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USA Tax Compliance Software, Systems, Recent Problems and Solutions

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As many know, we have experienced difficulty with the installation¹ and operation of the systems and software necessary for the preparation of USA income, transfer and certain other tax returns, many due annually with some due more frequently. When referencing “USA” in this context, included is each and every individual state² within the USA as well as some counties, cities, municipalities, territories, protectorates and even indian reservations which are, in fact, sovereign nations recognized before the United Nations and the International Court of Justice.

Some background is necessary to gain some understanding and appreciation of these computer and software problems and, more broadly, the issues at hand.

The USA tax law distinguishes between corporeal and incorporeal entities applying differing but overlapping income and other tax regimes. Natural persons, corporations, limited liability companies, partnerships, limited liability partnerships, trusts, national associations, plus more are all treated differently for tax purposes. Furthermore, only national associations and a few other little known incorporeal entities are created under the law at the nation state level. Rather, each individual state is the licensing agent with respect to incorporeal persons. There are meaningful differences in governance which, in turn, impact taxation. Circles within circles.

There is a transfer tax on death, in the form of an estate tax at the nation state level and, in most of the individual states, an estate or inheritance tax. There is a tax on the donor who makes gifts, including those given during culturally relevant holidays, should certain cumulative annual thresholds be met.

A corporeal or natural person's income tax and death or estate/inheritance tax turns on marital status, children including quantity and age, parental and other familial relationships including after divorce and re-marriage, age of the individual and more. There is even a negative income tax assessed on the working poor known as the earned income credit.

The USA uses a global concept of taxation while its states vary including in degree. Indeed, the concept of taxing or not foreign sourced income at the USA individual state and subdivision level explicitly treats the other individual states and subdivisions as "foreign".

The USA income, death and gift tax regimes apply to "US persons". In colloquial terms, a "US person" includes those who hold a passport issued by the USA as well as certain visas and those who are physically resident without the legal niceties of proper immigration. US persons are taxed on their global financial circumstance, regardless of where they may actually reside.

For those who may wish to no longer be a US person including, but not limited to natural citizens, there is a process for renouncing. Please focus here. *E.g.*, a non-USA citizen who holds a "greencard" must "renounce", no different than a natural citizen of the USA. There is an exit tax assessed on a statutory definition of one's wealth when one renounces. There is a mitigating factor in that one's wealth must meet a certain threshold before an actual cash tax is due.

For all others who are not US persons, on a global scale regardless of place of residence, there are non-resident income, death and gift tax regimes.

Before I hear from some Americans on this subject of complexity, the USA already has a "flat tax" with respect to its income tax regime. It is known as the alternative minimum tax or AMT. Whether one realizes it or not, one pays income tax at the higher of the regular tax or the alternative minimum tax each and every year. The complexity in the USA tax regimes does not lie in the rates of tax.

The systems, including software, must accommodate all of this and more. Never overlook the fact that this complexity drives the costs of administration of the various government agencies as well.

The law, the software and now the portals for e-file and e-pay have become both a Rube Goldberg machine and a Rubik's cube of unmerciful complexity.

To an ever lesser degree, paper filing of USA tax returns is still possible. These systems and software referenced above are those necessary for electronic filing or "e-file", which to an ever greater extent, is mandated as a matter of law. For many there is now a financial penalty if one files in paper form. Last I checked, that penalty is US\$100. It is civil, not criminal, in nature. It is assessed on the preparer which, in this case, is

Chapple Blondet SRL and me. I am not in the habit of breaking the law. However, in this circumstance, I have gotten close to going back to paper and simply paying the penalty. My primary near term and, likely, current problem with this is filing in paper form is not going to be mechanically feasible. In one circumstance discussed below relevant to many of our clients, I cannot locate an actual physical mailing address which is a first in my career.

Furthermore, this software is used in the preparation process for paper based filings. The USA tax law, including the individual states and some political subdivisions, continues to devolve into a morass of perverse complexity. One consequence is preparing these returns without this software exasperates an already time consuming process with an increasing risk of clerical and other error. Proper tax preparation software does not eliminate these negative risks but it does mitigate them.

Unlike some of our younger colleagues, I actually remember preparing and did prepare tax returns literally with a pencil, occasionally on an IBM Selectric typewriter. Those prepared in pencil were then photocopied so as not to be erasable. Prior to my time and before photocopy machines, these returns were done in ink with NCR paper or copied multiple times by hand in ink or via carbon paper on early typewriters. Those were truly the "bad old days". In some defense of my ego, I commenced my career in my professions at the age of 18 with Ernst & Young in Des Moines, Iowa.

The Internal Revenue Service or IRS is a "sub-agency" of the US Department of Treasury. Thus, the systems which we often reference as those of the "IRS" are actually the systems of the greater US Department of Treasury.

Especially for those of us with "foreign bank accounts" and "foreign financial assets", there are now additional filings in the nature of disclosure which are required to be filed directly with the US Department of Treasury via these same systems. I think there is no longer a physical mailing address for some of these strictly Treasury forms leaving only the option of e-filing. The necessary software for these Treasury forms is included in the software for preparing and filing USA income tax returns. I believe there are separate software and portals available for these Treasury filings. I have never used them.

Some of our clients prepare and e-file these disclosure forms without our assistance. I applaud them as these forms contain mountains of minutia. Of course, the attendant law continues to become more complex where our attention may become necessary even for those who currently and competently administer this on their own.

One current problem is the data on these Treasury forms is partially redundant with the data imbedded in the actual income tax filings. One of my concerns is clerical consistency. I actually do not know the degree, if any, the US Department of Treasury actually cross references this data on an ongoing basis. When this process was first legislated some years ago, it was rather clear that they were not cross referencing and may well not have been able to do so without herculean human effort. Regardless, there

is risk of inadvertent clerical errors generating unwanted, unnecessary and frankly irritating questions. This software does, to a limited degree, “force” some consistency.

In some cases, the amount of data on these Treasury forms (some of our clients know one series of forms as “FBARs”) is not overwhelming. However, in one circumstance in this firm, there were over 360 foreign demand deposit or checking accounts. This circumstance involved a foreign bank’s trust accounts and the individuals responsible for these accounts. The data itself and data entry were mind numbing. The fact that this data was filed with the US Department of Treasury poses some serious issues of privilege under local law relative to the actual beneficial owners of these trust accounts who often have no connection whatsoever to the USA.

Then there are countries such as Switzerland and Costa Rica which are dual currency economies. In many cases this effectively doubles the data and data entry process. *E.g.*, I have two personal checking accounts, one denominated in colon and the other in US dollar which remains one of the world’s current reserve currencies. These accounts are used for things like the food markets, cleaning supplies, an occasional dinner or lunch in a restaurant, and so on. *I.e.*, this is blitheringly normal. These checking accounts are not vaguely nefarious. I am in no way unique in this regard. Our otherwise-the-same clients in Germany and many other places have one such checking account while we have two. The incremental computer memory space this drives is shocking.

While I am not going to devote too much space to this subject here, the US Department of Treasury systems include cables, hardware and software which are, in large part, very old. The USA has not invested sufficient time and capital to maintain these in a proper and necessary condition of mechanical functionality. This is the “chickens coming home to roost”, as the old *dicho* says. I believe one can still locate via google some of the discussion of the Arthur Anderson/Accenture engagement some years ago to “fix this mess” collecting a fee of US\$2 billion for their efforts. While Arthur Anderson went down in criminal flames, they were nothing less than diligent and appropriate in their work with respect to this engagement. They ultimately withdrew announcing that the US Department of Treasury Systems were “not fixable”. That should have been a very big tap on the shoulders of a few rather highly placed people to take some serious action. They did not.

It is now clear that one of the problems where we have been on the receiving end is a product of this failure in maintenance writ big. The US Department of Treasury has made systemic changes over the approximate past year and a half which are not working.

Several weeks ago, the US Department of Treasury publicly announced a large failure in the area of income tax returns for the profile which I will reference as the “vast vast normal”. That is a very good place to be. Among other matters, middle class people should not have to pay fees to simply prepare, file and pay the sum due with respect to

their income tax returns. Should you be interested in the actual notices of this US Department of Treasury /IRS failure, I have copies here in the office sourced in a journal to which people in my profession may subscribe. I am happy to send them along. They are written in a language (“taxese”) which tragically requires some knowledge in this area to truly understand especially the broader implications.

One of the changes implemented by the US Department of Treasury is an attempt to outsource or privatize at least a portion of these systems and portals. I assure you this does not get to a good result. This function belongs fully within the governance function or, minimally, in what we here in Central America call the “public” zone. In times past in the USA and notably the Commonwealth of Massachusetts,³ the cultures of the United Kingdom of Great Britain and Northern Ireland, the greater Europe, pre-USSR Russia and today’s Russian Federation referenced this as “the common”, in proper English. We can see a lesson in this process of destruction in the history of England in what is known as the “closure of the commons”. There are a plethora of other examples of failure in history including contemporary.

It is now clear that the private service to which we subscribed in the past and the very few alternatives have moved to the infamous “cloud”, in whole or part. One consequence of this which is very serious for attorneys, accountants and our clients is the software to prepare, maintain access and file these returns no longer physically resides in that “box under my desk”. *I.e.*, this operating software is no longer within my or this firm’s care, custody and control. The implications of this are serious and negative. Chapple Blondet is, of course, doing whatever we can to mitigate this downside risk but we are not infallible. The system is rapidly becoming boxed and locked.

None of the forgoing is unique to me or Chapple Blondet. I am not happy with the “wall of silence” I am hearing. Among others is the American Bar Association, perhaps especially the international section. We need to stand up and speak loudly. Those of us who fancy ourselves to be “elite professionals” seem to have overlooked that this includes a debt of responsibility which, back in the day, might be referenced as *noblesse oblige*. After I get done with our client responsibilities, this *bufete* is going to be speaking loudly concerning these matters.

Last week and this, we have been able to install and test two systems for USA tax compliance. Previously, we had one system. Given the times, I think having a Plan A and a Plan B is prudent and appropriate. The systems do differ. I am not going to elaborate on all of the differences here.

Here it is appropriate to say thank you to several colleagues and other firms as we have worked through these matters including US counsel who is also both an attorney and certified public accountant.

Another is the group of people who actually manage and operate the system we have used since 1 July 1979. I am raging with respect to the management of this firm as it is

a tragic cultural loss, in my view. This firm previously known as Commerce Clearing House was founded in 1913, a significant date in USA history. Among other events, this is the year the second, not first, USA income tax was enacted.⁴ Commerce Clearing House is one of the official reporters for the Supreme Court of the United States. Responsibility?

A note is in order here. A fact not well known with respect to the USA is it actually has twelve central banks, not one, which constitute the Federal Reserve System. One often hears references to “the Fed”, “the Federal Reserve”, “the Federal Reserve Bank” and similar. Occasionally, if one listens or reads closely, one will observe the reference “Federal Reserve Banks” (plural). Typically but not always, these are referencing the Federal Reserve Bank of New York which has the larger impact on the financial systems relative to the other eleven including specifically the administration of one of the world’s reserve currencies known as the US dollar. This is a rather odd and unique construct. It was actually done for a rather good reason which, unfortunately, has never been used. One of the reasons for twelve central banks within a single nation state deals with land mass as well as diversity of environment and culture impacting monetary policy.

A portion of this is relevant to this issue of the USA tax systems, much of the rest I will leave for another day. Some of the people with whom I am acquainted and with whom I work in this zone are not located in “New York”, “Washington”, *etc.* Rather, Chicago, Illinois, Sioux Falls, South Dakota, Des Moines, Iowa and Wichita, Kansas are significant in maintaining, operating and accessing these systems.

The USA central and private banks’ systems interacting with the US Department of Treasury are a part of the problematic areas. Some of this software remains in the computing or compiling languages known as FORTRAN (“Formula Translation” – 1950s) and COBOL (“Common Business-Oriented Language” – 1959) which long predate my days in the university. This is also a subject for another day but relevant to the problem at hand. Think along the lines of software updates, hardware renovation and replacement and maintenance.

The “tech people” who make these systems work with whom I have worked since 1 July 1979 reside in Wichita, Kansas. I confess to circumventing management investing some four hours with these still fabulous experts on Friday 22 April on an open line with open systems. The primary purpose of this was the installation, activation and testing of the USA Federal, state and local income, transfer and other tax compliance systems and software for the tax years 2003 through 2014 with respect to the ProFX portal, system and software.

One might reasonably ask why all the way back to 2003, some 12 years ago? The USA tax regimes are in no way stable. Each tax year differs with respect to the relevant law and, consequently, the relevant software differs but interacts from year to year. People need to listen and hear when people like me whine and rage about “receiving something like five e-mails a day from US Treasury with tax law changes...”. In addition to trying to

keep up with the changes as a professional, this software has to be changed and “updated” each and every time. *E.g.*, we installed the ProFX software for 2003 through 2014 on Friday 22 April 2016. This morning Tuesday 26 April 2016, I had to spend a more than one hour with “automatic updates” to this same tax compliance software for the tax years 2009, 2010, 2011, 2012, 2013 and 2014. That’s right. Retroactive law and system changes to the year 2009.

When one hits this metric in cultural/empire/nation state problems, one needs to pay some serious attention. I am rather expert in this zone of collapse, bankruptcy and insolvency are a subset. While I will tread lightly due to matters of privilege, I did work on a portion of the collapse of the former Soviet Union. That was a nation state, empire and cultural collapse. One of my infamous war stories is when we had to close the Moscow office of what is today BDO.

The USA portion of BDO arose when the Seidman family emigrated their law firm from Russia to New York City prior to the 1917 Bolshevik Revolution in Russia, then under Tzar Nicholas II. Thus, the USA portion of BDO is actually Russian in its origins.

I am a very privileged person. The Seidman brothers and one other who actually emigrated from Russia elevated me to full equity partner at the ripe old age of 31. These fabulous mentors of me actively worked within the firm well into their 90s to a very wonderful result for our clients, a few like me and others. I inherited a portion of their original practice. Given that these fabulous people did not believe in anything as vulgar as “retirement”, I am the “last partner trained by the founding Russian family”.

The founding German family was led by Herr Doktor Heinz Heinrich Otte and his son. The affiliation of the Seidman family and Otte family occurred in the early 1950s. Prior to WWII, the attest function or audit function in Germany was imbedded in the banks. The Otte family came out of Commerzbank. With the imposition of the Marshall Plan, these attest or audit practices were spun out of the banks into the model used by the USA where taxation, accountancy and consultancy are mixed with the attest or audit function. This mixing with the attest function should never be permitted.

During my tenure, the “retired” managing partner⁵ of the Hanover office as well as others in the Frankfurt office assisted me in certain large engagements. In addition to Germany, these engagements spanned in excess of 35 nation states not including the USA but including Russia, both during its inclusion within the former Soviet Union and after the collapse. Some of this work was systemic in nature.

In short, BDO in its origins was deeply classically Russian (Eastern Orthodox/Byzantium/Eastern Roman) and deeply classically Germanic which differs from Roman and Eastern Orthodox, including the culture and ethics of my professions. BDO had a far larger footprint in Europe than the USA throughout my 25 year tenure.

I have some past affiliation or relationship in a teaching capacity with the Universität Heidelberg. Heidelberg was founded on 18 October 1386. It has operated without

interruption since that date. Heidelberg is the university of Dra. Hannah Arendt, former Chancellor Helmut Kohl who oversaw the unification of the Germanies and many others. As a general principle, law, accountancy and consultancy are actually a part of the greater area of philosophy. Indeed, my professions are all about human behavior like that upstart known as economics. In this contemporary world, we have lost our way.

I would be remiss if I failed to mention Miss Lillian Call, the founder of BDO's Boston office in 1969 via merging Lillian and Sten Nyburg's Cambridge law and accountancy firm into Seidman & Seidman, the predecessor to BDO USA, LLP. Very shortly after that merger, Mr. Nyburg tragically died. I never had the honor of knowing the man who was Lillian's mentor. Sten and Lillian's culture in the law, accountancy and consultancy was that of the Commonwealth of Massachusetts. Lillian was a leader in the development of these software based compliance systems. Among other matters, the portion of the New England practice which I managed in the early 1980s under Lillian's guidance was one of the *beta* sites for ProFX. She was an extraordinary mentor of me.

For the record, I have some serious education under the watchful eyes of the *Ordo Sancti Benedicti* (Benedictine Order) in the German and French languages and the *Societas Lesu, S.J.* (Jesuits) in the law.

I have to add here that education is a life-long process, not some event with a *certificado*. It is a process that I treasure and continues yet today in this great *Republica de Costa Rica* under the Figueres constitution. What an extraordinary culture and place to be! There are solutions here.

I am blessed with a classical and diverse education which holds me in good stead. I am forever grateful perhaps especially in these troubled times. The lessons of classical education have great value when dealing with collapse, insolvency, failure and crises. We need solutions. Clearly what we are doing and have been doing is not working.

So, back in the day, we had to close the Moscow office due to the velocity of the change in the relevant law including taxation as the Soviet Empire imploded, some portions of which we were advising as well as long standing practices and clients in these very zones. With respect to our clients, we could not advise them before the law would change leaving our clients and the firm at risk. Thus, we "soft closed" the Moscow office until some stability returned, then "re-opened".

When I receive more or less five e-mails daily from the US Department of Treasury many of which are large pamphlets or small books with changes in the law... . Then when I have to update tax compliance software back to 2009 within a few days of loading the software in 2016 for the same purpose... . This is neither new nor recent with respect to the USA. Shades of the not so distant and not so good past.

No, I am not recommending amending returns within this practice already filed for these tax years. In some circumstances, we did have to amend several years when 2009 was changed via legislation enacted into law in late December 2010.

Furthermore, prior year “tax attributes” carry forward and back, among other matters of a similar nature. Thus, prior and future tax years can and do impact the current year tax calculations including tax due. *E.g.*, the record for my career to date is where we had to amend the prior 40 years of a large multinational consolidated group where the stock and bonds traded on the world’s bourses. These amended tax returns were necessary through no fault, nefarious or otherwise, of this corporation, its management or its stockholders. These amendments were a product of the law. This law applies to our clients, from the poor to the vast vast normal to the grand in scale and scope assuming they are otherwise subject to the USA regime.

In fact, Chapple Blondet here in our San Rafael de Escazu offices does have systems for this very process which go back to the tax year 1997. Older tax years can still be obtained via ProFX but one has to have either old hardware and software or purchase updated archival software. Remember 32 bit machines and the square disks? Chapple Blondet does maintain hardware with the mechanical means to access the data on square disks for the moment but we have not invested in 32 bit near antique computers. Until rather recently, I had two “squirreled away” in BDO USA LLP’s Gardner, Massachusetts office.

I have not installed the 2015 tax year with respect to ProFX. I can do this later, if appropriate.

There is another problem here which is cost. ProFX has changed its cost structure such that it looks to me to be 100 times more costly in some circumstances than the second system to be discussed in a moment. ProFX is certainly more costly for 2015 than in prior years. This is, of course, relevant. If this firm does not make a profit from this service, it can serve no client in this area of taxation. The same is true of any other firm.

I think more importantly, this goes to the heart of the cost of my professions’ services in this area of tax compliance. This cost is pure overhead. Tax compliance does not add a single productive electron to our clients’ businesses and families. The vast majority of my clients now and over the years are in the productive areas of our economies such as agriculture, electric power generation, retail, commercial and industrial construction including roads, bridges and hospitals and even literal rocket science, to mention a few.

My *curriculum vitae* certainly indicate that one area in which I am expert is finance, including very large insolvent banks and their holding companies traded on the world’s bourses and these very systems. But I frankly find our productive clients to be far more interesting and a bit more important than mere money. This firm will have zero revenue if these clients fail including via excessive overhead costs. Overloading their overhead, including if not especially, by excessively complex tax and other financial systems, is exactly contrary to Chapple Blondet’s best interests and the best interests of each and every client including those in finance, not to fail to mention the best interests of our countries and cultures. This is directly contrary to this attorney and certified public accountant’s quality of life.

When I return to the management group of ProFX with respect to cost, I think I may have a little leverage on the pricing of their semi-monopolistic position. Plan B known as ProSystems or the new system provides this leverage. It is less costly.

There is an issue out there with respect to these private services and portals. One needs to listen very attentively when one hears the beat of this contemporary "privatization mantra". They are NOT referencing capitalism which is fundamentally premised on very real and serious competition. What is typically being referenced today is called a "private monopoly", another topic for another day.

The gentleman from ProFX's tech group with whom I worked last week is sufficiently mature to recall FORTRAN and COBOL. He has thankfully worked within these systems for his entire career. During the inevitable "hurry up and wait" time implicit in these processes, he was very responsible and helpful to me in largely confirming my views, suspicions and methods of dealing and coping with this immediate problem as well as facing our future. I am very grateful to him and his colleagues.

One of the issues is security including referencing certain government agencies. It includes the "hackers" who now know to look for "back doors" and other intentional and unintentional weaknesses in these systems especially within "e-file" and "e-pay". It includes data mining by private interests. I saw a recent estimate for the month of January 2016 where the US Department of Treasury estimated the systemic losses from fraud to exceed US\$2 billions due solely to e-file.

There has been at least one event where the USA government systems were hacked on a large scale. This hack involved the USA government personnel files and systems including those employed by the US Department of Treasury, their military people and those employed in intelligence. While this is not directly touching the US Department of Treasury systems, it amply demonstrates something a little more serious than a merely careless attitude and likely vulnerability throughout.

I think it may be appropriate to observe that a large Panamanian law firm's systems were rather recently hacked. The finger prints on that are curious. Apparently not well reported is the alleged hacking of several other law firms at the same time or about the same time including Weil Gotshel & Manges in New York City. Curiosity is my only observation concerning this matter at the moment.

These losses are typically in the nature of what one calls identity theft. Given the data included in USA income tax returns and that required from those of us with "foreign financial accounts", the risk to those of us who are honest hard working people is not trivial. Thus, this is one of my concerns in operating this firm. This is very real. It is tragically not "wingy dingy", for lack of a better expression.

The second system we have installed is via Intuit. Some may recognize Intuit as the owner of QuickBooks, another problem for another day. This system is known as ProSystems as opposed to ProFX discussed above. (As a side note, I have no idea who

dreams up these obnoxious and confusing names!) Intuit has several packages or layers of tax compliance software. Some of their software is geared specifically to the vast vast normal. This package is in no way sufficiently robust for this firm or similar.

A bit of history is instructive. In the past the Intuit system was developed for the vast vast normal. As a consequence, it was not sufficiently robust to prepare and, in more recent times, e-file more complex personal let alone business tax returns in the USA system. Some within my professions mocked them in a most arrogant and inappropriate manner. As I mentioned before, the place I reference as the vast vast normal can be a very good place to be, one of the reasons being one does not have to employ us or similar to prepare personal income tax returns. That is a good thing. More time for more important matters such as quality of life.

I will add here that *la Republica de Costa Rica* understands this albeit I fear the day as we are inching down this path. *E.g.*, I do not personally file an income tax return here. The firm does file an annual income tax return as a business enterprise. I do, however, pay personal income taxes to Costa Rica via a fabulous final withholding tax regime. As a taxpayer, an attorney and an accountant, this most assuredly does enhance the quality of my life including the profits of Chapple Blondet.

I have always had a most delightful and profitable practice with some seriously great people and families well within this vast vast normal. For attorneys and accountants like me, this group provides many “happy problems”, a phrase invented by a linguist in Köln, Germany. Happy problems go to the heart of a quality life including education, innovation and being full square in the productive economy.

In the context of tax compliance software, that which works for our “typical” client (including foreign like me and more than a few others within this firm) will also work for the vast vast normal. Tis simple math. Pay for one system which works for nearly all.

There are areas where even ProFX is not sufficiently robust such as the issues in that 40 year carryback and amending process I previously referenced. Due to the US Department of Treasury systems, it remains “unresolved” yet today despite an outstanding order of the US Department of Justice. The issue sources in the inability of the “IRS computer” to accept the content of the various income tax returns, including the resolution of a dispute. The sum of money is not trivial.

A part of that matter required the client to go before the Supreme Court of the United States. In that matter, I testified before the US Department of Treasury in Washington, DC and actually via that process, formal and informal, wrote some of the regulatory law which is still law in the USA today. Some of this testimony included these systemic matters. Indeed, it is actually, as my British friends are wont to say, “spot on” with respect to some of today’s very serious problems.

After investing some considerable time with several others who are currently using ProSystems, I concluded it was likely to be sufficiently robust for nearly all, if not all, of

our current clients as well as “no worse” in the security area and the issue of care, custody and control of the software. So, last week we purchased access to this software for only the tax year 2015. I have been assured that access to prior years can be purchased as needed.

ProSystems 2015 is currently installed in this firm’s systems. I have commenced the preparation of some returns on this system. It appears to confirm the advice I previously received. The “foreign” portion of the law exists in this software. I have actually used a small portion of this area. It appears to be adequate.

A client of this firm has used Intuit software for more than a few years to prepare his personal tax return. Privilege limits my ability to comment but he and I have had some success with Intuit. We were not using ProSystems but, rather, another version. But we did experience a rather meaningful debacle.

This debacle was located on the receiving side of the US Department of Treasury. Thus, ProSystem, ProFX and every other private system did not function in the same area.⁶ The sums of revenue the US Department of Treasury had actually received which were not reflected in their systems were positively astounding. That was another wake up call which was more than 14 years ago.

The point of the forgoing is we administered the returns properly including the existence of the relevant “node” of software. We e-filed properly. We paid the consequent tax properly. The problem was the US Department of Treasury/IRS received only a portion of the actual returns which I saw on my screen and as reflected in the copy belonging to the client. The checks cleared, some for several millions each. The US Department of Treasury, as I recall, waited over a year before they told “us tax lawyers and accountants” of this failing within their systems. There was silence in that room when a few of us were advised verbally before the official systemic release.

Their solution was not comforting. It involved remitting the functional equivalent of one piece of paper in the form of a pdf file wholly independent of the actual tax file. The IRS promised to attach that pdf file to the relevant returns. I have no idea how one attaches a pdf file to those previously e-filed returns.

The tax in question was literally the taxpayer’s election to pre-pay the income tax on one’s entire pension otherwise due only as and to the extent one receives the actual pension payments. Thus, it had a very long forward impact. *E.g.*, 20 years from now I receive my pension tax free due to paying this sum 20 years prior.

The burden of proof is on the taxpayer. So, if the IRS does not show in its systems that I previously paid this tax, they will and do issue deficiency notices to collect it yet again a second time. That is not proper on the part of a government with respect to, dare I use the word, its citizens and, in this case, others. There are more than a few non-US persons who are rightfully and properly the beneficiaries of USA based public and private pensions. Given various treaties, tax information sharing agreements and

similar, non-USA taxing and enforcement authorities will often assist the IRS in their collection efforts.

So, we do not know or even have reasoned assurance of what is actually being received via these systems including , if not especially, e-file. Thus, please be very sure to obtain and retain PAPER copies of your tax returns and proof of payment. These need to be retained on a permanent basis.⁷

For those who prepare and file your own income or other tax returns, please be very sure you also print a copy and retain that in your permanent files.

Which brings me to proof of filing. When Chapple Blondet was initially required to file our clients' USA tax returns via e-file, we received via e-mail a confirmation from the relevant taxing authority confirming their receipt of the relevant tax return. This was remitted to us by the taxing authority, not the intermediary portals such as ProFX. We no longer receive these. I have every reason to believe ProSystems does not differ in this regard. I am investigating this a bit further. I find this to be uncomfortable.

Purchasing access to ProSystems also purchases access to a second portal into the US Department of Treasury, the several states and some political subdivisions' systems. Having Plan B strikes me as prudent.

One final change needs to be mentioned. The US Department of Treasury decided to add insult to injury. After "I know not how many years", they have changed the due dates with an obnoxious level of complexity. Thus, people like me now have to go back and check this in painful detail. It is time consuming. The tax software is certainly helpful in this area if only shifting a bit of this burden to the poor souls who have to keep it current. The reason for this appears to be some obnoxious attempt to slightly accelerate tax collections. We will be addressing this with our clients on a more individual basis.

I have thanked several people above without referencing their name. You know who you are.

There is another who is a dear client and friend for so many years. He is a purveyor of fine chocolate and other fabulous *dulces*. His store is a few floors down and across the street from the last office I had in Boston's financial district. He has devoted and continues to devote his life to nutrition and a small bit of happiness in the lives of so many, including those who are less fortunate. He was there as well when we were working in excess of 100 chargeable hour weeks in some of those horrible times past making a difference with respect to those with whom I was working as well as me and my family.

Well, he is still here helping us in both practical ways and lending a patient and understanding ear as well as providing some guidance to us from our clients' point of

view. This extraordinary man has always been and remains forever an inspiration to me and, I am sure, a few others as well. Thank you so very much.

And, sir, I trust you will also thank on our behalf that other fabulous gentleman who works in these very systems for the Commonwealth, God help him, who used to “hang out” at the Cape Cod office and residence from time to time. The Boston public libraries still actually stock the instruction book to Form 1040 individual tax returns in paper form?! Wonders never cease.

There is an oft quoted portion of the poem *Marmion* by Walter Scott published in 1808 which I think reflects the state of affairs imbedded in this morass of USA tax law and compliance. Systems of this nature, scale and scope are cultural. There is a clear element of deceit in these systems.

Oh, what a tangled web we weave
When first we practice to deceive!

Thus, at this moment I am going to send this rather lengthy memo and then return to preparing tax returns until they are complete. No doubt there will be other “glitches”. However, I believe we are on our way.

Once this is done, this attorney and accountant and this firm are going to speak rather loudly in some quarters concerning this very subject and more. As one might say:

Gute Dinge haben Weile. (It will be worth waiting for.)

Again, thanks to each and every one of you for your kind patience.

Please never hesitate to call or e-mail with questions or concerns. The new telephone number, post office box and physical address are all noted in the letterhead.

A postscript: I sent the last draft of this to that fabulous linguist in Köln this morning due to a near term conference call where this is relevant. It is nearly impossible to proof read one’s own work. I promise, you have not lived until you have a serious linguist as your editor. I even made only two errors in my German spelling! I am so blessed and so grateful to all.

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¹ Chapple Blondet purchased two buildings on a single lot in late January 2015. These buildings were purchased to house both our offices and my residence.

The reason is to greatly reduce our carbon footprint. In addition to nearly eliminating the use of an automobile, we have cut our electric consumption, so far, by over half which includes our sainted constructors' power tools. We consumed 399 kilowatts in March 2016 which translates into just a tad more than 37,000 colones (US\$70). This approximate one half metric is relative to our former office and residence, both of which were highly energy efficient.

Indeed, this is also a demonstration project of exactly what can be done and how we as a law, accounting and consulting firm can play a very meaningful role in helping our clients and others achieve similar results. I am fond of reminding that less consumption means lower monetary costs as well as required of all of us in these trouble times of global resource limitations.

We commenced a process of restoration and renovation in early February 2015 which is ongoing. I moved the residence into these buildings in February 2015. In August 2015, the renovation process was sufficient that we could physically move the offices. Thus, the computer systems were shut down and moved.

Further, as part of this process, we are re-configuring these computer systems. *E.g.*, one of my goals is to remove the server which is on 24/7 intended to drive an intra-net as well as providing access to the net/red. This server uses a surprising amount of electricity as well as increases the risk to external hackers, viruses and so on.

There are also problems with Microsoft, specifically Version 7, Vista and now Version 10. We are, for the moment, boxed and locked into Microsoft at least to the extent of USA tax compliance matters. The USA tax compliance software requires the use of Microsoft operating systems.

Computer experts today seem to find these goals and processes "odd", for lack of a better word. This profession has clearly become part of the problem albeit thankfully there remain a few who are intelligent, dedicated to their profession and behave in a responsible manner.

On the other hand, I have been sorely disappointed with more than a few of these computer specialists, explicitly including their attitude. They apparently are utterly clueless as to the energy and resource issues, even when I limit that to mere monthly monetary costs in the discussion.

They do not understand security which includes unauthorized access to both these systems and these buildings. But security is a little more than this. It includes such matters as back up in the event of fire, earthquake, virus and similar as well as the health and welfare of those who live and work in these buildings and those who may visit from time to time.

As for innovation and a few other matters, I have seldom met a group of more obnoxiously rigid Luddites who absolutely refuse to change, grow and mature professionally, technically and personally.

I have no more patience.

² Seldom appreciated these days is a fundamental constitutional issue within the United States (plural) of America. Within this system, each individual state which makes up the union is, in fact, sovereign. Thus, for example, bonds issued by the individual "states" are sovereign bonds, in many respects not that different from those issued by the Republic of Costa Rica and others.

The licensing of incorporeal persons such as corporations, partnerships and similar is largely reserved to the individual sovereigns which make up the United States of America.

These differences in sovereign governance meaningfully impact the governance of incorporeal persons organized under one or another of the separate sovereigns which make up the United States of America.

Furthermore, not all of these “states” are states. Rather, for example, Massachusetts is a commonwealth as is Pennsylvania. The actual name of Rhode Island is the “State of Rhode Island and Providence Plantations”.

The State of Hawaii (“*Moku‘āina o Hawai‘i*”) is positively fascinating in this area as I believe Hawaii is more akin to a monarchy than a state. Dole Food Company, Inc. is facing a few material problems as a direct consequence where the issues trace directly to 1851.

One of my experiences in Hawaii involves the sale of the airframe for a 747 Boeing aircraft and its engines to Bank of Hawaii Corporation which has its origins in 1897. It is a classic in illustrating the importance and complexity inherent in many of these matters. Sovereign governance issues can be paramount and even trump taxation.

In addition to Hawaii in this matter, we had to concern ourselves with the Kingdom of the Netherlands via Koninklijke Luchtvaart Maatschappij NV or KLM or Royal Dutch Airlines (the “NV” is an incorporeal person known as a “*naamloze vennootschap*” and the “Royal” in approximate English has serious meaning including “who can sign off on the deal”), England as distinct from the United Kingdom as well as the City of London, Nihon-koku (the “State of Japan”), Barbados within the Lesser Antilles, the Commonwealth of Massachusetts, the State of Rhode Island and Providence Plantations and the United States of America including more than one ministerial or cabinet level agency in terms of matters of governance and taxation including income and transfer taxes.

I had the dubious distinction of issuing what is called the Tax Opinion Letter concerning this matter as well as actively closed the transaction. The sum of wealth was not trivial. The ultimate beneficiaries, in part, included large pension plans.

The understanding and deep appreciation of responsibility as well as the necessary education and study is paramount especially in these troubled times. These matters, including constitutional, are important.

³ There is a reason one half of the park in front of the state capital, the old Ritz Carlton, my former condominium in Boston and a few other landmarks is referenced as “the Boston Common” while the other half is referenced as “the Boston Public Gardens”. Of course there are matters of greater substance, as well.

⁴ The first USA income tax was enacted in 1865. A copy of this legislation and the floor debate of the US Congress is in this firm’s library.

⁵ My German partners of this generation shared the same view with respect to vulgar retirement as my USA/Russian partners.

⁶ As I thought about this, I do not recall if we were ever advised as to whether those returns filed in paper form experienced the same problem. Please bear in mind that nearly all returns are ultimately key punched into the US Department of Treasury computer systems. Those filed in paper form are simply key punched by IRS personnel or subcontractors.

⁷ From time to time, one will read or hear that one needs to retain USA tax returns and attendant supporting data for only “three years”. This sources in the concept of the statutes of limitation. Statutes of limitation, in the context of taxation, limit the time beyond which the taxing authorities can change a measure of income or other tax result.

Some years ago, I did an exhaustive study of this issue on behalf of a client. While we knew the answer, this study was another “education”. The simple answer is one must retain these income and other tax returns on a permanent basis.

In the case of a natural or corporeal person and limited to the USA nation state law, I might be willing to destroy these documents about 10 years after an individual passes away. The taxing authorities can and do go after the decedent’s property now in the hands of his heirs for tax deficiencies, among other matters. The law concerning this matter does, however, differ with respect to each and every individual state.

The study I referenced above is in the context of incorporeal persons and limited to the extent of the USA nation state and more than a few of the several states which had the ability and could assert jurisdiction after the corporations were liquidated and dissolved under the relevant and various individual legal regimes concerning governance of incorporeal entities. What a mouth full of verbosity! In any event, as a consequence, Chapple Blondet SRL and others are under a direct order of the US Federal Bankruptcy Court to retain certain documents for 15 years after “corporate death” of a particular incorporeal person and the cessation of certain insolvency proceedings.

Again, I have a collection of other war stories along the lines of the “the law and the lore”, to borrow a phrase from the title of a truly great book concerning taxation in the Commonwealth of Massachusetts. Suffice to say, you and I need to keep these records in paper form on a permanent basis.

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