Contact us to learn more about our International Tax practice.
Increasing complexities and growing transparency considerations in the international business community create tax challenges for corporations with global operations and for individuals with international assets and activities. With over five decades of experience handling sophisticated cross-border matters for clients, Caplin & Drysdale’s International Tax Group is well-versed in addressing these challenges. Many of our lawyers formerly held senior roles in the Internal Revenue Service, the Department of Justice, and the Treasury Department, giving insight into how U.S. tax law is administered and enforced. Several had senior in-house positions with leading multinational companies. Our services range from planning to controversy management, including various alternative dispute resolution mechanisms.

The Group’s lawyers are regularly sought after by the media for their opinions on the most pressing international tax issues, including transfer pricing and offshore voluntary disclosure. We continually receive high ratings from professional ranking services, including recent recognition as the International Tax Team of the Year (The Legal 500), as a leading U.S. tax law firm in international tax (Tax Directors Handbook), and as leading tax and transfer pricing advisors globally (Legal Media Group/International Tax Review).

Our boutique structure means we can offer clients direct access to highly-skilled practitioners. Our broad network of top-notch foreign advisors enables around-the-globe collaboration, customized to the client’s particular situation and preferences.
International Tax

Structuring International Transactions, Operations, and Investments

When planning a cross-border transaction, taxpayers and their advisors face an array of daunting U.S. rules. The chosen structure will have both immediate and long-term tax consequences, of which some are direct and obvious while others are indirect and more subtle. Choice of entity can be critical to the outcome, and “check-the-box” rules offer many planning opportunities.

We can:

• Choose the most tax-efficient foreign situs consistent with your business or personal needs.
• Prepare corporate, trust, and partnership documents.
• Review foreign tax credit status and design credit-optimization strategies.
• Apply statutory “inbound” rules of taxation.
• Navigate all aspects of taxation of U.S.-based multinational companies, including the Subpart F regime.
• Obtain advance rulings to ensure approval by relevant tax authorities.
• Restructure as business considerations or foreign tax rules change.
• Evaluate transfer pricing consequences and opportunities.

At Caplin & Drysdale, structuring international transactions, operations, and investments is an active segment of our practice. We advise taxpayers on tax-efficient structuring of cross-border investments, including optimum use of tax treaties, foreign tax credits, tax deferrals, and entity classifications. We also help multinational enterprises with strategic management of international tax exposures.

Interpreting U.S. Tax Treaties and Handling Competent Authority Cases

Caplin & Drysdale’s tax treaty practice covers both substantive legal issues and the administrative aspects of securing treaty benefits. Our lawyers have in-depth knowledge of many of the U.S. tax treaties currently in effect, and some worked closely on treaty negotiations when in government.

The Competent Authority process is designed to help taxpayers minimize international double taxation and to provide other forms of assistance to U.S. and foreign taxpayers in an international context. Many taxpayers are unfamiliar with the Competent Authority mechanism. Caplin & Drysdale understands the process, knows the players, and uses the process on a regular basis with principal foreign counterparts to benefit our clients. We are closely monitoring and evaluating ongoing changes to the U.S. Competent Authority role and process, which can significantly affect case resolution strategies and opportunities.

We can:

• Advise on treaty interpretation and the applicability of treaty provisions to your situation.
• Advise on strategies for obtaining Competent Authority relief, prepare a tailored request, and shepherd the process to completion.
• Make your concerns or the concerns of your industry known to government officials who are negotiating or renegotiating a particular treaty.
• Coordinate with foreign advisors to handle foreign aspects of your case.
• Serve as expert witness in foreign legal proceedings where experience with U.S. tax law and treaties is pertinent.
Enforcing transfer pricing and profit allocation rules for cross-border dealings between related parties and branches is a top audit priority for U.S. and foreign tax authorities. The current multifaceted initiatives of the OECD, including its comprehensive Base Erosion and Profit Shifting (BEPS) project, and related undertakings by the United Nations directed at emerging markets, guarantee further focus and heightened controversy.

We can help resolve transfer pricing disputes when they do arise. Our lawyers have handled scores of multi-million dollar transfer pricing cases at every stage, including IRS examination, IRS Appeals, Competent Authority, and litigation, for both U.S. and foreign multinationals. The intercompany transfers at issue have involved manufacturing, distribution, development, sale and licensing of intangibles, services, and loans and guarantees. Our clients’ industries include banking and financial products, pharmaceuticals, electronics, telecommunications, insurance, medical equipment, biotechnology, crude oil, oil field services, luxury brands, industrial equipment, automobiles and automotive components, fertilizer, and steel. We work collaboratively with the economics and analytic practices at major accounting firms and boutique economic consulting firms.

The IRS APA Program provides an excellent mechanism to address and resolve potential cross-border transfer pricing controversies before they occur (as well as deal with past years through a rollback feature) on a unilateral, bilateral, or multilateral basis. Caplin & Drysdale has helped numerous clients successfully navigate the APA process, and we are familiar with the extensive ongoing changes to the Program’s organization and procedures.

We can:

• Address transfer pricing and permanent establishment (PE) issues, both at the planning stage and in controversy. In today’s environment it is difficult for companies to avoid transfer pricing controversy, but careful planning can mitigate the risks and exposures involved.

• Advise on strategies for effectively structuring transactions and allocations, and for appropriately pricing them.

• Prepare or review Section 6662 transfer pricing penalty protection documentation.

• Prepare intercompany agreements and cost-sharing arrangements.

• Understand, navigate, and be proactive in legislative and regulatory matters relating to Section 482, including industry trade association undertakings.

We bring the combination of a substantive, technical background in complicated international tax issues, the nimbleness of a boutique, and the tactical judgment of experienced litigators to advise in even the most sensitive circumstances.
International Tax Controversies: Examinations, Criminal Investigations, Voluntary Disclosures

Caplin & Drysdale has extensive experience in U.S. international tax disputes involving the IRS and/or the Justice Department. Many of our lawyers served in senior litigating positions for the government, and the firm has handled the full range of tax disputes, including civil examinations involving Fortune 50 companies and other businesses raising complex inbound or outbound issues, audits of high-net-worth families focusing on global assets, criminal investigations of companies or individuals involving multi-country activity, and personal or corporate voluntary disclosures reflecting previously unreported international assets or transactions.

The IRS and the Department of Justice have increasingly focused on international features as a basis for audit and enforcement activity. For example, our practice has recently been handling over a thousand cases involving the failure of U.S. taxpayers to report foreign financial accounts and other assets. We work closely with non-U.S. professionals in many of these cases. On a daily basis, our firm’s lawyers address audit demands, information document requests, administrative summonses and requests to interview taxpayers. Caplin’s criminal defense team has the know-how to deal with all aspects, from the sudden appearance of investigators to a grand jury subpoena raising complicated privilege or foreign legal issues.

We regularly handle IRS examinations at the revenue agent level, either directly or behind the scenes as an adjunct to the client’s tax department. We participate actively at the IRS Appeals Office level, developing strategy, preparing written protests and negotiating with Appeals Officers. We also assist with ancillary issues relating to tax disputes, such as financial statement disclosure, tax reserve provisions, and future tax return treatment of disputed issues.

We can:

- Handle strategic and day-to-day aspects of IRS audits, Appeals, and specialized processes (such as mediation and arbitration), as well as judicial proceedings.
- Counsel U.S. citizens, green card holders, and American businesses on rectifying prior tax non-compliance.
- Advise companies and individuals on sensitive examination or penalty issues.
- Defend clients in cases involving criminal tax allegations.

Additional International Tax-Related Services

The wide scope of Caplin & Drysdale’s services to foreign entities and individuals also includes extensive practices in the following high-profile areas:

- Foreign Account Tax Compliance Act (FATCA)
- Department of Justice Program for Swiss Banks Regarding Foreign Bank Accounts
- Taxation of Nonresident Athletes and Entertainers
- Tax Withholding Rules
- Cross-Border Financings and Financial Products
- Foreign Exchange Rules
Caplin & Drysdale’s international tax lawyers regularly partner with the firm’s other practice groups, including:

- Business Tax
- Complex Litigation
- Corporate Law
- Creditors’ Rights
- Employee Benefits
- Exempt Organizations
- Political Law
- Private Client
- Tax Controversies
- Tax Crimes
- Tax Litigation
- White Collar Defense

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