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KBKG TAX INSIGHT

IRS – COCA-COLA \$3 BILLION TRANSFER PRICING COURT CASE WIN

"You Can't Beat the Feeling . . . of a \$3 billion-plus transfer pricing tax bill."

With apologies to the authors of the Coca-Cola's 1988 marketing tagline, the IRS won a landmark transfer pricing tax court case against Coca-Cola on November 18, 2020. Coke now owes an additional \$3 billion in taxes for 2007 through 2009, and perhaps much more. The transfer pricing adjustments applied to foreign subsidiaries in Brazil, Chile, Costa Rica, Ireland, Mexico, and – you guessed it – Swaziland.

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US Tax Court Judge Albert Lauber found that the Coca-Cola foreign subsidiaries earned profit margins far in excess of almost all food and beverage companies globally. Consequently, he concluded that Coca-Cola was shifting profits offshore through incorrect transfer prices.

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What does this mean for multinational companies?

Multinationals of all sizes can draw several lessons from the Coca-Cola tax case.

First, the IRS now has case law to support audit positions that subsidiaries of US companies should not earn excessive profits. What is considered “too much profit” will vary by industry, but subsidiaries earning higher margins than the parent company likely face more questions.

Second, Coca-Cola referenced a tax audit closing agreement from 1996 as support for their transfer prices. However, the judge dismissed this prior agreement as irrelevant for a 2007 to 2009 audit. In practice, a no-change audit for transfer pricing in prior years may not necessarily serve as comfort for the next audit.

Finally, while this tax court case did require enormous time and resources, transfer pricing audits are still a high return on investment for the IRS. With this win, the IRS is well-positioned to replicate this approach to companies of all sizes.

If companies or CPAs have questions about Transfer Pricing, KBKG’s Principal and Practice leader, Alex Martin, is here to assist. » [Schedule a call now](#)

KBKG also has many resources on our website to help you answer any other questions not listed here. » [Learn about Transfer Pricing](#)

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Sources

https://www.wsj.com/articles/coca-cola-improperly-shifted-profits-abroad-tax-court-rules-11605738514?mod=hp_list_pos5

<https://www.ustaxcourt.gov/USTCDockInq2/DocumentViewer.aspx?IndexID=7941838>

About the Author



Alex Martin – Principal

Alex Martin is Principal and Transfer Pricing Practice leader at KBKG, operating from Michigan. He has 22 years of full-time transfer pricing experience working in Washington, D.C.; Melbourne, Australia; and Detroit, Michigan over the course of his career. Alex has assisted companies in many industries addressing transfer pricing issues on a US and global basis.

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