



Patrick Smith Quoted in BNA Daily Tax Report on the Altera Decision

PRACTICE AREAS

Tax Accounting

Tax Controversies

Bloomberg BNA Daily Tax Report

July 31, 2015

On Friday, July 31, the Bloomberg BNA Daily Tax Report had a story on the Tax Court's *Altera* decision from earlier this week in which Ivins attorney Pat Smith was quoted. *Altera' Renews Debate Over Arm's Length.'*

Patrick J. Smith of Ivins, Philips & Barker in Washington, D.C., told Bloomberg BNA that "the one clear consequence is that we'll be seeing a lot more challenges under the arbitrary and capricious standard. People are going to start looking around at regulations they don't like, and asking themselves, Did the IRS make similar failures in issuing those other regulations?' The answer is going to be yes."

"It was not just, or even mainly, the lack of an explanation that the court found to be defective," Smith said. "It was the basic reasoning process that the IRS used that was defective. The court clearly said that the arm's-length standard under Section 482 requires an empirical analysis, in order to decide what the right answer is. The IRS did not undertake that kind of analysis. They said, We can just think in our offices about what the right answer should be, and we don't have to consider whether that's what people would do in the real world.' "

He added: "The tax court said that whole approach is flawed. It's not merely procedural. It's much more fundamental than that. The whole thought process that the IRS has applied was wrong, basically. The court said this is not the way to go about deciding what the right answer should be, under Section 482. That's really a very serious flaw in the IRS's approach in this case."

| 2 | Patrick Smith Quoted in BNA Daily Tax Report on the Altera Decision

[BNA Link](#)

[Law360 Article/July 28 IP&B Post](#)