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Top International Tax Cases To Watch In 2025

By **Natalie Olivo**

Law360 (January 1, 2025, 8:01 AM EST) -- Major multinational corporations such as 3M and Coca-Cola will continue to litigate high-stakes international tax cases during 2025, including transfer pricing disputes with billions of dollars on the line and fights against regulations that allegedly exceed the government's authority.

Courts will be grappling with several key cases in the new year, including Coca-Cola's long-running $3 billion transfer pricing dispute and 3M's ongoing challenge against regulations that it claims are statutorily invalid in allowing the Internal Revenue Service to allocate income from overseas. In addition, courts will weigh in on disputes that could resonate among a range of corporate taxpayers, including a challenge brought by Liberty Global against the IRS' application of the economic substance doctrine.

Here, Law360 looks at six key international tax cases to follow in the new year.

Liberty Global

Denver-based Liberty Global's case will hinge on how the Tenth Circuit interprets the economic substance doctrine, which Congress codified in 2010 under Internal Revenue Code Section 7701(o).

According to the statute, the IRS can deny tax benefits when a transaction "does not have economic substance or lacks a business purpose" in situations where the doctrine "is relevant."

A Colorado federal judge cited the doctrine in October 2023, when he ruled that Liberty Global wasn't entitled to a $109 million tax refund because "no reasonable factfinder" could characterize the company's underlying reorganization as a basic business transaction.

As part of the transaction, known as Project Soy, the telecommunications company took several steps in 2018 — including reclassifying a Belgian subsidiary under U.S. tax law — that ultimately allowed Liberty Global to sell its stake in the affiliate to its U.K. parent company for $2.4 billion.

Liberty Global claimed a deduction against its gain from the sale under IRC Section 245A, created by the 2017 Tax Cuts and Jobs Act, which allows U.S. corporations to repatriate certain foreign earnings tax-free.

In challenging the IRS' denial of the deduction, which underlies Liberty Global's refund bid, the company told the Tenth Circuit that the economic substance doctrine helps courts determine whether a

transaction falls within the meaning of a statutory or regulatory term. According to Liberty Global, the doctrine isn't relevant in this case, where the company followed the tax code and related regulations "to a tee" when reorganizing to claim the Section 245A deduction.

Liberty Global is in an unusual situation because it is "unabashedly" saying that it carried out this transaction to take advantage of the tax benefits, according to S. Starling Marshall, a partner at Crowell & Moring LLP. If the court finds that the economic substance doctrine applies, the ruling won't help provide guidance for companies that carry out tax-efficient reorganizations as part of normal business transactions, she said.

"That may not leave us with the right vehicle to get this really necessary question answered," she said.

According to Elizabeth Stevens, a member of Caplin & Drysdale, although Liberty Global has conceded a nonbusiness-motivated transaction, a ruling could still be helpful to other taxpayers because it could determine when the doctrine applies at all. If the decision establishes a relevancy test, then in situations where it does not apply, there's no need to worry about proving to the IRS that the substantial business requirement is met, she said.

"I am surprised that the taxpayer conceded that issue because that is sort of putting all your eggs in one basket," Stevens said. "But I think they have a good argument that there is a threshold relevancy determination. Whether it applies to them depends on what that looks like."

The case is Liberty Global Inc. v. U.S., case number 23-1410, in the U.S. Court of Appeals for the Tenth Circuit.

Coca-Cola

As the latest development in Coca-Cola's long-running case against the IRS, the Atlanta-based beverage giant in October appealed its $2.7 billion tax bill to the Eleventh Circuit. The appeal followed the U.S. Tax Court's approval of computations agreed on by both sides to reflect the court's rulings in 2020 and 2023. Coca-Cola's $2.7 billion tax liability is expected to reach about $6 billion with interest, according to a statement from the company.

Coca-Cola's case centers around changes the IRS made to the division of income among the parent company and its foreign affiliates involved in bottling, distribution and marketing for 2007 through 2009. Coca-Cola has contended that the agency pulled a "bait and switch" when applying a new transfer pricing method after allowing the company to reasonably rely on a different approach for more than a decade.

In 2020, Tax Court Judge Albert G. Lauber found the IRS was within its rights to change the transfer pricing method. He held off on addressing Coca-Cola's Brazilian income until November 2023, when he sustained the agency's adjustment following a decision in a separate case that upheld related transfer pricing regulations.

Coca-Cola said in early August that it "looks forward to the opportunity to begin the appellate process," and as part of that process, will pay the agreed-upon liability and interest to the IRS.

In raising its bait-and-switch argument, Coca-Cola had claimed the IRS' "abrupt change in position" amounted to arbitrary and capricious decision-making from the government — conduct that is

prohibited under administrative law principles. This arbitrary-and-capricious standard is grounded in the U.S. Constitution, including the Fifth Amendment's guarantee of due process, according to Coca-Cola.

Stevens noted that pharmaceutical company Amgen made similar arguments in alleging that the IRS' adjustments to its income were unconstitutional, and the Tax Court judge in that dispute summarily denied its motion. That at least one Tax Court judge already gave this argument short shrift is, for Coca-Cola, "a potential harbinger of what the taxpayer can expect if they raise those arguments on appeal," she said.

The Tax Court case is Coca-Cola Co. et al. v. Commissioner of Internal Revenue, docket number 31183-15, in the U.S. Tax Court.

Case information for the Eleventh Circuit appeal is not yet available.

3M

Multinational conglomerate 3M is challenging transfer pricing regulations in an Eighth Circuit case that tax attorneys are watching closely, in part because a split Tax Court narrowly upheld the rules. The decision showed conflicting stances on key concepts under the Administrative Procedure Act.

The contested regulations, known as blocked income rules, allow the IRS to ignore certain foreign restrictions on payments under IRC Section 482, which covers the arm's-length principle of pricing intercompany transactions and allocating profits to match how unrelated businesses would behave. Nine out of 17 Tax Court judges validated the regulations in February 2023.

In challenging the rules, Minnesota-based 3M argued that a Brazilian tax law mandated fixed ceilings on royalty payments for trademarks and patents. Under this law, the royalty payments that could be allocated from the company's Brazilian affiliate were just under $166,000, according to 3M, which claimed the IRS instead allocated nearly $24 million by relying on invalid blocked income regulations.

Congress added a sentence to Section 482 in 1986 to say income tied to intercompany transfers of intangible property "must be commensurate with the income" generated by those intangibles — language government attorneys have cited in defending the IRS' income allocation in the 3M case. But during oral arguments in October, U.S. Circuit Judge David R. Stras questioned whether regulations would authorize the IRS to disregard the legal restrictions in Brazil.

"I can't find a grammatical hook for the IRS' reading," Judge Stras said.

As some see it, the divided views of the Tax Court judges may raise questions for the appellate panel in light of the recent U.S. Supreme Court decision in Loper Bright v. Raimondo, which gutted deference to administrative agencies.

In that ruling, the high court in June overturned a decades-old precedent that instructed judges about when they could defer to federal agencies' interpretations of law in rulemaking. The decision upended the Supreme Court's 1984 ruling in Chevron v. Natural Resources Defense Council, which generally required that courts defer to reasonable regulatory interpretations of ambiguous statutory language.

According to Christopher Gurley, counsel at Crowell & Moring, given the scrutiny during oral arguments, it would not be surprising to see the court rule that the blocked income regulations exceed the statutory

authority of Section 482.

"In the absence of Chevron deference, the court may in fact determine the statute does not permit income allocation in situations where foreign laws prohibit such payment," he said.

The case is 3M Co. et al. v. Commissioner of Internal Revenue, case number 23-3772, in the U.S. Court of Appeals for the Eighth Circuit.

Medtronic

Practitioners will be watching Medtronic's case to see how the Eighth Circuit weighs in on transfer pricing approaches that fall under the "unspecified method" of Section 482 regulations.

The long-running dispute centers on how much Medtronic's Puerto Rican affiliate, Medtronic-PR, should pay for intangibles that it licensed from Minnesota-based Medtronic during 2005 and 2006. According to the government, Medtronic charged the affiliate an artificially low royalty rate for these "uniquely valuable intangibles" as a way to shift more than $1 billion in income offshore.

In the underlying Tax Court ruling, Judge Kathleen Kerrigan in August 2022 decided on a transfer pricing approach using the unspecific method. Under this approach, she determined the rate by making adjustments to a method known as the comparable uncontrolled transaction, or CUT, which relies on transactions between unaffiliated businesses to benchmark those between related companies.

Both Medtronic and the government appealed the decision. Medtronic urged the Eighth Circuit to reverse the portion of the ruling that scrapped the CUT, contending that an agreement with a former competitor, Siemens Pacesetter, meets all the comparability factors under this method.

Meanwhile, the government has continued to argue for the IRS' use of the comparable profits method, or CPM, which takes into account profits from a variety of companies. According to the government's appellate brief, the Pacesetter agreement isn't comparable to the Medtronic-PR license.

As part of the underlying ruling, Judge Kerrigan wrote that because neither Medtronic's CUT nor the IRS' CPM was the best approach, her adjustments under the unspecific method are "necessary for us to bridge the gap between the parties' methods."

According to Gurley, Medtronic's case will likely serve as an important precedent for the application of unspecified transfer pricing methods. The decision should definitely clarify how much discretion courts have in deviating from the more traditional transfer pricing methods and substituting a hybrid or unspecified approach when the traditional methods have failed to deliver a reliable result, he said.

Gurley added, "If the court affirms the Tax Court's hybrid approach, this would likely grant broader discretion for both taxpayers and courts in applying more creative and case-specific transfer pricing methodologies."

The case is Medtronic Inc. et al. v. Commissioner of Internal Revenue, case numbers 23-3063 and 23-3281, in the U.S. Court of Appeals for the Eighth Circuit.

Microsemi

In another case that could have wide-ranging implications, semiconductor manufacturer Microsemi is fighting the IRS' Section 482 adjustment regarding an intercompany purchase of semiconductor products.

Microsemi is challenging much of the $35.4 million in deficiencies the agency claimed in a 2021 notice and fully disputes the IRS' asserted $27.7 million in penalties for tax years 2007 to 2012, according to its Tax Court petition, which it filed in March.

In the underlying transaction, Microsemi acquired a competing semiconductor business and transferred all its rights, resources and capabilities to an existing cost-sharing arrangement in a platform contribution transaction. The company chose the acquisition price method for this transaction, which it described in its petition as "the most reliable approach" where a cost-sharing participant acquires a target company that owns intangible property that is within the scope of the agreement.

Under this method, Microsemi adjusted the acquisition price by essentially backing out the value of items that are not related to the intangible property, including "resources, capabilities and rights not reasonably anticipated to contribute to developing cost shared intangibles," according to the petition. But the IRS ignored the relevant Section 482 regulations "by contending that there should be no adjustment whatsoever," Microsemi said.

According to Stevens at Caplin & Drysdale, when companies apply the acquisition price method to a platform contribution transaction, it is very common to deduct routine operating value from the acquisition price to get to the value of the intangibles. The IRS has begun saying that companies cannot make these deductions because it is not strictly specified in the regulations, she said.

Stevens added, "That is one issue that will be before the Tax Court that has potential ramifications for lots of other taxpayers."

The case is Microsemi Corp. & Subsidiaries v. Commissioner, docket number 36721-21, in the U.S. Tax Court.

Solar New

Solar New U.S. Holdings Corp., which is affiliated with medical supply company Steris Corp., in January 2023 filed two petitions in the Tax Court challenging a total of $46 million in tax deficiencies for its 2017 tax year.

According to Solar, the deficiencies are related to the IRS' "invalid and inapplicable" retroactive application of regulations under IRC Section 304, which covers intercompany stock transactions. The IRS used the regulations to adjust the company's income under Subpart F, which is the long-standing regime that immediately taxes U.S. companies' foreign passive income earned through controlled foreign corporations, Solar said.

Congress expressly defined the term "controlled foreign corporation" and it specifically removed a limitation that the retroactive regulations purport to reinstate, according to Solar. Accordingly, the rule conflicts with the TCJA and other parts of the federal revenue code, and it exceeds the U.S. Department of the Treasury's statutory authority, the company said.

Furthermore, the IRS prohibited its office of appeals from granting any type of hearing to the company,

according to Solar. The IRS does not allow its appeals office to settle any case by considering hazards of litigation to the agency based on taxpayer arguments that a regulation is invalid, the company said.

The IRS also did not allow the appeals office to grant any hearing to the taxpayer to consider its arguments that the IRS examiner's alternative arguments are "entirely inappropriate, lacking any factual or legal applicability to Solar," the company said in its petition.

"Similar to the retroactive regulation, the IRS' alternative arguments are an obvious attempt to thwart congressional statutes and congressional intent," the company said.

The case is Solar New U.S. Holding Corp., docket numbers 1614-24 and 1615-24, in the U.S. Tax Court.

--Additional reporting by Dylan Moroses. Editing by Neil Cohen and Bruce Goldman.

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