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**Tax Policy**

Each month or so, members of Crowell & Moring's state tax team sit down with a different state's top revenue executive or chief counsel for a candid conversation regarding current tax issues as well as his or her own career. The series has a comprehensive nationwide scope. For this column, the third in the series, Don Griswold, Walt Nagel, and Jeremy Abrams (members of Crowell's state tax team) spoke with Peter Franchot, Comptroller of Maryland.

## **Crowell's Conversations: An Interview With Peter Franchot, Comptroller of Maryland**

PETER FRANCHOT, INTERVIEWED BY DON GRISWOLD,  
WALT NAGEL, AND JEREMY ABRAMS

### **Maryland's Fiscal Watchdog**

**CROWELL:** So, here we are in this fabulous office in the historic town of Annapolis and it all looks very . . . colonial!

**FRANCHOT:** Well, it's a fabulous office. William Donald Schaefer had it for eight years, Louis Goldstein had it for 40 years, and it's an honor obviously to be the Comptroller. But you know, because I'm an independent fiscal watchdog, there will inevitably be some frictions between me and the Legislature.

I think that friction goes with the nature of the job. For example, there are a couple of bills this year that are meant to get my attention, because the Legislature

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doesn't always agree with my fiscal positions. And looking at history, the same thing happened to Louis, 50 years ago. In fact, the Legislature even tried to abolish the position of Comptroller and turn it from an elected office into an appointed office, where in effect the Comptroller would be appointed by, and therefore serve, the Governor.

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**“One of the beauties of my job is that I'm independently elected . . . and don't necessarily have to toe the party line.”**

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**CROWELL:** That system – Governor appoints the top Revenue official – is common in most states.

**FRANCHOT:** Yeah, well one of the beauties of my job is that I'm independently elected. And that gives me a lot of credibility and independence and lets me work with the Governor and Maryland's Board of Public Works which approves state contracts. So I'm able to freely object when I don't think the best interests of taxpayers are being served, whether it's wasteful or inappropriate spending or issues with the procurement practices. That's the key: I can really stick up for Maryland taxpayers and don't necessarily have to toe the party line.

So they went after Louis; tried to eliminate the Comptroller's power and independence. They called a constitutional convention and they attempted to abolish the position. This was '67-'68. Even though Maryland only has three statewide positions that are independently elected – Governor, Comptroller, and Attorney General – there was interest in consolidating power further within the governorship. They made a tactical error, though, by including Registers of Wills and Circuit Court clerks who are local elected officials; they tried to convert those positions into state appointed positions, too.

**CROWELL:** Well that wasn't a very wise move, was it?!

**FRANCHOT:** Sure wasn't, because these folks who hold these elective offices are enormously popular. So, Louis, despite not having any institutional support at all, used the popularity of the clerks of the court and the Registers to just jam this constitutional convention and succeeded in blocking the change. But they did wing him a little bit. They took away his authority to audit state agencies and gave it to the legislative branch to do that. Now I maintain that was a big mistake, since taxpayers would be better off with an independent agency handling those duties. And I really believe that Marylanders feel strongly about having a strong and independent fiscal watchdog in the Comptroller's Office.

**CROWELL:** "Fiscal watchdog" – that's the phrase you just used to describe yourself and the essence of what you do. What does "fiscal watchdog" mean to you?

**FRANCHOT:** That means that I'm independently elected by Maryland taxpayers to look after the fiscal affairs of the State. And so, I am the only politician in Maryland who sees all the money coming in from the 2.8 million returns we collect, but who also votes on virtually all the expenditures on the Board of Public Works. The fact that I'm an independently elected official and my vote is equal to the Governor's is without comparison; there is no other state that has it. This, I suppose, is a reason a governor might want to eliminate it as Governor Tawes did. But having someone independently elected, accountable directly to the people, who sits on the Board of Public Works, collects state revenues and chairs the Board of Revenue Estimates, that's critical to the people of our state. And it's one of the reasons why Maryland is envied around the country.

**CROWELL:** So, it's you on the Board of Public Works, along with the Governor, and the State Treasurer . . .

**FRANCHOT:** Yes. . . well to give you a sense, in my tenure as Comptroller – the last six years – we've voted on over \$60 billion in contracts. It's really action central over at the Board of Public Works and it's a real benefit for the citizens of the state, because the nature of this position and its independence makes me a true check and balance for taxpayers before contracts are approved.

## Taking Maryland's Business Pulse

**FRANCHOT:** I also try to keep attuned to the interests of the people, including the business community. By the way, Don, thank you for serving on my Business Advisory Council.

**CROWELL:** I'm pleased to be a part of it. Tell us about the Council and what you hope it is helping you achieve.

**FRANCHOT:** Well, those are my eyes and ears into the front lines of the business community and what is going on in your field and also small and big businesses. The problem that the United States has right now with all of the Washington . . . dysfunction, I guess you'd call it . . . is that both parties have politicized the fiscal issues to the point where they can't get anything done. While it isn't exactly the same here in Annapolis, too often elected leaders have similarly politicized our fiscal issues. And it's a big problem.

Since taking office, I made it a point to reach out to the business community. I've met with businesses, large and small, in every corner of the State, with each and every Chamber of Commerce, and I've incorporated the perspective of the business community into our quarterly state revenue estimates. It's critical, because you just don't get the full economic picture by looking at the revenue numbers, since many are lagging indicators.

And particularly with the business community, what I find they need is not so much lower taxes, but they need stability and certainty as far as the tax and regulatory environment, and we haven't given them that. On a yearly basis, the Legislature has tinkered with the tax code and it has proven to be a real negative for Maryland as far as its national business reputation and the ability for small businesses to make payroll, to hire, and to invest.

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**Since many of the revenue numbers are lagging indicators, it is critical to get the perspective of the business community.**

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**CROWELL:** Given that negative reputation, why should companies expand in Maryland or move here as opposed to somewhere else?

**FRANCHOT:** Well, we have a great state with an educated work force, proximity to the federal government, great higher-ed institutions, great medical institutions; we are number one in K-12, in public school education for the last five years. We have a tremendous state with all sorts of unparalleled assets and potential. But I continue to tell my colleagues across the street that state policies—particularly with regards to taxes and regulations—are not done in a vacuum. Competing with our neighboring states, I've contended and maintain that this repeated meddling with the tax code, particularly in these unpredictable economic times, puts us at a competitive disadvantage with neighboring states, like Virginia.

But, Maryland is a great state. We just need to get ourselves back on track in terms of our fiscal policies. A move to the center, if you will, meaning that fiscal issues shouldn't become partisan issues. Give our consumers and our businesses a chance to take a deep breath and get their feet underneath them, but as to whether they should be in Maryland; people love Maryland . . . the schools, the talent, the natural assets. It is a great state.

**CROWELL:** This type of move to the center suggests a tension, perhaps, in your role as Comptroller—and perhaps particularly for you, because of your independence as a popularly-elected official. The tension, of

course, is that between attracting businesses to the state and at the same time, trying to keep revenues up. So, for example, you suggested that one of your major accomplishments in the last term was “cracking down on tax cheats.” How do you wrestle with that tension?

**FRANCHOT:** It’s easy. If there is someone out there that has got a tax issue with us—either through the economic recession that we are going through or inadvertence—we are not interested in getting a pound of flesh. We are not the Internal Revenue Service and I tell our citizens, don’t be intimidated and scared of us, we are here to serve you and we take that very seriously. On the other hand, if someone is deliberately, fraudulently cheating the state out of its tax revenues, we go after them like a ton of bricks, and we’ve got the technology now that will allow us to really sift through the economic activity of corporations and individuals to locate people that are just thumbing their nose and not paying what they lawfully owe. Well, that we don’t put up with.

We want to make it fair on a level playing field for everybody that does the right thing, which is the vast majority as you know. And we are pretty vigorous there. We have collected over \$3.1 billion in difficult-to-collect taxes through the federal vendor offset program, the captive REIT changes we urged, and technological advances. I point out that these aren’t new or increased taxes; they’re taxes already owed that we weren’t previously able to collect. The only way to make it fair for the vast majority of businesses who play by the rules is to vigorously go after those who don’t.

### **Franchot and Comptroller: A Great Match**

**CROWELL:** Let’s talk about your career for a moment. You spent 20 years in the House of Delegates and served on several committees during that time in the General Assembly. Then what prompted the move to run for the statewide office?

**FRANCHOT:** Well, I loved the Legislature, but I’d been there 20 years. I was a subcommittee chair in appropriations, which was an important role that put me at the heart of state fiscal policy. But I sensed that people wanted a change in the Comptroller’s Office and I was ready to roll the dice and run against William Schaefer, who was like the Babe Ruth of Maryland politics at the time. Long-time Mayor who turned around Baltimore, popular two-term governor and comptroller. . .

He had lost a little bit of ground, but nobody gave me the chance, even my own mother didn’t think I was going to win! But in a three-way race against him and a talented County Executive named Janet Owens, I won narrowly in the primary, won the general and since then I’ve won comfortably.

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**“The only way to make it fair for the vast majority of businesses who play by the rules is to vigorously go after those who don’t.”**

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**CROWELL:** You had some pretty big shoes to fill, following Schaefer and Goldstein. The statue of Goldstein outside your window is inscribed with his famous way of greeting people, “God bless y’all real good.”

**FRANCHOT:** Louis was probably the most beloved elected official in the history of the State. When I first was elected in 1986, as a rookie delegate, he showed up at a fundraiser that I had. It was like God himself showed up. I mean this guy was just . . . everybody knew him. Everybody recognized him, incredibly charming guy, in person. But I am lucky to have his seat. May I tell you a quick Louis Goldstein story?

**CROWELL:** Sure.

**FRANCHOT:** I met the head of security in the court of Southern Maryland, in Leonardtown, and he told me, “In a previous career, I was in the state police and my job was driving Louis Goldstein. The Comptroller was always running behind time. He’d come running out of his office and go out to the car at the curb, jump in and say, ‘Kenny, I’ve got to get to Ocean City and talk to the teachers’ convention, I’m late. Step on it.’ So,” he said, “I would step on it in my trooper sedan, going down Route 50. Louis would say, ‘Drive faster, I am not going to be there on time.’ Inevitably, we would get pulled over in Salisbury, red and blue flashing lights. The officer came to the door, and I said ‘Officer, I am with the state police, I’m driving the Comptroller, he’s late. We are going to Ocean City.’ Louis would lean over from the backseat and say, ‘Officer, I told him to slow down!’ He just threw me under the bus,” but he said, “You know, it couldn’t have been done by a nicer person.”

**CROWELL:** Speaking of stories: You made news and surprised a lot of people recently by announcing that you will not be running for governor. What went into that decision?

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**In deciding not to run for governor, it became apparent to me how well-suited the Comptroller’s Office is for me.**

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**FRANCHOT:** At the end of the day, there were a lot of people who were pushing for me to run, who were looking for someone who’s fiscally responsible but comes from a progressive perspective on social issues. I gave it a lot of thought. But at the end of the day, and after lots of conversations with my wife, Annie, and kids, Abbe and Nick, it became apparent to me how well-suited the Comptroller’s Office is for me. You know, some people wait their whole lives looking for their dream job and I looked in the mirror and realized I’ve already got mine. And I look forward to being a central voice on fiscal issues in Annapolis for years to come.

### **New Deputy Comptroller David Roose Takes Over for Linda Tanton**

**CROWELL:** You have recently said thank you and farewell to Deputy Comptroller Linda Tanton after many years of great service, and welcomed David Roose as her successor. Anything you can share with us about words of advice you’ve given to David as he comes into this important role?

**FRANCHOT:** When I was elected Comptroller in 2006, I was taking over an agency from two titanic figures in Maryland politics – Louis Goldstein and William Donald

Schaefer. In many ways, David's task is bigger than mine was because Linda Tanton is among the most respected figures in the country on tax compliance and collection. She was a trailblazer on so many levels, being the first woman to head our Compliance Division and then to go on and serve as Deputy Comptroller. And there's no doubt, we'll miss her, as will the national tax professional/government accounting communities.

That's why I was pleased to name our new Data Center after her, as a small token of our appreciation for her selfless service to the State. But David brings with him a wealth of knowledge on our agency and state government, having led our Bureau of Revenue Estimates for many years. He'll bring his own brand of leadership style to the agency and will build off the outstanding legacy that Linda leaves behind. I value the advice and leadership David provides me, and I have the utmost confidence that he'll excel in his new role. And David is a trailblazer in his own right, as the first-ever Deputy Comptroller to come from a division other than Revenue Administration or Compliance. And his intimate knowledge of state fiscal policy, revenues, and the state economy make his appointment to succeed Linda great news for Maryland businesses and taxpayers who rely on our agency.

Frankly, my only advice for him is to go home at the end of the day, since David is notorious for his dedication and long hours.

### The Possibility of Maryland Moving Toward Combined Reporting

**CROWELL:** David's work—if not his name—will be familiar to many of the big corporate taxpayers who are going to read this column, because of David's work on leading the revenue estimating for Maryland's consideration of the possibility of switching to a combined reporting regime. Does the appointment of David to this role signal anything about how serious the possibility may be of a move towards combination?

**FRANCHOT:** I would be stunned if the Legislature moved forward with combined reporting. It's well intentioned, but it would just be more destabilizing to the state's business reputation and, as David's studies show, it actually is very schizophrenic as far as the revenue that it generates. Some years, it does produce revenue and other years, the state would lose revenue. And so I often say to anyone lobbying on this issue, if they run into a legislator that supports combined reporting, ask them whether they support the *Finnegan* or the *Joyce* method. That tends to quiet them down pretty quickly!

So, it sounds good. It is appealing. I know it is kind of a cause célèbre with some factions in the Legislature, but in the midst of a weak economic recovery and after the steady series of tax and fee increases, this is really bad timing for businesses and the economy. In a nutshell, it has questionable benefits and carries significant risk.

### Gambling With Maryland's Future

**CROWELL:** Another policy issue that impacts State Revenues is an issue that you were front and center opposing over the course of the past year. That was the gambling issue. Despite your efforts, an expanded gambling referendum was approved by the voters. What do

you see as the potential implications for tax revenue collection and tax policy?

**FRANCHOT:** My view on this is well-documented and I'm not going to relive yesterday's battles. But I maintain that Maryland's made a real mistake by going down this casino lane. And we are going to regret it several years from now, because we will be stuck with three or four of the biggest casinos in the country, and they are all going to be cannibalizing each other and they are going to be lifting money out of our consumers' pockets left and right, sending it out of state to Las Vegas. And the economy, which is consumer driven in Maryland, is going to suffer. I made my case, and we lost narrowly in the statewide referendum. But I have no regrets in standing up and speaking out, because it is just a bad idea and remains a very unstable source of state revenue.

So it's really an unfortunate development in Maryland's history and I don't think it's something Marylanders will ultimately be proud to be known for.

### Internet Taxation and Remote Sellers

**CROWELL:** What other trending tax issues make you concerned?

**FRANCHOT:** You know, this Internet taxation issue is very vexing, because I was told that we were going to sort it out in Washington this year. Now, I am told that it is off the tracks, and that is a lot of money that we are losing. Someone said they were trying to figure out what they would do for those states that don't have a sales tax. Well, okay, let's work that out. But you know, we need somebody to step up and say, "Look we will collect the sales tax from remote sellers, just like we do with all of our in-state companies."

**CROWELL:** This trend towards the information economy and online retailing is certainly one that a lot of states and taxpayers are wrestling with—whether it is the scope of the Internet Tax Freedom Act or the perennial question of a state's authority to exercise jurisdiction to impose an obligation on remote sellers to collect use tax.

**FRANCHOT:** Congress needs to decide this because obviously we can't do that for our citizens.

### The Comptroller's Legacy

**CROWELL:** Time will tell. In fact, let's fast forward together and imagine that you're looking back on your next term as Comptroller: What do you think you will be known for as Comptroller?

**FRANCHOT:** Well, my reputation is "give 'em hell Pete." That is the way people see me out there. They love the fact that I am willing to put my hand up and speak out. This independence is very unusual in Maryland because, you know, we're essentially a one-party state, so generally anybody who challenges the establishment, the party line so-to-speak, typically gets wiped out early. But I am in a position now where I've got some real independence and strength, and people love the fact that I am a check and balance.

So, that is how they view me, as an independent voice on tax policy and economic issues. I have a reputation of calling them as I see them. I do not have to go and get my response checked off by all sorts of politicians. I have a great staff, I rely heavily on them and

when they come with a recommendation and it is in the public interest, we are perfectly free to adopt it.

### Looking Down the Road

**CROWELL:** You know, sometimes events mostly overtake a leader. Do you see anything else coming down the pike—whether it is court cases or issues or trends in the tax base—that either are particularly positive or you see as risk areas? Things that you are following or you think that corporate America ought to be thinking about as we go forward?

**FRANCHOT:** Well, as I mentioned earlier, my goal for corporate Maryland is to provide some stability, particularly in the tax environment, because I think that stability is the proper prescription for a sluggish recovery. We have not been able to deliver that because the Legislature and the Governor are very aggressive as far as tinkering with the tax code. What really concerns me is that both the nation and the state are on unsustain-

able fiscal paths right now. It is so obvious to everybody that we can't continue to max out our public credit cards into oblivion. Taxes and spending won't lead to economic recovery. We need sustained private sector growth. I think Corporate America, like most Maryland families, are desperately waiting on their elected leaders to put the politics aside, to work together and to seriously address our country's fiscal challenges.

They want leaders who understand that the current path is just not sustainable. I am able to make that case, because I am not just a tax collector. I am Maryland's chief fiscal officer. That is what the state constitution says: I am not only involved in collection of revenue, I vote on approving spending. So it's a great position and I'll continue to use it to urge caution and fiscal restraint.

**CROWELL:** Thank you, Peter, for hosting us here in Annapolis.

**FRANCHOT:** My pleasure.