

## Law360 Quotes Elizabeth Stevens on Profit Splitting

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Multinationals suffering the economic effects of the coronavirus pandemic may decide a profit split is the method that will best help them share losses across the organization, but adopting it abruptly — or abandoning it in better times — can be risky.

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Typically, a profit split is used when a company in each participating jurisdiction contributes something "nonroutine," or unique and valuable, to the enterprise. From a tax authority's perspective, that contribution, usually in the form of an intangible asset, "didn't just arrive there overnight," said Elizabeth Stevens, a Member of Caplin & Drysdale.

"Suddenly, in a loss year, we have something nonroutine, so we share in the losses. What about last year?" she said. To convince a tax authority that a company's switch to profit split is warranted, "you would ideally have some functional change that you can point to, some facts on the ground that support your change" in method, Stevens said.

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While a profit split may align well with a company's needs during a pandemic, businesses contemplating a switch to the method should consider whether it is likely to serve them well over the long term, Stevens said.

Companies "should be wary of adopting [methods] that suit their interests in dire economic conditions but that would be inconsistent with those interests in 'normal' conditions," she said.

"Profit splits may not be the Hotel California, but once implemented, they may be difficult to walk back," she said, alluding to the Eagles song lyrics that say "you can check out any time you like, but you can never leave."

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While Stevens said she hadn't seen the profit split escape hatch Frank described, she recalled working on an advance pricing agreement with a somewhat similar provision. The APA, which involved a license of intangible property, specified that no royalty was due if paying the royalty would put the licensee into a loss position, she said.

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## **Attorneys**

Elizabeth J. Stevens

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