REPRINT

CD corporate disputes

RESOLVING TAX DISPUTES WITH REGULATORS

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Founded in 1965, **Charles River Associates** is a leading global consulting firm that offers economic, financial, and business management expertise to major law firms, corporations, accounting firms, and governments around the world. CRA has extensive experience in international arbitration, including both commercial and investment treaty claims, and has been engaged in some of the most complex and high-profile disputes of recent years. The firm provides expert testimony and analytical expertise in a variety of industries, including life sciences, metals and mining, financial services (including banking, finance, and insurance), energy, and telecommunication and other media.

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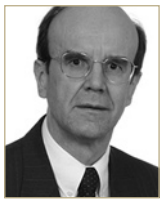

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CD: Could you provide a brief overview of the current tax regulatory environment in your region? Are you seeing an increased number of disputes with tax regulators?

Curd: The United States has had transfer pricing regulations in place since the '60s and the current version has largely been in place since 1994 – Section 1.482 of the Internal Revenue Code. In the last five years we have seen various updates and changes to the US regulations in response to the globalisation of commerce. We have also seen increased awareness of international tax issues from the rest of the world. The number of countries with transfer pricing regulations has grown from less than 15 countries in 2000 to over 70 countries in 2012. Since transfer pricing, by definition, involves at least two countries in any one transaction, the need to ensure that both countries earn their fair return is very important to both taxpayers and tax regulators. As transaction volumes have grown, so too have disputes. With the global economic downturn, the need for countries to ensure that they maximise tax income has increased thus heightening scrutiny on multinational companies.

Salmond: The tax regulatory environment has been increasingly in the public eye over recent months with large corporates and their advisers under the spotlight. In this context, the Parliamentary Public Accounts Committee and the press has asserted that some multinational businesses that operate in the UK are not paying sufficient tax in the UK. This approach is somewhat simplistic and ignores the complexities of international taxation. That said, this has had an impact on some businesses – particularly those sensitive about their public image – which in some cases have taken a more cautious approach to taxation. Businesses in the public eye are more reticent to pursue tax disputes with HMRC. HMRC is also taking a more coordinated and concerted approach to investigating the tax affairs of those businesses which they perceive are underpaying tax. In some instances, particularly in cases concerning marketed tax avoidance schemes, this has led to an increase in the number of disputes. Interestingly, HMRC has also published data which suggests tax disputes are increasing year on year, with 55,764 taxpayers requesting a review of an HMRC decision in 2011-12, and 10,828 appeals being made to the First-tier Tribunal. Of course most of those appeals never make it to a contested hearing.

Miller: At the same time that US tax authorities are in search of more revenue, budgetary restraints are limiting their activities. Consequently, it is difficult to say whether, on an overall basis, there is an increase in tax disputes. However, the IRS appears to be increasing its focus on 'high ticket' items such as transfer pricing – an area in which the IRS has

extensively enhanced its capabilities in the past two years – and complex transactions involving what the IRS considers to be improper tax avoidance. In particular, the IRS has been providing more technical assistance to its auditors in these complex cases in hopes of better developing cases for litigation. Thus, there seem to be more large, high profile disputes. In addition, both the UK and the US legislative committees have aggressively questioned taxpayers in public hearings, again raising the impression of increased tax disputes.

Wentworth-May: The most interesting aspect of the current tax regulatory environment is the way in which tax is now very much in the public spotlight. The attitude of the media in combination with the Public Accounts Committee's investigations into tax issues places pressure on HM Revenue and Customs and taxpayers alike to not only be seen to be complying with the letter but also the spirit of tax law. In general, HM Revenue and Customs are adopting a more targeted approach to tax disputes, by focusing on particular sectors which they consider have tax compliance issues. Of course, HM Revenue and Customs continue to take a zero tolerance approach towards anything they perceive as being tax avoidance, but this has been their approach from long before the recent public attention on this issue, and we are not seeing an increase in such disputes overall.

Dumezich: In general, the US tax regulatory environment has been in the spotlight since the financial crisis. Congress and the Executive branch face conflicting demands from constituents to reduce deficit spending, protect social security and Medicare benefits, and enact tax reform to alleviate compliance burdens faced by corporate and individual citizens, while at the same time collect sufficient revenue to fund the federal budget. As such, the IRS is under significant pressure from all directions while its own budget is reviewed in the wake of recent negative publicity. Despite budgetary constraints, the IRS faces greater demand to collect revenue and must undertake implementation of the Affordable Care Act. We have seen greater scrutiny of firms under examination and reluctance

> **"Despite budgetary constraints, the IRS faces greater demand to collect revenue and must undertake implementation of the Affordable Care Act."**
>
> *Daniel Dumezich, Winston & Strawn LLP*

to walk away from potential disputes. State and local governments have also stepped up their audit and collection activity in order to continue to provide essential services to their citizens.

CD: In your opinion, do firms place enough emphasis on tax compliance? Do you believe that the G20's current push to counter tax avoidance will put extra pressure on companies going forward?

Salmond: In our experience, businesses place a very important emphasis on getting their taxes right within the confines of the statutory framework. HMRC has introduced a compliance regime for large companies, which requires a senior accounting officer to ensure that the company establishes and maintains appropriate tax accounting arrangements to allow tax liabilities to be calculated accurately in all material respects. Further, many businesses are averse to receiving penalties for reputational reasons. In our experience, business will always strive to abide by the law. Major businesses naturally seek to take account of the society of which they are a part.

Wentworth-May: We have, for some time now, emphasised the importance of tax compliance, not just in terms of making sure that tax returns are properly completed and filed but also in terms of being open and transparent with HM Revenue and Customs as to one's tax affairs. Our experience is that companies place great stock in being treated as a low risk by HM Revenue and Customs, as it has a significant impact on their compliance burden. In the UK the G20's approach is unlikely to place any extra pressure on companies. The UK courts have adopted a hostile approach towards tax avoidance schemes for a number of years now, certainly since well before the G20's current push, and this, together with an increase in anti-avoidance legislation – including the new GAAR – has meant that no sensible company can expect to engage successfully in artificial and abusive tax avoidance in the same way as it may have been possible a decade ago.

Dumezich: Our multinational clients recognise the importance of tax compliance. In the US, we find that our clients are spending more on tax compliance and the related examinations due to the regulatory environment and the frequency and complexity of the demands made by taxing authorities. The G20 push to counter tax avoidance has not created additional pressure on firms in and of itself, as that organisation does not tend to drive tax policy in the US. However, the G20's focus does point to the growing political sentiment among its members, including the US, that tax avoidance is a problem that must be addressed. In the US, firms have already felt the repercussions of this sentiment through additional compliance burdens, such as

those imposed by the FBAR and FATCA reporting requirements.

Miller: The adoption of FIN 48 and the IRS uncertain tax positions form have resulted in a greater emphasis on tax compliance, as will the activities of the G20. However, this increased focus has often not been accompanied by a corresponding increase in the quality of documentation supporting the tax position taken. Tax disputes are generally fact intensive and the best and most efficient time to gather the facts is at the time of the transaction and not several years later when written documents are hard to find and the persons involved have either left the company or do not recall the details of the transaction. In these times of tight corporate budgets it is very tempting not to gather all the facts in the hope that a transaction will not be challenged; however, in the long run it is often much more economical to spend the money and do a thorough job at the time of the transaction.

Curd: Many of the countries that have transfer pricing regulations also have documentation compliance requirements that require multinational companies to prove compliance with local regulations. If the company is public, rather than private, their financial auditors typically require compliance with transfer pricing laws; therefore, the vast majority of multinational companies do place significant emphasis on tax compliance. The G20's 'tax avoidance' position is less about compliance with current laws and more about how laws could be changed to redistribute the profits earned by multinationals. 'Tax avoidance' in the context of the G20 has to do with multinationals using the differences in country-specific tax rates to reduce their overall global tax burden within the constraints of the regional regulations.

CD: Have you seen an increase in cross-border transaction disputes, including transfer pricing disputes, in recent years? How challenging is it to balance tax efficient policies with regulatory compliance on cross-border transactions?

Miller: The increased focus of the IRS on cross-border transactions and, in particular, transfer pricing, is highlighted by the 2011 appointment of the first Director of Transfer Pricing Operations. The challenge of balancing tax efficiency and regulatory compliance in transfer pricing disputes is greatest in the area of the transfer of intangibles. This is a very complex area and, as evidenced by recent developments, including hearings in the US and the UK, there does not even seem to be a consensus as to the 'right' answer. Under those circumstances, the taxpayer is well-advised to carefully and completely document its position and to utilise expert economic, appraisal, tax and legal counsel from the outset. In other cross-border transactions,

the IRS is increasingly making use of broad economic substance and business purpose arguments and, in those cases, it is quite important to document your facts and make the IRS argue your case and not a case that it would like to argue.

Dumezich: This is an area of primary concern for firms in recent years. After a 'quiet period' in the late 1990s and early 2000s, we have seen increased scrutiny in areas such as the intercompany financing of acquisitions and restructuring that involve cross-border components. Further, the IRS has created a robust transfer pricing group, staffed with experienced examiners, which participates in the audit of multinational firms. The challenge to balance tax efficiency with regulatory compliance in cross-border transactions is immense. In the US Treasury's haste to protect revenue, compliance burdens have increased dramatically. While the policy concerns behind the regulations are understood, the compliance requirements often extend beyond the intended targets, consuming firm resources to document and report massive numbers of transactions that pose limited risk for abuse. Further, knee-jerk reactions to topics like 'stateless income' will only exacerbate the compliance burden with respect to cross-border transactions in the future.

Wentworth-May: HM Revenue and Customs have invested heavily in their transfer pricing team, which has led to greater success in challenging cross-border transactions under transfer pricing principles. We would always recommend that large companies seek agreement with HM Revenue and Customs in respect of their intra-group cross-border transactions through a suitably drafted advance pricing agreement to avoid any such disputes. In a cross-border context, any possible tax efficiencies which might be achieved should never dictate the commercial decisions that businesses take. That said, any business looking to expand internationally will inevitably need to consider the tax impact of what they are planning to do, in order to see whether any sensible steps can be taken to, for example, minimise double taxation or withholding taxes.

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Matthew Wentworth-May, Olswang LLP

Curd: Where you have reasonably similar global pricing requirements, the balance is based primarily on the business facts and circumstances in combination with available tax structures that fit with the business. For instance, if a US company's primary business is the manufacture and sale of semiconductors to Asian manufacturers, the tax structure will follow that Asia will be a primary hub of activity and will look for the most tax advantageous way to set up the Asian business. For example, if there is flexibility in the location of a new manufacturing plant, opening a manufacturing plant in Malaysia may provide better tax rates than Japan, as well as a less costly workforce. There is no choice but to comply with local regulations; however, given the global environment today, there is often a choice as to which region you choose to locate. While the majority of countries follow a global standard – the OECD Guidelines – when it comes to pricing mechanisms, there are about a half dozen countries that require unique systems that often contradict the global system. Where these anomalies exist, multinational companies must choose between business needs and effectively being overtaxed. For instance, the global regulations require the use of third party pricing benchmarks to set pricing, but the local, contradictory regulations may require a formulaic price unrelated to market rates. In these cases, if the business requires that the activities specific to that country continue, the multinational company has no choice but to pay the formulaic rate in the region. This creates friction with the global standards since the formula is usually above market price.

CD: To what extent are tax authorities placing a greater focus on cross-jurisdictional joint audits? What challenges does this raise for multinational firms?

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Rebel A. Curd, CRA

Wentworth-May: Any tax dispute which involves more than one tax authority more than doubles the tax compliance burden for the taxpayer. It is true that there has been an increase in cross-border cooperation between tax authorities in the form of increased information exchange – particularly in the wake of FATCA. However, it is still a challenge for

multinational firms to ensure that they can reach an agreement which satisfies all of the tax authorities involved. Our experience is that such disputes can monopolise the time of a client's internal tax resource, particularly in relation to transfer pricing disputes, and whilst HMRC have confirmed they are interested in the idea of a joint audit with another tax authority, they have yet to get this to work in practice, and the difference in audit cultures between tax authorities – with HMRC being more collaborative where other authorities are more combative – makes it difficult to agree the right audit approach. Firms therefore need to be proactive in trying, to the extent possible, to engage in a form of alternative dispute resolution that binds all of the interested parties – for example, through agreeing bilateral or multilateral APAs.

Curd: Bilateral APAs have become more common and competent authority can be used to help resolve cases of double taxation when one country makes a tax adjustment and the company is seeking relief on the other side of the transaction. However, since the primary purpose of tax audits is to ensure that the individual tax authority is maximising its tax revenue, these can be contentious and time consuming. Cross-jurisdictional joint audits are still in their infancy. I believe these will only work in cases where the two countries where affiliated entities are performing the same functions as each other are both targeting a third entity in another country to move profit. For instance, two European subsidiaries, say, France and Germany, that perform buy/sell distribution on behalf of a Swiss parent. Both the French and German tax authorities could, in theory, pool resources, but in the end there is no compelling reason that one country should assist the other, as it is unlikely to change the outcome of the audit.

Dumezich: The IRS has not made it a secret that it is exploring the viability of an official joint audit program. We have undertaken one US-Australia joint audit. Our experience is that the joint rules still need development. More importantly, we have observed increased information sharing among taxing jurisdictions, including state and local examiners. A relevant example of this information sharing can be found in the FATCA partner agreements entered into between the US and countries such as France, Germany, Italy, Spain and the United Kingdom. For multinationals, joint audits and information sharing will eventually increase the compliance burdens placed on them to respond to information requests. Further, these joint audit programs will require firms to allocate additional resources to ensure documentation in all countries is coordinated in such a manner as to avoid inadvertent descriptions that tax authorities can interpret as contrary to the firm's stated tax reporting positions.

Miller: It is my experience that cross jurisdictional joint audits are still quite unusual. However, I believe

that they will become more common in the future. As illustrated by the recent actions of the G20 and the OECD Action Plan on Base Erosion and Profit-Sharing, transfer pricing is a multi-jurisdictional issue and multi-jurisdictional audits will be one tool which tax authorities will use in addressing transfer pricing matters. For the taxpayer, the prospect of a joint audit heightens the importance of being prepared, having all the relevant facts together and being able to tell one consistent, compelling and well-documented business story to support its position in all the jurisdictions.

CD: No matter what precautions are taken, firms might expect to become the target of regulatory audit, enquiry or investigation at some point. What is the best course of action a company can take in the event of investigation?

Dumezich: Preparation should begin long before an examination begins. Information and documents supporting the firm's tax reporting should be carefully prepared and maintained in an easily accessible format in anticipation of an eventual examination. For purposes of US federal tax issues, this documentation should be maintained until the statute of limitation for the time to assess tax has expired for the given years. In the event of an examination, the best practice is to be responsive, yet act carefully and deliberately. A clear explanation of a tax item, accompanied by documentation, often can resolve outstanding questions before a dispute arises. This requires the firm's tax practitioner to be concise without being evasive. A resolution of an issue with an IRS field examiner is usually the most cost efficient strategy; although a taxpayer should be cognisant of its appeals rights and the alternative dispute resolution opportunities that are available.

Miller: Success in an audit requires a good, well-documented business story. The matters are often technical and complex but they are best dealt with in the context of a reasonable and understandable business story. Before the audit begins, review your documentation, perform a risk assessment and decide if you need to gather additional information. Managing an audit involves telling your story to the IRS team and responding promptly to their questions. You should be proactive. Consider opening the audit with a presentation of your story to the entire IRS team. Maintain an open dialogue with the IRS team to avoid misunderstandings, especially with regard to the facts and to encourage frank discussions that will lead to the successful resolution of the relevant issues. Develop processes with the IRS audit team concerning the scope and scheduling of information document requests.

Curd: Education, communication, and thorough documentation are your best defences. First, educate and communicate with your business

team. Educate your local controllers so they understand what to do if they come under audit locally. Communicate openly with the business personnel so you know when there are operational changes that could impact the tax structure. Second, educate the tax auditors. Help them understand your business and your industry. Forcing them to research everything themselves will only delay the audit process. Offer to give several presentations on your business and the tax structure at the beginning of the audit before the formal information and data request process begins so they do not waste time asking questions that are irrelevant. Finally, make sure your transfer pricing documentation is clear. Lay out the relationships in both words and pictures. Explain why market or industry issues impact your business and the setting of prices. Keep these updated so even if you have a tax adjustment, you will not be subject to penalties due to lack of documentation.

Wentworth-May: A company needs to enter into a dialogue with HM Revenue and Customs at an early stage of any investigation. An early meeting with HM Revenue and Customs can often resolve an investigation quickly, before the parties have had time to adopt entrenched positions which can make settlement impossible. This is particularly important in order to allow a company to explain to HM Revenue and Customs all of the relevant facts, so both parties are starting from the same position, and can at least reach agreement on what are the points of disagreement. The most effective form of dispute resolution that a company can take is to avoid a dispute in the first place, and this is only really possible early on in an investigation, which is what makes it so important for a company to make sure that their first response to any investigation provides a complete and compelling answer to the issues HM Revenue and Customs have raised.

Salmond: In the event of a significant investigation, companies are best advised to take professional advice to ensure that, first, the tax authorities have the relevant authority to conduct the investigation and, secondly, are conducting it within the scope of the relevant law. Generally the best advice is to take a collaborative and constructive approach with the tax authorities, but in doing so it is important to engage with the tax authorities at the appropriate level of officer seniority to ensure that sensible and appropriate engagement is obtained. Depending on the nature of the investigation or enquiry, it may be necessary to engage in a more formal process such as alternative dispute resolution or litigation through the courts, but in practice the vast majority of investigations can be resolved bilaterally.

CD: Inevitably, investigations may lead to a dispute. What advice can you give to firms on achieving the most favourable

outcome from a tax dispute with regulatory bodies?

Curd: I have found that the key to favourable outcomes is finding common ground and being flexible. My largest cases have settled with minimal to no adjustments due to the ability of both the tax authority and taxpayer to agree that while they have differences in opinion on certain areas of the law, the economics of the pricing held true in either case. This requires working together and less as adversaries; understanding that pricing has many shades of grey and there is not only one right answer in every case.

Miller: The key to successfully resolving a dispute that could not be resolved at the audit stage is the same as the key to resolving an audit without a proposed adjustment – being prepared with a well-documented business story supporting your position and promptly answering the questions of the IRS. It is critical to focus on the concerns of the IRS. If the concern is factual, consider how best to present additional information to resolve the concern and whether arbitration of the unresolved factual issue is the best path to resolution. If the concern is legal, consider whether it is best to seek technical advice at the National Office or to resolve the issue either at IRS Appeals or in court. At each step, consider all of the available alternatives for resolving your case.

Salmond: Where the parties cannot agree on the tax outcome we have found that alternative dispute resolution can be another option. In the UK this often takes the form of 'facilitation'. This usually means HMRC will engage one of its own qualified mediators to work with another qualified mediator appointed by the taxpayer. Joint facilitation in this way can help unlock disputes, save time and costs and result in the right tax being agreed much sooner than through traditional litigation. However, the UK's experience is that not all cases are suitable for ADR.

Dumezich: Addressing tax disputes early, maintaining a dialogue with the examiner and understanding the regulatory process typically leads to the most favourable outcome. Often, a firm is best served by consulting with a regulatory specialist in early in the process. A specialist can effectively limit the scope of the inquiry, provide a realistic assessment of what would constitute a favourable outcome given the regulatory environment and advise a firm on the best ways to achieve its goals. Further, such specialists can provide an outsider's perspective, whereas those close to the transaction or item of contention may feel a sense of personal ownership that might prevent resolution of the dispute on reasonable terms. This can occur because getting to the 'right' answer with respect to a tax dispute may sometimes result in significantly higher costs and expenditure of human resources for the firm than a favourable settlement may entail.

Wentworth-May: To achieve a favourable outcome a company needs to act proactively to try and find a way to settle the dispute on their own terms, always bearing in mind the limitations HM Revenue and Customs have placed on themselves through their Litigation and Settlements Strategy. Most tax disputes ultimately turn on the facts, and so you need to make sure that you have a complete understanding of all of the relevant facts from the very beginning, and so does HM Revenue and Customs, as a careful analysis of the facts can often expose flaws in the approach HM Revenue and Customs have taken.

CD: Litigation can be a time consuming and costly process. Do you see alternative dispute resolution methods being used more frequently to resolve tax disputes between firms and regulators?

Salmond: HMRC has now announced that facilitation or mediation is a recognised method of resolving a wide variety of tax disputes and has had some success with two pilot schemes – one for small and medium enterprises and the other for large and complex disputes. These pilot schemes are now being formalised into HMRC standard operating procedures and the success of the pilots has demonstrated the value of such an approach to resolving disputes. That said, the tax authorities are understandably reluctant to use this process if the dispute focuses solely on the interpretation of a piece of tax law; but even in cases of this nature, a closer examination of the facts and circumstances can sometimes help the parties see the dispute in a new light.

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Giles Salmond, Deloitte LLP

Wentworth-May: HM Revenue and Customs are slowly beginning to engage in alternative forms of dispute resolution, but it still very much depends on the individuals involved. We have found it helpful to be able to speak directly to HM Revenue and Customs' ADR team, who are not only invested in the process but are also more willing to engage with a company to explore if ADR is appropriate. We hope that HM Revenue and Customs will increasingly turn to ADR as a cost efficient way of either settling a

dispute or at least narrowing the facts and issues in dispute. This is particularly important in transfer pricing disputes, where ADR can resolve disputes involving competing expert evidence, greatly reducing the time needed for a tribunal hearing.

Miller: I expect that ADRs will be used more frequently in the US. Advance pricing agreements will become more and more common as a way to avoid transfer pricing disputes. Similarly, we should expect that the Compliance Assurance Process (CAP) Program which is designed to resolve significant issues on a real time basis will be expanded. I also expect that post-Appeals mediation and the arbitration of factual issues will expand. Competent authority is also a form of an ADR and more and more treaties are including arbitration provisions in the event that the competent authorities are otherwise unable to reach an agreement. Even after a case has been docketed in court, we should expect that more judges will encourage the parties to refer all or part of the case to mediation or arbitration.

Dumezich: The inherent time, cost and uncertainty associated with tax litigation has encouraged both sides to seek alternative methods of resolving tax disputes where possible. We have achieved satisfactory resolutions to matters for clients at dramatically reduced costs by using a wide array alternative dispute resolution methods, including the Early Referral to Appeals process, Fast Track Settlement options, Post Appeals Mediation and Arbitration. Additionally, we have been able to resolve several unique matters for firms by voluntarily disclosing the issue to the IRS, educating the assigned examiners as to the nature of the issue, and then working towards resolution on an expedited basis. In these instances, the IRS often has been willing to work in partnership with the firm to reach a fair result, in a cost effective manner, for both the firm and the US Treasury.

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Curd: The best way to reduce litigation costs in transfer pricing in the US is to resolve any dispute at the field or appeals level. Field audits can be quite long and costly themselves due mostly to inexperienced transfer pricing auditors. The IRS

added a significant number of new field economists in the last couple of years. While it is helpful to everyone in the long run to have more transfer pricing experts in the IRS, there has more recently been extended audit proceedings due to lack of knowledge. If it is clear that no resolution will be had at the field level, then the appeals level is a very good and timely resolution arena. The vast majority of transfer pricing audits in the US are resolved at the field and appeals levels.

CD: Today, tax controversies are regularly the subject of intense media attention. What steps can firms take to mitigate reputational risk when such disputes arise?

Miller: With the increased media attention, corporate tax groups – for perhaps the first time – need to work closely with the corporation's public affairs function. Potentially significant issues should be identified early by the tax group so that public affairs personnel can be made aware of them before they become public knowledge. In this regard, it is important to provide the public affairs personnel with an accurate and understandable explanation of the transactions so that, if appropriate, they will be able to issue a statement and, if it is decided to do so, respond to press inquiries. It is very important that the public affairs personnel be given the complete story and sensitised to any potential difficulties that might exist. As in other areas, it is not helpful, if the corporation is seen as changing its story as additional facts become known.

Salmond: The use of alternative dispute resolution is a confidential process and generally will not reach the media spotlight. This is a good reason to use it to avoid the publicity that may arise. In the UK, taxpayers are usually named in litigation and reported decisions are in the public domain. If litigation is the only way to resolve the dispute then there are certain measures that the parties can take to redact or reduce information that is given publicly in the decision. For instance, certain sensitive commercial information can, with the judge's agreement, be kept confidential.

Wentworth-May: The current public debate is as much about whether companies are acting in a socially responsible way as it is about whether they are paying the right amount of tax. Multinational companies therefore need to be able to explain clearly the approach they take to tax, and how the decisions they take are driven by the commercial objectives of their business alone. It is not enough in the eyes of the public for a company to rely on the fact that what they have done complies with the strict letter of the law. It is important to be able to show that they are open and transparent in their tax affairs. Even if large companies are happy that they comply with the letter and spirit of the law, they

need to prepare for how to deal with any negative media coverage. Our experience is that, to manage reputation, large companies need to be able to respond quickly when faced with adverse press, and ensure that the board of directors know what to say when faced with questions. Recent UK experience shows how things can go wrong for a large company that does not prepare in advance to face this sort of coverage.

Curd: The media hype that we have seen in the last few years is disturbing. Most is written by non-tax people who do not fully understand the complexities of the issues and easily misrepresent what is happening – for instance, an article published in 2009 indicated that transfer pricing is killing babies in Africa. However, what is more disturbing is the political ambush on multinational companies in the public forum. I have seen a tax director fired because the board of directors were outraged by the adjustments and positions proposed by government auditors based on the positions taken in the media. In this case, the tax authority's position did not stand up once the facts of the company were reviewed in detail. My recommendation is that a company fully document its transfer pricing position contemporaneous to the decisions regarding the transactions. This includes aligning the company with industry standards and educating the business personnel internally, including the board of directors, about the tax and transfer pricing policies. These steps will allow the company to hold strong in political or media storms.

Dumezich: Most importantly, a firm should endeavour to use the administrative process, including alternative dispute resolution procedures, to the greatest extent possible. The IRS is not permitted to disclose taxpayer information related to such proceedings, providing the firm with greater control of the information that will be in the public domain. This prohibition does not extend to litigation of tax disputes which becomes a matter of public record. This encourages firms to seek non-litigation resolution opportunities if reputational risk is a significant concern. The firm must ascertain whether other risks may arise due to media exposure as well. This requires coordination with senior management, other departments, and outside advisers. Armed with this information, the firm can craft position statements that promote resolution of the tax dispute with the IRS, while attempting to raise the level of discourse over that which may be put forth by uncontrolled, unflattering, or sensationalist headlines. CD