

Tax Controversy

Sullivan & Cromwell's Tax Group works with clients on all aspects of their tax controversies, from the audit level, to the administrative appeals level, to litigation in court.

The Group seeks to manage and resolve tax disputes for its clients without resorting to costly and time-consuming litigation. S&C believes that it is far better to approach tax controversies with a view toward resolving the matters at the earliest possible stage of the process and at the lowest possible cost to the client, both in terms of any payment to the Internal Revenue Service and the expense of achieving such results. The ultimate goal is to eliminate entirely any proposed adjustment, a result the Firm has often achieved for its clients.

The Firm's work draws upon two particular strengths:

- The Tax Group consists of lawyers who have extensive knowledge of the tax law as well as the workings of the IRS, including a former chief counsel for the agency.
- The Litigation Group brings its advanced and effective approach to corporate litigation to help the Tax Group lawyers develop the most effective way to resolve their cases.

Clients benefit from a team of knowledgeable tax lawyers and accomplished litigators working in close cooperation—the best of both skill sets and the most effective response to increasingly sophisticated and confrontational IRS challenges.

SELECTED REPRESENTATIONS

Recent tax controversy highlights include representing:

- **a European Company's U.S. subsidiary**, in an IRS examination of a refund claim for the Extraterritorial Income Exclusion involving access to journal articles on an electronic database in countries other than the United States. The amount at issue was in excess of \$110 million in tax and, at the IRS appeals level, S&C was successful in preserving all but \$400,000 of the refund claim. We believe that this case involved the largest ETI refund to date.
- **a non-U.S. multinational company**, in an IRS examination involving a dual consolidated loss issue which the IRS examination team raised at the "11th hour" of the examination. The IRS examination team was seeking an adjustment in excess of \$1 billion. Working less than two months on the issue, S&C was able to convince the LBI case manager and LBI territory manager that the losses were not in fact dual consolidated losses, and the issue was dropped.
- **a U.S. Real Estate Holding Company**, in an IRS examination where the IRS examination team originally was seeking tax, interest and penalties of almost \$80 million. Numerous issues were involved, including constructive dividends and the use of a corporate plane; it is also highly likely that the examination was triggered by a whistleblower filing with the IRS. Eventually a potential \$46 million case went to IRS appeals and the IRS appeals office conceded 93% of the case (totaling \$43 million).
- **the U.S. subsidiary of a non-U.S. bank** at the IRS appeals level where the IRS examination team set up a so-called Foreign Tax

PRACTICES & CAPABILITIES

Tax

Tax Controversy

French Tax Practice

U.K. Tax Practice

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Credit Generator issue (value at about \$50 million). S&C filed a written protest and then convinced the IRS appeals officers to make an 85% concession on the issue; we are not aware of any other taxpayer who received more than a 35% concession with respect to this issue.