

# Transfer pricing services



European Tax Firm of the  
Year and UK and Germany  
Tax Firms of the Year 2011

*International Tax Review*

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# Transfer pricing

‘Transfer pricing’ refers to the setting of prices for the provision or supply of goods, services and intangible assets within a multinational business.

These are related-party ‘controlled’ transactions, so market conditions do not govern them. The choice of transfer price can affect how profits are allocated within the organisation and accordingly where taxable profits arise internationally. Thus transfer pricing is a major concern for national tax authorities. To ensure a fair distribution of tax revenue, Organisation for Economic Co-operation and Development (OECD) guidelines and the local tax laws of most modern or industrialised economies require that transfer prices adhere to the arm’s-length principle.

The arm’s-length principle broadly permits taxing authorities to amend (for tax purposes) the terms of a transaction between connected parties so that if they differ from the arrangements that would be made between independent enterprises, any profits that would have accrued to one of the enterprises, but by reason of the particular terms of the arrangement have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Designing and documenting an appropriate transfer pricing policy should not be viewed simply as a compliance issue for corporate taxpayers. Informed and strategic transfer pricing advice can protect against double taxation, boost profitability through a reduced global effective tax rate and align inter-company pricing with business strategy, thereby providing a better understanding of profitability drivers and supporting company development, expansion and growth.

At the same time, companies have policies on corporate social responsibility and wish to avoid a perception that their arrangements are ‘tax driven’; transfer pricing planning should not interfere with what works best commercially for the business.

**Global Corporate  
Tax Law Firm of the Year  
Who’s Who Legal Awards 2005–2010**

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# Freshfields' transfer pricing services – how we can help

Tax law, commercial law and sophisticated economics are becoming ever more important in transfer pricing. The ideal advisory service for corporate taxpayers must now combine all these specialist areas.

Recent high-profile transfer pricing cases have been determined on fine points of law and the testimony of expert economists. Moreover, tax authorities are recruiting their own economists and expressing a new determination to litigate when necessary. International bodies are reviewing the interpretation of the OECD Model Tax Convention on the basis of complex economic arguments. Companies must find a way through increasingly detailed and often conflicting statutory transfer pricing codes in more and more tax jurisdictions.

We have responded to these new challenges with the creation of a dedicated in-house transfer pricing team combining the high-quality international tax advice for which we are already internationally recognised with an equally expert level of economics knowhow. The result is a new offering for multinational enterprises – a complete and independent transfer pricing service including risk assessment, strategy advice, legal implementation and protection of intangibles, as well as documentation, defence and dispute resolution, all based on expert interpretation of tax law and analytical economic thinking.

Whether your business faces the challenge of compliance in many jurisdictions, or of international restructuring to prepare for the future, we can provide the solution. Our transfer pricing services combine a unique blend of economics, tax and intellectual property (IP) law, as well as expert dispute resolution skills, with industry-specific commercial awareness.

Our transfer pricing strategic review process is a comprehensive investigation into the three dimensions of transfer pricing:

### Planning

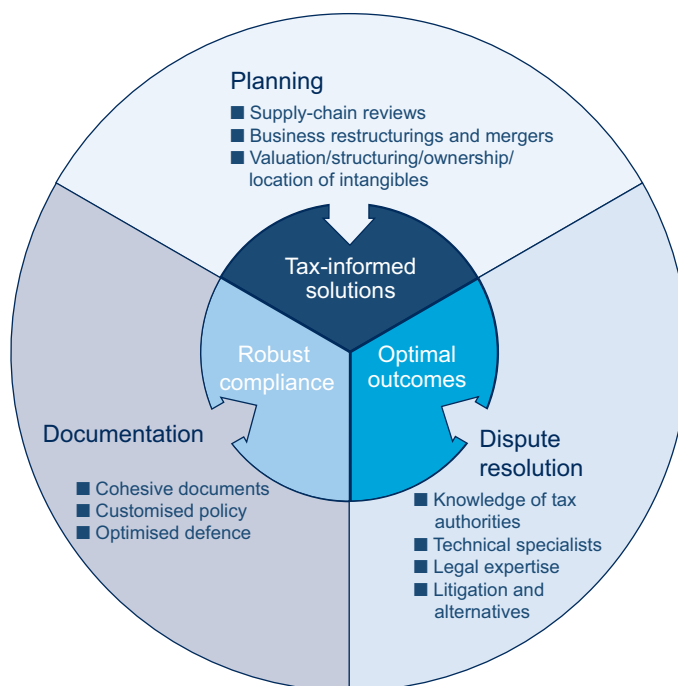
- We can help you to identify and act on 'quick wins'.
- We can advise you on ways you can restructure your supply chain or re-organise your business to make it more tax efficient.

### Documentation

- We can help you to meet your immediate benchmarking and compliance obligations.
- We can advise you on putting in place transfer pricing risk management arrangements that are adequate to maintain a 'low-risk' status in the longer term.

### Dispute resolution

- We can help you to negotiate advance pricing agreements, advance thin-capitalisation agreements, rulings and informal agreements with the tax authorities to achieve greater certainty.
- We can advise you on transfer pricing enquiries and investigations and give you litigation and alternative dispute resolution support when necessary.
- We can also help you with competent authority, mutual agreement and European Arbitration Convention processes.



Freshfields' international tax and dispute resolution teams have an exceptional reputation and are consistently ranked as market leaders. Our international IP specialists advise on brands and products, patents and technology, and IP transactions, with special reference to the telecommunications, media and technology sector, to pharmaceuticals, biotechnology and healthcare and to consumer products, frequently on a multi-jurisdictional basis. We combine all of these skills to act for local and international clients on domestic and cross-border transfer pricing issues, including large-scale transfer pricing disputes.

Our international tax group offers clients innovative tax solutions across all areas of their businesses. The composition and geographical spread of our team of more than 150 tax practitioners means that all of our tax lawyers combine in-depth knowledge of their countries' tax regimes with an understanding of the business tax systems of the major trading nations and how international transactions and structures work.

Internationally, our tax teams are consistently ranked in the top tier across all leading directories and we are recommended as a leading tax firm by the major tax publications for our transactional and advisory work and our tax disputes practice.

#### **Specific financial services-related transfer pricing capabilities**

- We can advise on the new OECD guidance on the attribution of profits to branches
  - this is likely to be of particular interest to banking and insurance businesses.

- We can carry out a functional analysis and benchmarking to confirm the split of investment management fees between the investment management, sub-advisory, sales and administrative functions of global investment management and services businesses.
- We can carry out a functional analysis and benchmarking to apply the OECD global trading guidelines to a residual profit split analysis between the research, sales and trading functions of corporate and investment banking businesses.
- We can work with you to review the arm's-length nature of tax-structured investment products.
- We can advise financial services head office functions on the emerging EU model services agreement and cost-allocation guidance.

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# Some of our recent projects

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## UK

- Advising on a major transfer pricing litigation case.
- Advising on the opportunities presented by a company's rebranding project to adopt a global franchising model.
- Advising a hedge fund on the optimal transfer pricing policy for a new UK trading desk and the separate attribution of profits to the permanent establishment created by the desk.
- Acting as expert economic witness in a dispute involving a retailer that was settled through an alternative dispute resolution process.
- Representing a resort owner in a dispute over the expenses and revenues booked to a hotel.

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## Austria and Germany

- Advising on the transfer pricing implications of business restructurings of financial institutions.
- Advising various financial institutions on the transfer pricing issues arising out of tax audits.
- Advising a European financial institution on the cross-border re-organisation of its investment banking activities, including transfer pricing methods for intra-group services and potential exit charges arising from the transfer of intangibles to group companies.

- Benchmarking arm's-length interest rates for bank loans to their subsidiaries, based on stand-alone credit scores for parents and subsidiaries and adjustments for implicit parental support.
- Benchmarking arm's-length royalty and sub-licence fees for an IP structure put in place by the acquirer of a retail business.
- Advising on the determination, documentation and change of intra-group charter rates of a shipping group, reflecting new economic challenges.

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## Belgium

- Litigating and subsequently negotiating a transfer pricing arrangement for a major international automotive company with the Belgian tax authorities.
- Obtaining a landmark tax ruling relating to the transfer pricing arrangements entered into by a Belgo-French retail chain.
- Obtaining a precedent-setting transfer pricing tax ruling on the sale by major Belgium-based polished diamond traders of their products to the Asian market through Hong Kong-based sales entities.

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## China

- Advising an international engineering group on defence of its transfer pricing arrangements in a Chinese transfer pricing audit.

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## France

- Advising an international food services operator on an IP transfer pricing planning structure.
- Advising a major multinational mining company on the establishment of an in-house consultancy firm, including advising on the arm's-length pricing of intercompany consultancy services.
- Advising a multinational chemicals company on a major transfer pricing re-assessment.
- Determining an appropriate sales commission for a subsidiary of an international construction company.

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## Italy

- Advising on a major transfer pricing litigation case involving the attribution of free capital to the Italian permanent establishment of a foreign bank.
- Advising a multinational energy producer on the correct transfer pricing analysis of the sale of electricity generated by an Italian gas-fuelled power plant to a foreign group trader.
- Advising a leading investment bank on the transfer pricing aspects of a multi-jurisdictional disposal of its asset management businesses.
- Advising an international pharmaceutical company in defence of its transfer pricing policies and procedures including analysis of the transactions, briefing of an expert witness and advice on transfer pricing aspects of the litigation strategy, followed by advice on improvements to the company's transfer pricing controls.

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## Netherlands

- Advising a Netherlands-resident group financing company of an international airline on the transfer pricing aspects of a convertible bond issue.
- Advising an international real estate private equity fund on the transfer pricing aspects of back-to-back financings through various jurisdictions.
- Representing an international financial institution on a dispute with the Dutch tax authorities in relation to its onshore and offshore captive insurance companies.

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## Spain

- Advising a major food manufacturer on its transfer pricing arrangements, involving different geographical divisions, and on the tax implications of the use of trade marks and intangibles.
- Advising a large Spanish corporate group on transfer pricing policies and intra-group services agreements.
- Advising several major construction and real estate companies on goodwill valuation and the transfer pricing aspects of corporate re-organisations.
- Benchmarking the interest rate and profit interest elements of profit participating shareholder loans to a real estate company.

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## US

- Advising on a transfer pricing report considering the allocation of costs to non-US subsidiaries of a US corporation.

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# Transfer pricing contacts

## UK

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### **Murray Clayson**

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Murray is a partner in Freshfields' tax practice group and is based in London. He specialises in international tax, finance and capital markets taxation, corporate structuring, transfer pricing, banking and securities tax, asset and project finance, derivatives and financial products, particularly cross-border.

Murray is listed in *Chambers Europe*, *Chambers Global*, *Chambers UK*, *The Legal 500 UK*, *Who's Who Legal*, *PLC Which Lawyer?* *Yearbook*, *Tax Directors Handbook*, *Legal Experts*, *Euromoney's Guide to the World's Leading Tax Advisers* and *International Tax Review's World Tax*. He is a fellow of the Chartered Institute of Taxation, past-chairman of the British branch of the International Fiscal Association (IFA) and a member of worldwide IFA's Executive Committee, and also of the CBI's main Taxation Committee and International Taxes Working Group and the ICC UK Committee on Taxation.

Murray is a graduate of Sidney Sussex College, Cambridge University. He joined the firm in 1983 and has been a partner since 1993.



### **Danny Beeton**

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Danny is head of transfer pricing economics in our London office. Danny has over 20 years of experience as a strategic transfer pricing adviser defending companies in transfer pricing disputes as well as advising on the design, implementation and documentation of transfer pricing arrangements. His related economics advice includes the valuation of intangible assets, the attribution of profits to permanent establishments and questions of thin capitalisation.

Danny is a member of the CBI's International Taxes Working Group, and is listed in *Euromoney's World's Leading Transfer Pricing Advisers*. Danny gained his PhD in economics from Queen Mary College, London, where he subsequently lectured. Danny joined the firm in 2009, having previously been a partner in a large accounting firm.



**Philip Croall**

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Philip is a partner in the dispute resolution team in London. He has more than 20 years' experience in all kinds of dispute resolution methods, including litigation, arbitration and mediation. He has considerable experience of large-scale litigation including, most notably, working for a leading pharmaceutical company on the preparations for what would have been the UK's largest transfer pricing dispute.

Philip was educated at Emmanuel College, Cambridge. He has been a partner since 1992.



**Chris Forsyth**

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Chris is an IP/IT partner in London. He specialises in patent litigation, trade mark advice and technology transactions. In addition to his contentious work, Chris has also worked on a number of high-profile initial public offerings for technology-based companies, addressing both national and international IP issues.

Before joining the firm in 2000, Chris was IP counsel to the global mobile satellite communications project, ICO Global Communications, where he was responsible for all IP matters, including the conduct and eventual settlement of its long-running patent dispute with TRW. He was also involved in the IP side of the company's NASDAQ flotation and successive rights issues.

Chris has been a partner since 2001.



**Justin Watts**

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Justin is an IP/IT partner in London. He is dual qualified as a lawyer and chartered engineer. He worked in satellite communications engineering before qualifying as a lawyer.

Justin's patent experience covers biotechnology, medical appliances, mechanical patents, semiconductors, computers and computer architectures, software, data storage and communications structures and standards, telecommunications and networks, and electronic and optoelectronic devices and systems.

Justin is experienced in IP transactional work, particularly in the technology, media and communication sector. He is also an experienced IP litigator and has widespread litigation experience in the UK courts.

Justin holds a PhD in optoelectronics from King's College, Cambridge. He has been a partner since 2003, having previously been a partner at another firm.



**Susanna Brain**

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Susie is an associate in the London tax department. She maintains a wide general practice, covering all aspects of corporate tax and tax structured finance, in addition to transfer pricing, where Susie has particular experience advising on the attribution of profits to permanent establishments of financial institutions.

Susie was educated at Jesus College, Cambridge, and joined the firm in 2004.



**Rupert Macey-Dare**

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Rupert is a lawyer and economist based in our London office with experience of transfer pricing, dispute resolution, IP and intangible assets, finance, structured asset finance, risk, economics, derivatives, option pricing, low carbon, employment and competition law.

Rupert is a member of the Royal Economic Society and has been a member of the Bank of England securities lending and repo committee (SLRC), European Bank for Reconstruction and Development (EBRD) staff committees, International Swaps and Derivatives Association (ISDA) derivatives committees, International Bar Association (IBA) antitrust committee and Bar Association for Commerce, Finance and Industry (BACFI) executive committee.

Rupert's academic background is D.Phil (economics and option pricing, Oxford), MA (Cambridge), MSc Econ (LSE), LL.M (City), Bar (Middle Temple), with additional training at the Oxford Said and Cambridge Judge Business Schools. Rupert joined the firm in 2008 and qualified as a solicitor and solicitor advocate (civil and criminal) in 2010.

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**Austria**



**Michael Sedlaczek**

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Michael has been a partner in Freshfields' international tax practice group since 2001 and is based in Vienna. He specialises in structuring national and international mergers and acquisitions, group reorganisations with particular focus on financial institutions, tax aspects of financial instruments and banking taxation. A strong focus of his practice is on the planning and structuring of private wealth and family-owned businesses in the context of international tax planning.

Michael joined the firm in April 1999 and speaks German and English.



**Claus Staringer**

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Claus is a principal consultant in Vienna. He specialises in corporate tax planning, M&A transactions, structured finance, estate planning and tax litigation. He advises industrial enterprises, banks and insurance companies, international investment banks and private equity funds.

Claus was educated at the University of Vienna and at the Vienna University of Economics and Business Administration, where he is also a professor of tax law. He is the author of a number of articles and publications. He has been a principal consultant since 2001.

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**Belgium**



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Axel is a tax partner in Brussels. He has a broad-ranging practice advising corporate and financial clients on Belgian and international tax issues, including bank taxation, stock options and tax transparent entities. Axel is also reputed for his interventions in high-profile tax litigation cases.

Axel is a professor of tax law at the University of Leuven. He is listed as a leading individual in *Chambers Global*, *European Legal 500*, *Global Counsel 3000*, *IFLR 1000* and *Euromoney's Guide to the World's Leading Tax Advisers*.

Axel was educated at the University of Leuven (law and business degree) and Columbia University, New York (masters in law) and holds a PhD from Leuven on tax transparency. He has been a partner since 2000.

## France

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### **Antoine Colonna d'Istria**

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Antoine is a tax partner in Paris. He has extensive expertise in corporate, finance and property tax. He represents a wide range of domestic and international clients, with a particular focus on multinational companies, banking clients and investment funds.

Antoine is recognised in both *Legal 500* and *Chambers* as a leading practitioner in tax law and is a member of both the IFA and the Institute of Tax Lawyers and Counsels (Institut des Avocats et Conseils Fiscaux).

Antoine was educated at New York University, the Universite Paris II and the Universite Paris X. He has been a partner since 2000 and has been the managing partner of the Paris office since May 2007.



### **Cyril Valentin**

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Cyril is a tax partner in Paris. He advises a wide range of French and international clients on the tax-related aspects of domestic and cross-border public and private M&A transactions and re-organisations, leveraged buy-outs and property transactions. He also has extensive experience in the taxation of structured finance transactions, securitisations and tax-enhanced financial products.

Cyril has been recognised as a leading tax practitioner by *Chambers Europe*, *Legal 500*, *PLC Which Lawyer* and the *International Tax Review*. He is a member of the IFA and publishes regularly on issues in French and international taxation.

Cyril was educated at the HEC Paris, the Law School of the Universite Paris XI and New York University. He has been a partner since 2005 and heads Freshfields' French tax practice.

## Germany

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### **Ulrich Blaas**

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Ulrich is a tax partner in Hamburg. He advises companies and private equity investors on tax-optimised M&A transactions, restructurings and initial public offerings, especially on cross-border and real estate-related transactions.

Ulrich was educated at the University of Cologne, from where he holds a PhD in law (*Dr iur*). He became a tax inspector (*Diplom-Finanzwirt*) in 1982, was admitted to the Bar in 1990 and qualified as a tax advisor (*Steuerberater*) in 1992. Ulrich has been a partner since 2000.



### **Jan Brinkmann**

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Jan is a tax partner in Frankfurt. He specialises in the tax structuring of corporate re-organisations, especially in the banking sector, M&A transactions, tax-optimised financings, taxation of banks and investment products and international tax law.

Jan was educated at the University of Constance, from where he holds a PhD in law (*Dr iur*). He also holds a diploma in tax law from the College of Fiscal Affairs, Nordkirchen, and a master of laws degree (*MJur*) from Oxford University. Jan qualified as a certified tax adviser in 2001 and has been a partner since 2004.

## Hong Kong

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### **Mark Parsons**

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Mark is a counsel in our Hong Kong office and a member of both our Asia IP/IT practice group and our global technology, media and telecoms sector group.

Mark advises on a range of corporate and commercial work, including technology transactions and outsourcings, commercial transactions in the TMT sector, data protection and privacy, telecoms regulatory work and mergers and acquisitions, restructurings, joint ventures and public offerings.

## Italy

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### **Vittorio Salvadori**

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Vittorio is a principal consultant in Milan. He advises on the tax aspects of financial and derivative products, structured finance transactions, securitisations, domestic and cross-border financing and M&A transactions.

Vittorio graduated *summa cum laude* from the Università Commerciale Luigi Bocconi in Milan in 1994 and was admitted as a *Dottore Commercialista* (chartered accountant admitted to practise in the Italian tax courts) in 1995. He has been a principal consultant since 2001.

## The Netherlands

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### **Machiel Lambooi**

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Machiel is a tax partner in Amsterdam. He specialises in transfer pricing, tax disputes and international corporate taxation, with specific expertise in the areas of M&A taxation, restructurings and insolvencies and group financing structures.

Machiel is listed in *Chambers* (global – tax), *European Legal Experts (tax)*, *European Legal 500*, *Global Counsel Handbook*, *Tax Directors Handbook*, *Who's Who Legal* (corporate tax) and *International Tax Review's World Tax*.

Machiel was educated at Leiden University. He has been a partner since 1999 and heads Freshfields' Netherlands tax practice.

## Spain

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### **Miguel Lorán**

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Miguel is a tax partner in Barcelona. He specialises in corporate tax planning, advising clients on a wide range of transactional corporate finance work, mostly in private and public M&A, demergers, restructurings and leveraged buy-outs, both on the debt and the equity side. Miguel also regularly advises on the tax aspects of structured finance transactions, securitisations and product development.

Miguel has been a member of the Barcelona Bar Association since 1993 and is a member of the Asociación Española de Asesores Fiscales and the IFA.

Miguel was educated at the Barcelona University and holds a masters degree in taxation from ESADE. He has been a partner since 2006.

## US

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**Robert Scarborough**

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Robert is a tax partner in New York. He specialises in the taxation of structured finance transactions and other complex financings. He also regularly advises on international tax issues and advises non-US corporations on the US tax treatment of demergers and other corporate transactions.

Robert has served as chair of the New York State Bar Association's tax section and as associate tax legislative counsel at the US Treasury Department, and he is listed in *Chambers USA*.

Robert was educated at the University of Virginia Law School and Harvard College. He has been a partner since 1999.

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# About Freshfields

At Freshfields Bruckhaus Deringer we provide our clients with exceptional advice that makes a real difference to their businesses. This approach demands the highest standards of intellectual rigour and service delivery as we strive to exceed the expectations of our clients.

Our international approach is founded on leading local capabilities and experience, backed up by the knowledge and experience of the wider firm.

With 2,500-plus lawyers in 16 jurisdictions across Europe, Asia, the US and the Middle East, we have the resources to co-ordinate and execute even the largest and most complex matters involving numerous jurisdictions.

We have a wealth of expertise in our chosen practice areas – areas selected because of their critical importance to our clients. But we also invest in developing the specialist industry knowledge of our people so that they can combine their legal skills with genuine understanding of the markets in which our clients operate. This approach enables us to go beyond simply responding to today's issues. We think ahead – identifying the challenges of the future, and advising our clients on how best to meet them.

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