



Ivins Attorney Pat Smith Quoted in Tax Notes re QinetiQ case

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Ivins attorney Pat Smith was quoted in a *Tax Notes* article about the oral argument in the Fourth Circuit in the *QinetiQ* case, dealing with the issue of whether the Administrative Procedure Act's reasoned explanation requirement is applicable when the Tax Court reviews IRS deficiency notices. *Court Weighs APA's Effect on Deficiency Notices in QinetiQ*.

"I thought it was notable that very early in the argument by the taxpayer's lawyer, the judges were asking questions about the fact that the Tax Court engages in de novo review and why that is not very relevant in responding to the argument that the arbitrary and capricious and reasoned explanation standards apply," said Patrick J. Smith of Ivins, Phillips & Barker Chtd. Smith said that is the heart of the case but that there was not a satisfactory response from the attorneys.

The panel was clearly very interested in the language of section 7522, which requires a description but also states that an inadequate description does not invalidate the notice, Smith observed. "To me that's not the answer in the case, but I would expect it to appear in the opinion, which I still expect to go in [the] government's favor," he said.

Smith said he was surprised that the government's attorney did not describe the reasoning in *Ax v. Commissioner*, 146 T.C. No. 10 (2016). "The reasoning in *Ax* is central to the fact that the reasoned explanation requirement is tied intricately to the arbitrary and capricious standard of review," he said. Smith said that *Securities and Exchange Commission v. Chenery Corp.*, 318 U.S. 80 (1943), makes clear that the reason why the court



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expects the agency to provide a reasoned explanation is that the agency's action gets deference and the court needs to make sure that the reason being used to defend the action was the same reason the agency relied on when it made its decision. The reasoned explanation requirement also is needed to evaluate the quality of the agency's reasoning, he said. "When an agency action is reviewed under the de novo standard, the whole setting is completely different," Smith said.

"I think clearly at least one judge was very bothered by the unfairness that is created for taxpayers when there is no explanation," Smith said. "It's hard to disagree with that." However, he does not expect that to yield an opinion in *QinetiQ's* favor. "I expect that there will be language in the opinion expressing that thought and that the expectation of the courts [will be] that the IRS will do a better job," he said.