

Henry J. Birnkrant

Senior Counsel

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Multinationals facing tax issues, including transfer pricing matters and tax-efficient structuring of cross-border business transactions, turn to Henry for responsive and pragmatic advice. Both the IRS and the OECD have independently consulted Henry on creating systems to facilitate transfer pricing compliance. He understands your business goals, and works to minimize tax liability and risk.

Henry Birnkrant focuses his practice on transfer pricing matters and U.S. federal income taxation of domestic and cross-border business transactions.

Henry advises multinationals on structuring cross-border transactions and operations to minimize the associated tax burden. Examples include planning for acquisitions and dispositions of U.S. and foreign business operations; structuring the financing, development and ownership of intellectual property; and reorganizing cross-border business operations. He also advises on all aspects of transfer pricing, and the Organization for Economic Cooperation and Development (OECD) has invited him to participate in its Transfer Pricing Experts consultations.

Henry also represents taxpayers in disputes with the IRS, including in IRS examinations, appeals and competent authority proceedings. He has represented taxpayers in proceedings that resulted in the IRS withdrawing adjustments that were proposed for Tier 1 issues and withdrawing adjustments that would have resulted in substantial compliance penalties. In addition, he has helped multinationals secure innovative APAs that satisfy both their business objectives and the requirements of the relevant tax authorities. Henry was consistently recognized by *Chambers USA* and *International Tax Review* and has been selected to *The Best Lawyers in America*[®] since 2005. He was the winner of the 2020 International Advisory Experts Award for tax in Washington, D.C.

Representative Experience

- Secured the first bilateral advance pricing agreement to cover all of the imports of a U.S. subsidiary of a major Japanese multinational; in addition to specifying the methodology for examining the pricing in the subsequent years, it resolved contentious disputes for six prior open years.
- Represented a U.S. multinational in securing unilateral advance pricing agreements that provided transfer pricing certainty for transactions with its Irish manufacturing subsidiary and European distribution subsidiaries.
- Represented a variety of multinationals based both inside and outside of the United States in securing bilateral advance pricing agreements for transaction flows between the U.S. taxpayer and its affiliates in other countries, including Japan, Germany, Mexico and Canada.
- Persuaded an IRS appeals officer to withdraw the entire \$240 million adjustment that the IRS exam team proposed with respect to proprietary technology made available pursuant to the implementation of a cost-sharing agreement between United States and European affiliates.

- Persuaded an IRS appeals officer to withdraw all of the \$31 million of adjustments that the IRS examination team had proposed for the U.S. subsidiary of a large Japanese multinational and the accompanying transfer pricing penalty that IRS management had approved.
- Planned the tax-efficient restructuring of U.S. operations and the transfer of the U.S. assets of a Japanese multinational to enable those operations and assets to be included in a newly formed joint-venture corporation that is managed and controlled outside the United States.

Publications & Presentations

Publications

- “5 Important Points from Latest Altera Cost-Sharing Opinion,” *Law360*, August 5, 2019.
- “Advance Pricing Agreements (APAs),” in *Practical Guide to U.S. Transfer Pricing*, 3rd ed., LexisNexis, 2017-2018.
- “Proposed Changes for Competent Authority and MAP: A Good Direction but Incomplete Execution,” *Journal of Taxation*, June 2014.
- “Will the Service's New Approach to APAs Prove to Be More Efficient and Effective?” *Journal of Taxation*, March 2014.

Professional & Community Engagement

- United States Council for International Business, Taxation Committee, Tax Treaty Subcommittee, chair
- *Journal of International Taxation*, board of advisors
- Thomson West Tax Advisory Board
- Washington International Tax Study Group
- American College of Tax Counsel, Fellow

Education

- Columbia University (J.D., 1979)
- New York University (LL.M., 1983)
- University of Rochester (B.A., 1976)

Admitted to Practice

- District of Columbia

Related Services

Tax