90%?) of reality





## V. GOAL

- A. While seeking to enter a free trade agreement (TTIP), we should certainly avoid a tax war