



# Pat Smith Quoted in Law 360 in Midyear Update on Significant International Tax Decisions, Including Altera and SIH

## PRACTICE AREAS

International Tax

Tax

Tax Accounting

*Law 360*

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IPB attorney *Pat Smith* was quoted in a *Law 360* article providing a midyear update on the four most significant tax decisions in the international area in the first half of 2019, including the Ninth Circuit's reissued decision in *Altera* and the Third Circuit decision in *SIH*.

### **Altera**

Patrick J. Smith, a partner with Ivins Phillips & Barker Chtd., said the decision ignores principles of administrative law. As he saw it, the ruling "really stretched it" to find language in the regulations' preamble that supported the government's argument before the Ninth Circuit, where it contended that it doesn't matter what unrelated parties would do.

"The preambles to the proposed and final regulations didn't say we don't care what unrelated parties would do," Smith said.

"They said, we believe this is what unrelated parties would do."

Despite the Ninth Circuit's decision to uphold the regulations, Smith didn't think the IRS and Treasury would see the ruling as permission for additional "sloppy issuances of regulations."

He cited a policy statement, released by Treasury in March, that announced a reaffirmed "commitment to the tax regulatory process."

"I think that shows an attitude of taking their responsibilities more seriously in terms of being careful about adhering to administrative law principles," Smith said.



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### SIH

Smith said the general takeaway from the case is that if a regulation has been around for a while and wasn't controversial at the time it was issued, it's going to be difficult to argue that the rule was arbitrary and capricious.

He also pointed out that the most persuasive argument in this case that income exclusions could exceed the amount of the loan didn't apply in *SIH*.

"When your best argument is about an aspect of the regulations that isn't harming you, I think that's another negative feature to these challenges," Smith said.