

# HORST FRISCH

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December 8, 2016

## THOMAS HORST, Ph.D.

### Education

B.A., Amherst College, 1965

M.A., Economics, University of Rochester, 1967

Ph.D., Economics, University of Rochester, 1969

### Professional Experience

- 1988+      Managing Director, Horst Frisch Incorporated. Company provides economic consulting services to private and public sector clients in areas similar to those served since 1981. Major areas of work include transfer pricing of U.S. and foreign-based multinationals, economic analyses of domestic and international tax issues, and FERC regulation of oil pipelines in Alaska and the Lower 48. Dr. Horst has testified as an expert witness in U.S. District Court in a corporate tax shelter case, in the U.S. Tax Court in four transfer-pricing cases, a case involving the apportionment of interest expense between foreign and domestic income, and a case addressing the income tax consequences of a complex partnership agreement. He testified in the Superior Court of Justice of Ontario, Canada about the impact of transfer pricing on a Canadian subsidiary's minority shareholders. Recently, he has affirmed three affidavits in a Federal Court proceeding in the Commonwealth of Australia. Dr. Horst has also testified in numerous Federal and state regulatory hearings on cost of service, rate of return, income tax and other regulatory issues involving oil pipelines.
- 1985-88      Director, International Tax Analysis, Deloitte Haskins & Sells. Trained and supervised staff of six professional economists to analyze transfer pricing and other international tax matters requiring economic analysis. Author of the International Bureau of Fiscal Documentation loose-leaf survey of transfer pricing rules for the United States. Testified before Congressional tax-writing committees on the appropriate tax treatment of foreign exchange gains and losses and on the impact of the Tax Reform Act of 1986 on the international competitiveness of U.S.-based service industries. Designed and supervised development of comprehensive computer program to calculate and project DH&S corporate clients' federal income tax liability (including complex foreign tax credit provisions) under Tax Reform Act of 1986 and subsequent law changes. Provided extensive and on-going advice to, and expert witness testimony for, the State of Alaska regarding oil pipeline tariff regulation and various state income tax issues.

- 1981-85 Principal, Taxecon Associates, Inc. Devoted considerable time to evaluating alternative proposals for out-of-court resolution of Trans Alaska Pipeline System (TAPS) tariff litigation; analyzed transfer pricing of goods, services, and intangibles; developed computer models of after-tax value of resource-extraction and manufacturing projects to various participants (owner-operators, governments, resource owners, creditors, etc.); evaluated economic consequences of allowing Eurobonds to be issued by U.S. companies through tax-haven finance subsidiaries; compared taxation of international income of commercial banks in the U.S., U.K., France, Germany, and Japan.
- 1977-81 Director, International Tax Staff, Office of Tax Analysis, U.S. Treasury Department. Formulated 1980 Treasury Department proposals for taxing foreign currency gains and losses. Actively involved in regulatory projects concerning transfer pricing rules; allocation of R&D, interest and other expenses against foreign income; foreign investment in U.S. real estate (drafted 1978 Treasury report to Congress); deduction of interest expense for U.S. branches of foreign banks (devised approach taken in section 882 regulations); taxation of U.S. banks by U.S. and foreign governments; criteria for, and limitations on, foreign tax credits allowed to U.S. taxpayers; tax treatment of "possessions corporations" (drafted first Treasury Report); taxation of actual and deemed dividends from foreign subsidiaries; and Domestic International Sales Corporations. Supervised staff of eight economists providing economic analysis of international tax issues. Worked closely with International Tax Counsel of the Treasury Department on legislation, regulations, tax treaties, Congressional reports and other international tax matters.
- 1975-77 Associate Professor of International Economics at the Fletcher School of International Law and Diplomacy at Tufts University. Taught courses in international trade and investment, international finance, microeconomics, econometrics, and introductory economics. Awarded and managed research contracts from the U.S. Treasury and Labor Departments. Appointed by President Ford to the Presidential Commission on International Investment.
- 1973-75 Research Associate at the Brookings Institution, Washington, DC. Co-author of book on the impact of U.S. multinational corporations on the U.S. economy and foreign policy. Drafted chapters on impact on U.S. exports, imports and balance of payments, antitrust issues, and income taxation. These chapters were specifically cited in several favorable book reviews.
- 1969-73 Assistant Professor of Economics at Harvard University. Taught graduate and undergraduate courses in international trade and investment and international finance. Published book on international investment by U.S. food-processing companies and articles on international trade and investment in the American Economic Review and other leading economic journals.

**Books and Articles by Thomas Horst**

"Comparable Profits Method," in Practical Guide to U.S. Transfer Pricing, Third Edition (Release 9), William H. Byrnes, Editor, LexisNexis, 2015.

"Debt Guarantee Fees and the Arm's Length Standard," Tax Notes International, February 13, 2012, 537-543.

"Determining a Subsidiary's Debt-Related Costs," Tax Notes International, May 16, 2011 (also to be published in Kai Konrad and Wolfgang Schön (Eds.), International Transfer Pricing in Law and Economics, 2011).

"Employee Stock Options and the *Xilinx* Case," Tax Notes International, September 7, 2009, 849-862.

"Using Discount Rates to Adjust Transfer Prices Under Long-Term Agreements for Differences in Risk," Tax Management Transfer Pricing Report, December 22, 2004.

"Practical Realities of Transfer Pricing Analysis," Global Transfer Pricing, November-December 2000.

"Taxation of Foreign Income of Financial Service Companies," The Impact of the U.S. Tax Code on the Competitiveness of Financial Service Firms, American Council for Capital Formation, 1997.

"Profit Split Method," Tax Notes, July 19, 1993.

"The Comparable Profits Method," Tax Notes, May 31, 1993.

"Transfer Pricing in the United States", in Hubert Hamaekers, Maurice H. Collins and Wilhelmina A. Comello, eds., The Tax Treatment of Transfer Pricing, International Bureau of Fiscal Documentation, 1992.

"Bausch & Lomb and the White Paper", (with Daniel Frisch), Tax Notes, May 8, 1989.

"Royalties and Super Royalties", International Tax News, Deloitte Haskins & Sells International, September 1987.

"The Case for Normalizing the Excess Tax Reserves of Public Utilities" (with Emil M. Sunley), Tax Notes, June 29, 1987.

"Foreign Exchange Gains and Losses: What are the Issues?", Tax Notes, September 16, 1985.

"International Aspects of Basic Tax Reform" (with Gary Hufbauer) in Charles Walker, ed., New Directions in Federal Tax Policy for the 1980's, American Council for Capital Formation, 1983.

"Some Issues in the Calculation and Uses of Effective Corporation Income Tax Rates", Tax Notes, November 1, 1982.

"Taxation of International Income of Commercial Banks", in Gary Hufbauer, ed., The International Framework for Money and Banking in the 1980's, International Law Institute, Georgetown University Law Center, Washington, DC, 1981.

"A Note on the Optimal Taxation of International Investment Income", Quarterly Journal of Economics, June 1980.

American Multinationals and American Interests (with C. Fred Bergsten and Theodore H. Moran), The Brookings Institution, 1978.

Income Taxation and Competitiveness: In the United States, West Germany, France, the United Kingdom and Japan, National Planning Association Committee on Changing International Realities, 1977.

"American Taxation of Multinational Firms", American Economic Review, June 1977.

"American Multinationals and the U.S. Economy", American Economic Review, May 1976.

"The Theory of the Firm", in John H. Dunning, ed., Economic Analysis of Multinational Enterprise, George Allen & Unwin, 1974.

At Home Abroad: A Study of the Domestic and Foreign Operations of the American Food-Processing Industry, The Ballinger Publishing Company, 1973.

"The Simple Analytics of Multinational Firm Behavior", in Michael B. Connolly and Alexander K. Swoboda, eds., International Trade and Money, George Allen & Unwin, 1973.

"Firm and Industry Determinants of the Decision to Invest Abroad", Review of Economics and Statistics, August 1972.

"The Industrial Composition of U.S. Exports and Subsidiary Sales to the Canadian Market", American Economic Review, March 1972.

"The Theory of the Multinational Firm: Optimal Behavior Under Different Tariff and Tax Rates", Journal of Political Economy, October 1971.

## **Expert Testimony of Thomas Horst**

### **Transfer Pricing**

*Cameco Corp. v. Her Majesty the Queen, Tax Court of Canada, No. 2009-2430(IT)G*

*Chevron Australia Holdings PTY Limited v. The Commissioner of Taxation of the Commonwealth of Australia, Federal Court NSD 569-578 of 2012 and NSD 151-156 of 2013.*

*Transocean Offshore Deepwater Drilling, Inc. & Subsidiaries and Transocean Holdings, Inc. & Subsidiaries v. Commissioner of Internal Revenue, Docket Nos. 17861-10 and 17862-10 (case settled before Tax Court hearing).*

*GlaxoSmithKline Holdings (Americas) Inc. v. Commissioner, U.S. Tax Court Docket Nos. 005750-04 and 6959-05 (case settled before Tax Court hearing).*

*In the Matter of Ford Motor Company of Canada, Limited, Superior Court of Justice (Ontario, Canada), Commercial List Court File No. 98-3075, January 22, 2004.*

*Altama Delta Corporation v. Commissioner of Internal Revenue, United States Tax Court, Docket No. 15083-92, 1994.*

*National Semiconductor Corporation v. Commissioner of Internal Revenue, United States Tax Court, Docket Nos. 4754-89 and 8031-90, 1992.*

*The Seagate Technology Inc. and Consolidated Subsidiaries v. Commissioner of Internal Revenue, United States Tax Court, Docket No. 11660-90, 1991.*

*The Perkin Elmer Corporation and Subsidiaries v. Commissioner of Internal Revenue, United States Tax Court, Docket No. 28860-89, 1991.*

### **Oil Pipeline Regulation**

*Comments Submitted in Response to The FERC Notice of Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs, Federal Energy Regulatory Commission, Docket No. PL 17-1-000.*

*SFPP, L.P., California Public Utilities Commission, Application No. 12-01-015.*

*BP Pipelines (Alaska) Inc., Federal Energy Regulatory Commission, Docket No. IS09-348-004, et al.*

*BP Pipelines (Alaska) Inc., Federal Energy Regulatory Commission, Docket No. IS09-348-000 et al.*

*SFPP, L.P., Federal Energy Regulatory Commission, Docket No. IS09-437-000.*

*SFPP, L.P. and Calnev Pipe Line, L.L.C.*, California Public Utilities Commission, Application No. 09-05-014 *et al.*

*SFPP, L.P.*, Federal Energy Regulatory Commission, Docket No. IS08-390-002.

*Kuparuk Transportation Company v. The State of Alaska*, Regulatory Commission of Alaska, Docket No. P-08.

*Cook Inlet Pipe Line Company v. The State of Alaska*, Regulatory Commission of Alaska, Docket Nos. P-07-5, P-08-3, P-08-7.

*Composition of Proxy Groups for Determining Gas and Oil Pipeline Return on Equity*, Federal Energy Regulatory Commission, Docket No. PL07-2-000.

*SFPP, L.P.*, Federal Energy Regulatory Commission, Docket Nos. OR96-2-000 et al.

*ARCO Products Company, et al., v. SFPP, L.P.*, Public Utilities Commission of the State of California, Case No. 97-04-025.

*Amerada Hess Pipeline Corporation, et al. v. The State of Alaska*, Federal Energy Regulatory Commission, Docket Nos. IS94-10-002 et al., and Alaska Public Utilities Commission, Docket No. P-94-1, 1996.

*SFPP, L.P.*, Federal Energy Regulatory Commission, Docket Nos. OR92-8-000 et al.

*Amerada Hess Pipeline Corporation v. The State of Alaska*, Federal Energy Regulatory Commission, Docket No. IS92-3-000, et al.

*Ultramar Canada Inc. v. Montreal Pipe Line Ltd.* (1990), 74 O.R. (2d) 136 (H.C.J.)

*Endicott Pipeline Company v. The State of Alaska*, Federal Energy Regulatory Commission, Docket No. IS87-36-000.

*Kuparuk Transportation Company v. The State of Alaska*, Federal Energy Regulatory Commission, Docket Nos. IS85-9-000, OR85-1-000, OR90-1-000.

*Trans-Alaska Pipeline System v. The State of Alaska*, Federal Energy Regulatory Commission, 33 FERC (CCH) ¶ 61,064 (1985), 35 FERC (CCH) ¶ 61,425 (1986).

#### **Other Matters**

*In re: G-1 Holdings, Inc. et al.*, Civ. No. 02-03082 (SRC) (D.N.J.), December 14, 2009.

*Sun Company and Subsidiaries v. Commissioner of Internal Revenue*, United States Tax Court, Docket No. 19631-97.

*ASA Investering Partnership, AlliedSignal Inc., Tax Matters Partner v. Commissioner of Internal Revenue*, United States Tax Court, Docket No. 27320-96, 1998.

*Judge Terry J. Hatter, Jr. v. The United States of America*, Docket No. 705-89C, United States Court of Federal Claims, in Support of Plaintiff's Motion for Summary Judgment, November 12, 1996.

*Atlantic Richfield Co. v. The State of Alaska*, 705 P.2d. 418 1985, Appeal Dismissed, 474 U.S. 1043.