the Internet has sprung into existence, remote sales now top $100 billion per year, and state sales tax revenues are rapidly shrinking.

The lesson for the ECJ is thus not to decide cases in the expectation that the political branches will act. Many member states are vehemently opposed to direct tax harmonization. The UK, for example, is more likely to react to losing Marks and Spencer by abolishing its domestic loss offset rules than by giving up on the unanimity requirement in direct taxes. Thus, the lesson for the ECJ is that it should be more careful about dismantling member states’ income taxes, because such decisions can have unexpected consequences.

More broadly, I believe comparing the U.S. and EU experiences shows that there is more than one way of constructing a single market without tax distortions, and that some level of distortion can be accepted. Thus, the U.S. Supreme Court can afford to be a bit more harsh without trampling down on state sovereignty on tax matters, and the ECJ can afford to be more lenient without creating unacceptable barriers to trade and investment within the EU.

I hope this conference is just the beginning of a series of discussions between EU and U.S. tax experts on these issues. A conference volume will be published next year, and a follow-up conference is tentatively scheduled for 2007—by which time we will also know how Cuno came out.

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