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A New Tax Policy Criterion: Stability

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Jason Oh, *Will Tax Reform Be Stable?*, **UCLA School of Law, Working Paper Series Law & Econ. Paper** No. 15-16 (2015), available at SSRN.

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Fairness, efficiency, simplicity, and revenue-raising capability (not necessarily in that order) have long been the hallmarks of good tax policy. In a forthcoming article, Will Tax Reform Be Stable?, Jason Oh introduces a new criterion: stability. Oh persuasively argues that certain tax reform may be more or less stable than others, and contends that it is possible to analyze and predict stability. Moreover, as Oh explains, understanding stability is essential in order to determine the durability of any good (or bad) tax reform.

This article is impressive because of both its potential importance and its ambition. Oh is right, of course, that, all else equal, a reform that quickly unravels is unlikely to be as impactful as one that does not. In this regard, the article's insights are akin in importance to the realization that taxpayers will change their behavior in response to legislation (for instance, by decreasing their sales of capital assets if the capital gains tax goes up), a realization that led to the practice of dynamic scoring of legislation. In pushing us to recognize a new dimension for evaluating tax policy, Oh has to color outside the familiar lines of existing debates. His willingness and ability to do so merits attention, and may well garner it in policymaking circles.

The article begins by carefully employing political science methodology in order to predict how liberal or conservative various tax policy positions are, and when legislative action is possible, based on the relationship between such policies and the preference of legislative pivots. The article then explores how such insights are crucial for analyzing the stability of tax reform. While a given reform package may bundle together various individual pieces of reform (such as a rate reduction for corporate taxes, a rate reduction for individual income taxes, and a rate increase for capital gains), in the future such pieces of reform will not necessarily be viewed together. Once unbundled, Oh argues that each piece of reform is going to be more or less stable, based on how extreme such a policy is, relative to the preferences of legislative pivots. Moreover, the article argues that certain tax reforms predictably will be more extreme than others and that, as a result, it is possible to predict, at the time a tax reform package is put together, which pieces are most likely to unravel.

The normative implications of this analysis are important. First, it suggests that policymakers should not assume that the pieces of tax reform packages will inextricably stay tied together. Rather, pieces of reform which, when viewed individually, are extreme, should be viewed as less stable pieces of reform. Indeed, although Oh focuses on extremity relative to legislative pivots, individual pieces of a reform may be unstable for reasons other than the extreme nature of a given reform piece relative to legislative pivots. In any event, Oh's analysis underscores how the purported efficiency, simplicity, and revenue-raising justifications for an unstable reform should be discounted by the instability of the reform itself.

Recognizing the stability dimension also can help legislators craft more stable reform packages, or at least recognize the likely transience of unstable reform packages. For instance, Oh suggests that limiting the value of a variety of popular tax expenditures is likely to be more stable than an outright repeal of a popular tax expenditure, such as the mortgage interest deduction. The analysis also offers general lessons for how to make reform more stable. For instance, Oh explains that bridging compromises (which move existing policies on both sides more toward the legislative center) are likely to be more stable than polarizing compromises (which provide each side with extreme gains). Oh also explores how mechanisms that one might think would be stability-enhancing, such as supermajority requirements, likely increase stability less than one would expect.

To be sure, this article raises many questions. For instance, the article explains that extreme policies get enacted to begin with by explaining that such extreme policies, when coupled with other reforms, are more likely to get enacted. The question, then, is how to predict what reforms will stick when they will inevitably be coupled with unknowable, future, possible reforms, and political and economic conditions. Moreover, one wonders whether the very assessment of certain policies as more or less stable is more likely to make them so. This latter point is not so much a concern about the stability analysis itself, but rather a concern about how such analysis may be used, or even manipulated in the future, just as dynamic scoring is vulnerable to manipulation. In any event, Oh is careful to acknowledge that stability analysis is not going to be precise or uncontroversial. Rather, he persuasively argues that stability should be part of the conversation.

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