



Ivins Attorney, Patrick Smith, Quoted in Law360 Article on the Altera Decision

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On Tuesday, July 28, 2015, Ivins attorney Pat Smith had a post at the tax procedure blog *Procedurally Taxing* on the unanimous court-reviewed decision by the Tax Court on Monday, July 27, 2015, in *Altera Corp. v. Commissioner*, in which the Tax Court invalidated a provision in the section 482 cost-sharing regulations requiring the cost of stock-based compensation to be included in the costs that are shared under cost-sharing arrangements, *A Massive Loss and a Huge Rebuke for the IRS from the Tax Court in Altera Decision*:

- [Procedurally Taxing Post](#)

In addition, Kristin Hickman, in her post on the *Altera* decision at *TaxProf Blog*, cited his 2012 Tax Notes article, *The APA's Arbitrary and Capricious Standard and IRS Regulations*:

- [TaxProf Blog](#)

Patrick Smith was quoted in Law360 Article on the *Altera* Decision on Wednesday, July 30, *Altera Tax Court Win Reveals Flawed IRS Rule-Making*.

The *Altera* case was the first time that the Tax Court has applied the arbitrary and capricious standard to IRS regulations, according to Patrick J. Smith, a partner with Ivins Phillips & Barker Chtd. Under that standard laid out by the U.S. Supreme Court in 1982 in *Motor Vehicles Manufacturers Association v. State Farm Mutual Automobile Insurance Co.* pursuant to the Administrative Procedure Act, a court must ensure that an agency is engaged in reasoned decision-making by examining the relevant data and articulating a satisfactory explanation for



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its actions.

Altera should be a wake-up call for the IRS, as the reasoning it has used in writing regulations is often inadequate, Smith said.

"The IRS has not been at all careful about certainly providing the kind of explanation that is required under the arbitrary and capricious standard," Smith said. "I think that there is a lot of likelihood that people will start challenging regulations much more," especially in the international tax arena, he said.

Altera was a resounding defeat for the IRS, Smith said. Given the unanimity of the decision and the fact that the IRS lost on every single question, Smith said he would be surprised if the agency appealed it.

- Law360 Article
- July 31, BNA Daily Tax Report Quote