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The Contemporary Tax Journal's Interview of Mr. Gary Sprague

By: *Xuan Hong, MST Student*

Mr. Gary Sprague, a tax partner based in international law firm Baker & McKenzie's Palo Alto office, is a recognized leader in the international law and e-commerce law field. With decades of international taxation experience, Mr. Sprague was appointed by the OECD to serve as the business co-chair of the OECD Technical Advisory Groups ("TAG") on business profits and treaty characterization issues. Mr. Sprague also serves on the International Fiscal Association's Executive Leadership Committee, as well as Tax Management's U.S. International Advisory Board. As a top U.S. West Coast Tax Advisor, Mr. Sprague devotes time to the development of U.S. and international tax policy matters on behalf of clients. Mr. Sprague shares his research and perspectives via numerous publications and conferences. He regularly contributes to Tax Management International Journal's Leading Practitioner Commentary, as well as to the annual TEI-SJSU High Tech Tax Institute conference in Silicon Valley.

Despite such amazing achievements in the tax field, Mr. Sprague, however, said taxation was not his first choice of law fields at the beginning of his career. What led Mr. Sprague to step into the tax law area and take on significant roles in serving clients on complex tax matters and help many countries shape international tax policies? In this interview with Mr. Sprague, he shared his career path in the tax field and his views of taxation as a profession.

Following are questions asked by CTJ and a summary of Mr. Sprague's answers.

1. [CTJ] How did you get involved in the tax field and with a focus on international taxation?

[Sprague] In part, it was by design. In other parts, it was by luck - both good and bad, or at least it seemed bad at the time. By the time I entered law school, I knew that I was aiming for a career dealing with international matters. I had taken the first set of tests leading to a possible position in the U.S. Foreign Service, but withdrew from the process in order to focus on law school. There, I took several courses that addressed legal issues arising from cross-border transactions. International tax was one of the more interesting classes I took. Apparently, I wasn't very good at it; it was one of my lowest grades in law school.

By graduation, I had decided that I wanted a career in international banking. So, I joined a firm in San Francisco that boasted a large practice advising mostly non-US banks. The firm also was well known for its admiralty work. Pictures of the subjects of its most famous admiralty cases lined the walls. That created something of an ominous sense in the halls, as the most famous cases for an admiralty firm are generally ships running into things like bridges or islands, or sinking in heavy seas. The firm also had a very small tax practice that supported its international shipping clientele.

The bad luck (at the time) partly arose because among the four entering first year associates, I took the longest break between the bar exam and beginning work. When I finally showed up for the first day of work, to my dismay I learned that the firm allocated department assignments for the four first years on a first come, first served basis. The position in the high profile banking group was long gone, snagged by a much more punctual candidate. All that was left was the one position that none of the others wanted - tax.

Not having any better options, I agreed. At least the firm promised that after a year, they would reconsider whether I could transfer to a more interesting department. Just before my first-year anniversary, the sole tax partner disappeared. It was never clear to me whether he was fired or resigned. A lateral partner recruit showed up to take his place. Firm management implored me

to reenlist in tax for another year, to help with the transition. I was the only associate in the corporate tax area. The flattery worked, so I signed up for a second year in the tax department.

As it turned out, the international tax treatment of shipping enterprises was unexpectedly interesting. Tax treaties normally contained an article dealing with international transportation income, U.S. domestic law had special sourcing rules for shipping, and subpart F had its own shipping income category. I began to think that perhaps tax wasn't so dull after all. But it was clear that the opportunities to develop skills in the broader international tax area were always going to be limited at this firm. So, when Baker & McKenzie announced that it had an opening for an associate in the tax group in San Francisco, I jumped at the chance.

2. [CT]] *What led you to become actively involved in tax work of the OECD?*

[Sprague] In the late 1990s, the OECD undertook a series of projects to explore the tax policy aspects of e-commerce. The OECD took the admirable step of organizing this work through a series of Technical Advisory Groups (TAGs), which were comprised of representatives of OECD Member countries, non-Member countries, and business. The business representatives were nominated through the Business and Industry Advisory Committee (BIAC) of the OECD. I had begun to be involved in some BIAC work on international tax matters, and by then Baker & McKenzie was starting to be known as leading advisors to the high-tech community in Silicon Valley. BIAC offered to put my name forward as a member of the TAG on treaty characterization issues, and the OECD agreed.

Our work was to examine several common e-commerce transactions and advise whether they should be characterized as royalties, business profits, or payments for the use of industrial, commercial or scientific equipment for tax treaty purposes. Our work eventually was adopted and published by the OECD, and some of our text made it into the OECD Model Tax Convention Commentary. The business representatives on the TAG chose me as the business co-chair, which turned out to be a very fortuitous decision, as the co-chairs were able to exercise direct influence of the technical drafting of the report. Based on my work on the treaty characterization TAG, the OECD then invited me to participate on the Business Profits TAG, which principally was focused on whether the Permanent Establishment (PE) standards of Article 5 should change in response to e-commerce business models.

3. [CT]] *What stands out as one or two of your most significant accomplishments regarding your work with the OECD?*

[Sprague] I think it is not one item, as much as the nearly 20 years of engagement since the original e-commerce TAGs. The OECD has continued to invite business input on its proposals, and I have been fortunate to be asked by our clients to continue to advocate for sound tax policy at the OECD on their behalf. Some issues are never resolved completely. My two TAGs addressed characterization and PE, and those issues are right back on the table now except in the context of the "digital economy" instead of "e-commerce."

4. [CT]] *How do you keep up to date with the tax law as well as technology so you understand how tax rules apply to it?*

[Sprague] That is pretty much an impossible task. The best strategy is to practice with a lot of really smart colleagues. From the perspective of providing a full range of tax advice to our clients, I rely on my colleagues to make sure that we as a firm have deep technical expertise in all relevant areas.

5. [CT]] *What do you think is one key area of our federal tax system that could/should be improved and why?*

[Sprague] We need international tax reform immediately. Our current rules are not competitive with those of our major trading partners. This disadvantages U.S. multinationals.

6. [CT]] What advice do you have for someone starting their tax career today?

[Sprague] Ask yourself whether you really enjoy working with the tax law, or whether it is just a job. If it's just a job, tax may not be for you. If you are really engaged with the intellectual rigor of the work, then you will have a long and satisfying career.

Fun questions:

7. [CT]] If you could have dinner with anyone, who would it be?

[Sprague] Mozart. It is hard to comprehend how a single person could envision and then create such a radical advance in his chosen art form over what had preceded him. I'd like to ask him whether he thought of his work in terms of making incremental steps over the prior art, or whether the new music just emerged wholly formed in his mind.

8. [CT]] What is the most unusual item in your office or something in it that has special meaning?

[Sprague] On weekends, I am a youth soccer referee. The way one works one's way up through the ranks is to start with younger matches in less competitive leagues, then graduate to older matches in more competitive leagues. Fairly early on in my referee career, I was given an end-of-season award: Under 12 girls "most improved referee." They gave me a nice plaque. I was quite proud of the recognition, and determined to hang the plaque on my office wall. While admiring it, it suddenly occurred to me that there was an unstated fact implicit in the award - that in order to be "most improved" this fellow must have had lots of room to improve. So, the plaque is still on my wall, as a reminder of humility and that there is always room to improve.

[CT] editor observation] For newcomers considering taxation as their professional direction, Mr. Sprague uses his own experiences to show that if you are willing to put your heart and action on the field, you would make a difference in your career life.

