

## Clark Armitage Talks to Law360 on International Tax Cases To Watch In 2020

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The key cross-border tax cases that specialists are tracking this year include high-stakes disputes over the U.S. Treasury Department's rulemaking authority and questions about whether multinationals can continually rely on the IRS' long-term approval of their transfer pricing methods.

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Although the closing agreement didn't expressly cover the years at issue, the company continued to use the same method to calculate royalties from its foreign units. As an institution, it looks arbitrary for the IRS to say yes to something in one year and no in another when the issue is the same, said Clark Armitage, a Member at Caplin & Drysdale.

"When the IRS has entered into a closing agreement saying something is OK, it's tough for a court — in a later year, with very similar facts — to say that agreement was wrong," he said.

The case is *Coca-Cola Co. v. Commissioner*, docket number 31183-15, in the U.S. Tax Court.

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The 1994 regulations were a reaction to "unfavorable court decisions," according to Armitage.

He cited the U.S. Supreme Court's 1972 ruling on income restrictions in *Commissioner v. First Security Bank of Utah*. In that decision, the high court ruled that an allocation of income isn't allowed when a legal restriction negates "the complete power" of a company to control the distribution of earnings among its affiliates.

The Sixth Circuit referred to the First Security ruling in a 1992 decision for *Procter & Gamble Co.* in a case that involved a Spanish legal restriction on royalty payments.

But according to the IRS, the subsequent regulations require a company to meet reasonable conditions to ensure that a foreign legal restriction is genuine and applies equally to businesses in similar situations.

"I think the question is whether the regulations go too far and are essentially overturning the court decisions," said Armitage. "They require very specific documentation and a lot of things in advance so that they effectively make it impossible for those court decisions to be given effect."

He added that while some aspects of the regulations make sense, showing that a law has general applicability is "tough to prove."

The case is *3M Co. et al. v. Commissioner of Internal Revenue*, docket number 5816-13, in the U.S. Tax Court.

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