



Pat Smith Quoted in Tax Notes

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Ivins attorney Pat Smith was quoted in a *Tax Notes* article on the new Memorandum of Agreement between Treasury and OMB governing review by OMB of tax regulations. *Treasury, OMB Tout Balanced' Agreement on Tax Reg Review Process.*

While Executive Order 12866 includes as significant regulatory actions those that raise novel legal or policy issues, the new MOA elaborates that novel tax regulatory actions subject to OIRA review could include those "prescribing a rule of conduct backed by an assessable payment." Patrick J. Smith of Ivins Phillips & Barker Chtd. predicted that this broad category could potentially result in more tax rules getting caught in OIRA's review net.

"If we only had the text of the memo, I might have one reaction . . . but, there's been such coverage of this, even in the nontax press lately, that it calls for more attention," Smith said. "EO 12866 seems to be about cost/benefit, but maybe there's more going on here . . . another layer of [substantive] review on top of the technical tax experts."

How to measure the cost of a tax reg in determining its significance has been the subject of much discussion. And in the face of that debate and Treasury's position that a rule's revenue effect results from whatever legislation is being implemented, Smith called the memo's language a helpful clarification.

"Theoretically, it seems to me, it has to be the potential effect on economic activity more broadly defined," Smith said. "Are people doing transactions or, more realistically, are they avoiding transactions because there's a tax effect? . . . That is the area where there is potential for possible broadening of scope."