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Global areas of practice

Tax

Baker & McKenzie LLP

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Practice description

Mr. Sprague joined Baker & McKenzie in 1985. His practice focuses on advice to software, high technology, and e-commerce companies.

Practice focus

Tax Planning & Advice (Corporate & International); Tax Controversies (Corporate & International); E-commerce Law

Representative clients, cases or matters

Mr. Sprague was one of five business representatives selected by the OECD to participate in the OECD Technical Advisory Group ("TAG") on Tax Treaty Characterisation Issues Arising from E-Commerce, and was elected chair of the business representatives on the TAG. He also was appointed by the OECD to serve as the business co-chair on the Technical Advisory Group on Monitoring the Application of Existing Treaty Norms for the Taxation of Business Profits. He was the Co-General Reporter for the subject Taxation of Income Derived from Electronic Commerce for the International Fiscal Association 2001 Congress, and is a co-author of BNA Tax Management Portfolio No. 555, *Federal Taxation of Software and E-Commerce*. He was appointed by the IFA USA Branch to serve on the IFA Executive Leadership Committee. He also serves on the Tax Management U.S. International Advisory Board, and is a regular contributor to the Tax Management International Journal's Leading Practitioner Commentary.

Publications, presentations and articles

Mr. Sprague has published articles in various journals, including the Georgia Law Review, the George Mason Law Review, Tax Management International Journal, Tax Notes International, and TAXES, a list of which follows:

- Observations on Treaty Interpretation -- Spanish Supreme Court Addresses Commissionaires, Tax Management International Journal (September 9, 2016)
- SKAT Issues Detailed Technical Ruling on PE Analysis Applicable to Data Centers, Tax Management International Journal (July 8, 2016)
- Establishing a Reseller Arrangement Under BEPS Action 7, Tax Management International Journal (May 13, 2016)
- The Australian Taxation Office's MAAL Client Experience Roadmap - 2016 and Beyond, Tax Management International Journal (March 11, 2016)
- Playing the Principal Role in Creating a Permanent Establishment, Tax Management International Journal (January 8, 2016)

- The Proposed Australian Multinational Anti-Avoidance Law -- Leapfrogging the OECD's BEPS Process to Devise a New Nexus Rule for Remote Sales, Tax Management International Journal (November 13, 2015)
- Reflections on the Final Lap (or Not) in the BEPS Project, Tax Management International Journal (September 11, 2015)
- Second Discussion Draft on Revisions to the Deemed Permanent Establishment Rule of the OECD Model Article 5(5) -- What Should Taxpayers Do Now?, Tax Management International Journal (July 10, 2015)
- Section 199 and Online Software -- Correct Conclusion but Questionable Rationale, Tax Management International Journal (May 8, 2015)
- Special Measures: Within or Beyond the Arm's Length Principle, Tax Management International Journal (February 13, 2015)
- PE: Attribution of Profit an Open Point Still to be Clarified, II Sole 24 Ore (February 5, 2015)
- The Best Job in the World, Tax Management International Journal (December 12, 2014)
- Further Work Expected on Digital Economy Issues Despite Issuance of Action 1 Final Report, Tax Management International Journal (November 14, 2014)
- Exchange of Information Limitations -- Rights Without Remedies, Tax Management International Journal (September 12, 2014)
- PRC Views on Intra-Group Service Fees Make for Interesting Reading — Positions on the Application of the Benefits Test, Tax Management International Journal (July 11, 2014)
- Extraterritorial Impositions of Tax and the BEPS Project, Tax Management International Journal (May 9, 2014)
- A Break in the Clouds: A Proposed Framework for Analyzing Cloud Computing Transactions, TAXES (March 2014)
- Role of §482 Principles to Determine Noncompulsory Tax Payments Arising From Transactions with Foreign Disregarded Entities, Tax Management International Journal (March 14, 2014)
- "Special Measures" and the Arm's Length Principle, Tax Management International Journal (January 10, 2014)
- Characterizing Cloud Transactions -- Applying Section 7701(e) to Remote Access Transactions, Part II, Tax Management International Journal (November 8, 2013)

- Characterizing Cloud Transactions -- Applying Section 7701(e) to Remote Access Transactions, Part I, Tax Management International Journal (September 13, 2013)
- Malaysia Guidance on E-Commerce Leaves Some Open Questions, Tax Management International Journal (July 12, 2013)
- Navigating the Cloud: Keeping Pace with the Evolving Taxation of Cloud Computing and E-Commerce, TAXES (June 2013)
- Canada Revenue Agency Issues Important Ruling on PE Aspects of Data Center, Tax Management International Journal (May 10, 2013)
- Might the UK "Patent Box" Become a Safe Haven for Offshore IP Income?, Tax Management International Journal (March 8, 2013)
- Spanish Court Imposes Extraterritorial Tax Nexus by Finding a "Virtual PE", Tax Management International Journal (January 11, 2013)
- Initial Thoughts on the OECD Discussion Draft on Special Considerations for Intangibles, Tax Management International Journal (November 9, 2012)
- OECD Intangibles Project — Speculations on Its Effect on IP Holding Company Structures of U.S. MNCs, Tax Management International Journal (November 9, 2012)
- OECD Intangibles Project — The Discussion Draft Deserves Close Attention, Tax Management International Journal (September 14, 2012)
- The Italian Supreme Court Weighs In on Commissionaire Structures - Is the Fat Lady Singing Yet?, Tax Management International Journal (July 13, 2012)
- Enterprise Services (Outline of Enterprise Services Session at IFA 2012), Tax Notes International (June 11, 2012)
- Spanish Supreme Court Gores Taxpayer After Business Restructuring, Tax Management International Journal (May 11, 2012)
- Cross-Border Home Offices - OECD Proposed Revisions to Article 5 Commentary Address a Common Practical Issue, Tax Management International Journal (March 9, 2012)
- OECD Proposed Revisions to Article 5 Commentary Clarify Guidance on the Use of Contractors, Tax Management International Journal (January 13, 2012)
- PEs and the Foreign Tax Credit: an Italian Twist in the **Voith** Paper, Tax Management International Journal (November 11, 2011)
- Understanding French Tax Cases: The Role of the Public Reporter, Tax Management International Journal (September 9, 2011)

- Applying (and Misapplying) the OECD Commentary in Commissionaire PE Cases, Tax Management International Journal (July 8, 2011)
- Section 956 Aspects of the Right to Duplicate and Sell Software into the US - a Wisp of Guidance from the Service, Tax Management International Journal (May 13, 2011)
- Cost-Sharing "Divisional Interests" Rule as Applied to E-Commerce Business Models, Tax Management International Journal (March 11, 2011)
- Section 901(l) and Notice 2010-65 - Not Quite There Yet, Tax Management International Journal (January 14, 2011)
- OECD Considers New Transfer Pricing Project on "Intangibles", Tax Management International Journal (November 12, 2010)
- More on Business Restructurings - The Australian View, Tax Management International Journal (September 10, 2010)
- The Zimmer Case: Lifting a Cloud Over Commissionaire Structures, Tax Management International Journal (July 9, 2010)
- OECD Article 7 Changes and the Relief of International Double Taxation - Part 2, Tax Management International Journal (May 14, 2010)
- OECD Article 7 Changes and the Relief of International Double Taxation - Part 1, Tax Management International Journal (March 12, 2010)
- Permanent Establishment Aspects of Transaction Processing on US Servers, Tax Management International Journal (January 8, 2010)
- Adjustments of Rights within Cost Sharing Arrangements, Tax Management International Journal (November 13, 2009)
- A Bogus Payment Plan (Indian Software Revenue Characterization Policies Leave Taxpayers in a Bind), San Francisco and Los Angeles Daily Journal (April 2009).
- Federal Taxation of Software and E-Commerce, 555 Tax Management Portfolio, BNA (October 2008)
- US: IRS Issues Subpart F Regs on Contract Manufacturing, Tax Planning International Transfer Pricing (April 2008)
- Source of Royalty Income and Place of Use of Intangible Property, Tax Management International Journal (August 10, 2007)
- Source of Royalty Income and Place of Use of Intangible Property, George Washington University/Internal Revenue Service 18th Annual Institute on Current Issues in International Taxation (December 8-9, 2005)

- The Changing World of Permanent Establishment Taxation: Managing the Risks, George Washington University/Internal Revenue Service 16th Annual Institute on Current Issues in International Taxation (December 11-12, 2003)
- Permanent Establishments and Internet-Enabled Enterprises: The Physical Presence and Contract Concluding Dependent Agent Tests, Georgia Law Review (Fall 2003, Vol. 38, No. 1)
- Allocation of Profits to Permanent Establishments, Tax Planning International Transfer Pricing (February 2003)
- Application of Transfer Pricing Rules to Branches and Permanent Establishments-Electronic Commerce and Intangible Property Aspects, George Mason Law Review (summer 2002)
- Attribution of Profits to Permanent Establishments, Tax Notes International (February 11, 2002)
- Highlights of Clarification on the Application of the PE Definition in E-Commerce, Tax Notes International (January 28, 2002)
- Another Step Towards Uniformity - Relative Consensus of the OECD TAG on Income Characterization of E-Commerce Transactions, Tax Management International Journal (June 8, 2001)
- OECD Initiatives in the Field of the Taxation of International Electronic Commerce, Joint Venture Silicon Valley Network's Tax & Fiscal Policy Council's Quarterly Newsletter (April 24, 2001)
- General Report on Main Subject I: Taxation of Income Derived from Electronic Commerce, Cahiers de Droit Fiscal International, Volume 86, IFA 2001 San Francisco Congress
- United States Taxation of Income from International Electronic Commerce Transactions, Tax Management Memorandum (December 4, 2000)
- OECD Characterization TAG Deliberations: A Push for Consensus, E-Commerce Tax Report, Bureau of National Affairs, Inc. (October 30, 2000)
- The Emerging International Tax Environment for Electronic Commerce, Tax Management International Journal (March 29, 1999)
- Letter to OECD re: Electronic Commerce, Intertax: International Tax Review (February 1999)
- The Final Software Revenue Characterization Regulations, Tax Management International Journal (February 12, 1999)
- Proposed Regulations on Computer Software Revenue Characterization, Tax Management International Journal (March 14, 1997)
- Characterization of Computer Software Revenue in International Transactions, TAXES (December 1996)

- Withholding Tax on Software Payments From Korea - Latest Word, Tax Notes International (December 16, 1996)
- Software Withholding Tax in the Far East: A Comparative View of Australia, Japan, and Korea, Software Taxation Letter (September 1996)
- Increasing Corporate Competitiveness By Utilizing Independent Contractors, The Computer Law Association Bulletin (1996)
- Response to Comments on the Analysis of the Proper Tax Treatment of International Payments for Computer Software Products, Asia-Pacific Tax Bulletin (December 1995)
- An Analysis of the Proper Tax Treatment of International Payments for Computer Software Products, Asia-Pacific Tax Bulletin (June 1995)
- Korea: Treasury Department Issues Memorandum on Treaty, Software Taxation Letter (April 1994)
- Korea: New Tax Guidelines for Packaged Software, Software Taxation Letter (March 1994)
- Current Federal and International Tax Issues in the Software Industry, Software Law Bulletin (November/December 1993)
- U.S.: Current Tax Issues in the Software Industry, Software Taxation Letter (December 1993)
- Comments on the Commentary to Article 12 (Royalties) of the 1992 OECD Model Convention, Intertax: International Tax Review (July 1993)

Mr. Sprague speaks frequently on a variety of international tax planning topics and has lectured in conjunction with seminars sponsored by various organizations including the Tax Executives Institute, the USCIB/OECD International Tax Conference, the George Washington University/IRS Annual Institute on International Taxation, and the TEI-SJSU High Technology Tax Institute. He has also testified before the House Committee on Ways and Means Subcommittee on Select Revenue Measures with respect to proposed revisions to subpart F to replace the extraterritorial income regime, and was an invited speaker in the IRS Chief Counsel Lecture Series (2006).

Professional Recognitions

- Mr. Sprague regularly has been voted a top U.S. West Coast Tax Advisor in the International Tax Review's annual survey of North America's top tax advisers, including most recently in International Tax Review -World Tax 2011.
- Mr. Sprague has been highly recommend as a leading lawyer in Chambers USA Guides 2011-2016.

- Bay Area Lawyer Magazine has named him one of the best lawyers in the Bay Area in 2005.
- Mr. Sprague was nominated, by his clients and peers, to appear in Euromoney Legal Media Group's 2001, 2002, 2006, 2007 and 2008 "Guide to the World's Leading Tax Advisers".
- He is listed as a "highly rated" Palo Alto-based tax strategist in Global Counsel Handbook's Tax Law publication (2003).
- Mr. Sprague has been recommended to appear as a leading lawyer in the PLC Cross-Border Tax on Corporate Transactions 2006 Handbook.
- Recognized in Best Lawyers in America each year since 2010.
- He has been designated a Northern California Super Lawyer each year since 2004.
- Mr. Sprague has been nominated, by his clients and peers, to appear in Who's Who Legal: California each year since 2007.

Professional Affiliations

American Bar Association, Section on Taxation; International Fiscal Association, USA Branch; State Bar of California.

Education and admission

Mr. Sprague is admitted to practice law in California (1981). He is a graduate of Stanford University (1977, B.A. *with honors* in Political Science, Phi Beta Kappa) and Harvard Law School (1981, *cum laude*). He also attended Trinity College in Dublin, Ireland.