



James N. Mastracchio

Partner

Washington, DC
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Jim is widely recognized as one of the foremost advisers to the global tax community with regard to civil and criminal tax enforcement matters. He represents clients in all phases of federal civil tax controversies. Jim is one of the few lawyers in the country who has served as lead counsel on international criminal tax cases. In that role, he has defended publicly traded companies, boards of directors, and senior management facing criminal investigations and prosecutions for alleged tax violations.

Jim is a seasoned advocate who brings decades of experience representing public and private companies, boards of directors, and senior executives in sensitive governmental investigations involving tax and financial matters. His practice focuses on solving clients' most difficult legal and tax regulatory challenges, whether in the context of civil, criminal, or parallel proceedings. He routinely represents clients before the U.S. Department of Justice (DOJ), U.S. Attorney's Offices, the Internal Revenue Service (IRS), the U.S. Competent Authority, State Attorneys General, and other regulatory agencies. Jim defends clients facing multi-jurisdictional investigations and litigation conducted jointly by the U.S. and foreign governmental agencies. In that role, he advises multi-national companies on treaty interpretation, inter-governmental agreements, tax information exchange agreements, competent authority proceedings, summons and subpoena enforcement, and other U.S. and intra-governmental investigatory

procedures. Jim litigates in every U.S. federal court having jurisdiction over civil and criminal tax enforcement matters.

CIVIL TAX REPRESENTATIONS

Jim represents clients in all phases of federal civil tax controversies. His extensive knowledge of U.S. tax law and civil tax procedures provides his clients with invaluable representation for some of the most sensitive and bet-the-company federal tax cases under investigation today. Whether an issue is before IRS Examination, IRS Appeals, Post-Appeals Mediation, U.S. Competent Authority, State Attorneys General False Claims Divisions or in federal courts, Jim is a trusted adviser who seeks the earliest possible resolution for any civil tax dispute.

CRIMINAL TAX REPRESENTATIONS

Jim is one of the few lawyers in the country who has served as lead counsel on international criminal tax cases. In that role, he has defended publicly traded companies, boards of directors, and senior management facing criminal investigations and prosecutions for alleged tax violations. Jim has appeared before regulatory bodies and competent tax authorities in numerous countries; served as an Independent Examiner in Zurich, Switzerland, for the DOJ's Swiss Bank Program; advised foreign financial institutions and foreign governmental agencies on the implementation of the Foreign Account Tax Compliance Act; and played a significant role in the interpretation of inter-governmental agreements and treaty protocols in connection with tax investigations. In the U.S., Jim routinely defends investigations conducted by IRS Criminal Investigation, the DOJ-Tax Division, and grand jury proceedings and prosecutions by U.S. Attorney's Offices across the country.

Prior to joining Winston, Jim led the civil tax controversy and criminal tax practices in the Washington D.C. office of a global law firm. Before entering the legal field, Jim was a certified public accountant with a Big Four accounting firm.

Key Matters

Some of the experience represented below may have been handled at a previous firm.

SIGNIFICANT ACTIVE FEDERAL COURT REPRESENTATIONS

- Filed US Supreme Court *certiorari* for a real estate development company regarding excessive valuation penalties
- Representing an estate in the 2nd Circuit Court of Appeals challenging the validity of Treasury Regulation 1010.820(g)(1)
- Representing a taxpayer before the 11th Circuit Court of Appeals regarding proper burden of production standard under IRC Section 7491
- Asserting claim of right tax benefits in US Tax Court for a mortgage company
- Defending a taxpayer facing civil fraud penalties in US Tax Court
- Representing four taxpayers facing whipsaw tax and civil fraud penalties in US Tax Court

SUCCESSFUL ENGAGEMENTS

- Successfully counseled clients resolve examinations of syndicated partnership conservation easement transactions
- Represented a cooperative in Internal Revenue Service (IRS) Appeals regarding proper interpretation of Treasury Regulations and successfully settled the matter
- Counseled clients facing investigations into offshore holdings and structured products and resolved those investigations favorably for those clients

- Represented clients before the New York State Attorney General's Taxpayer Protection Bureau regarding New York State's False Claims Act
- Represented multi-national clients before IRS Appeals in conjunction with the U.S. Competent Authority
- Successfully defended an international company facing criminal tax charges for insurance-related tax products
- Served as lead counsel in the criminal tax prosecution of a financial institution and its subsidiaries located in the Cayman Islands. The investigation resulted in declination letters being issued to the publicly traded company and financial institution with modest penalties being paid by two small subsidiaries through a cooperative plea agreement.
- Advised clients regarding resolution of conservation easement disputes with the IRS
- Successfully defended a civil and criminal tax dispute involving the question of the proper definition of loss of income insurance and allowable premium deductions
- Represented a client in a tax dispute regarding timing and amount of assets placed in service
- Defended against allegations by the IRS that the client was subject to a section 481 change in accounting method adjustment
- Achieved a full concession at IRS Appeals of an alleged tax shelter promotor penalty
- Defended a client in a tax controversy regarding the proper valuation of exploratory oil property contributed to a municipal government
- Acted as an independent examiner in the U.S. Department of Justice's Swiss Bank Program
- Counseled a client in a controversy related to the inability of the IRS to impose penalties without prior written approval pursuant to IRC Section 6751
- Defended a client in a tax dispute regarding an alleged tax and 40% valuation penalty, which was dropped after a successful argument that the statute of limitations for assessment had expired
- Secured the abatement of millions of dollars in penalties for a client in a dispute over the proper classification of independent contractors and employees
- Defended a client in a controversy related to the proper tax treatment of a construction contract settlement
- Represented more than 850 taxpayers who participated in the IRS Offshore Voluntary Disclosure Program
- Defended taxpayers facing penalties for failing to timely file Form 5471 and Form 8938
- Successfully raised Fifth Amendment assertions in an offshore civil penalty tax dispute
- Resolved a Freedom of Information Act dispute, gaining access to needed documentation from the IRS, which resulted in a case concession by the government
- Defended a client facing income and penalties as a result of deficiencies in IRS Tax Equity and Fiscal Responsibility Act (TEFRA) proceedings

Recognitions

- Recognized by *The Legal 500 US* in the area of contentious tax (2017–2020, 2022–2023) and international tax (2019)
 - Recognized as a “leading lawyer” in *International Tax Review Tax Controversy Leaders* (2016–2020)
 - Recognized by *The Legal 500 US* as a “Leading National Tax Controversy Attorney” (2016–2018)
 - Selected for inclusion in *Washington DC Super Lawyers*® (2014–2017, 2019)
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Activities

- Certified Public Accountant (CPA)
 - Member, International Bar Association
 - Member, Civil and Criminal Tax Penalties Section, American Bar Association
 - Member, Practice and Procedure Committee, Tax Compliance Section, New York State Bar Association
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Credentials

EDUCATION

Jim received his J.D., *summa cum laude*, from the New York University School of Law and his L.L.M in taxation from New York University in 1996. Jim also received his M.S. in tax from the State University of New York at Albany in 1991 and his B.S. in accounting, *summa cum laude*, from the State University of New York at Albany in 1987.

ADMISSIONS

- District of Columbia
- New York

Related Insights & News

PUBLICATIONS

- “Lights, Camera, Audit: High-Income Taxpayers, Partnerships, Corporations, and Promoters Headline Recently Announced IRS Enforcement Priorities,” *Winston & Strawn Tax Impacts Blog*, Co-author, Oct. 26, 2023
- “Looking Back on 2019 and Planning Ahead for 2020,” *S. Cybersecurity and Data Privacy review and update*, Co-author, Feb. 4, 2020
- “New IRS Tax Guidance Targets Crypto, and U.S. Persons Who Use It,” *Cointelegraph*, Oct. 31, 2019

SPEAKING ENGAGEMENTS

- “AI and Us – Is the Right Question Can We Use AI or is it Should We Use AI?,” 2023 Insurance Tax Conference, Panelist, Nov. 10, 2023
- “Financial Information and Other Meaningful Sources of Data That Enable Quality AML Assessment and Monitoring,” FIBA AML Conference, March 15, 2023

- “Primer: IRS Practice & Procedure,” Insurance Tax Conference, Nov. 10, 2022
- “International Tax Developments,” National Commerce Bank Jamaica Roadshow Conference, June 7, 2022
- “Tax Controversy Update: Coming Soon to an IRS Audit Near You!” Insurance Tax Conference, Nov. 30, 2021
- TEI New England Chapter, Dec. 4, 2020
- “The Intersection of U.S. and Asia Hedge Fund Reporting,” AIMA APAC Webinar, Dec. 11, 2019
- “Navigating Privilege and Ethics Obligations,” TEI Northeast Wisconsin Chapter, Nov. 21, 2019
- “International Anti-Corruption and Cross-Border Criminal Investigations: How to Mitigate Risk and Manage Violations,” Sept. 24, 2019
- “11th Annual Tax Planning Strategies – U.S. and Latin America,” American Bar Association, June 13–15, 2018
- 2018 TEI Region II Tax Forum, June 4–5, 2018

MEDIA MENTIONS

- In the News: **Unclear Tax Reporting Criteria May Dog Crypto Compliance** (July 15, 2020) Law360: Eversheds Sutherland Partner Jim Mastracchio is quoted in this Law360 article discussing the absence of guidance and uniformity regarding the reporting of cryptocurrency transactions and which types ...
- **Confusion On Crypto ‘Staking’ May Lead To Reporting Woes** (June 26, 2020) Law360: In this interview with Law360, Eversheds Sutherland Partner Jim Mastracchio discusses the lack of IRS guidance on cryptocurrency “staking,” in which a user receives virtual currency in exchange for ...
- **IRS Clarifies How Clients Should Report Income From Crypto Currency** (Nov. 19, 2019) *Financial Advisor*: Eversheds Sutherland Partners Sarah Paul and Jim Mastracchio are featured in Financial Advisor discussing the recent guidance released by the Internal Revenue Service detailing how virtual-currency ...
- **New Expat Tax Relief May Be Too Limited For Wide Appeal** (Nov. 19, 2019) Law360: Eversheds Sutherland Partner Jim Mastracchio is featured in Law360 discussing recent Internal Revenue Service tax relief procedures which allow former US citizens with limited back tax liabilities ...
- **Crypto Guidance May Mean Tax Bills On Unknown Assets** (Nov. 19, 2019) Law360: Eversheds Sutherland Partner Jim Mastracchio is featured in this Law360 article regarding tax payment on cryptocurrency. The Internal Revenue Service released guidance regarding cryptocurrency ...
- **IRS Beefs Up Tax Form in Crypto Compliance Effort** (Oct. 14, 2019) *Tax Notes*: Eversheds Sutherland Partner James Mastracchio is quoted in this Tax Notes article discussing the release of the draft 2019 Form 1040, Schedule 1, “Additional Income and Adjustments to Income,” as ...
- **IRS Rules New Cryptocurrency From Hard Forks Is Taxable** (Oct. 10, 2019) *Tax Notes*: Eversheds Sutherland Partner James Mastracchio is quoted in this Tax Notes article discussing the IRS’s second piece of guidance on the tax treatment of cryptocurrencies just issued. The action ...
- **The IRS Just Issued Its First Cryptocurrency Tax Guidance in 5 Years** (Oct. 9, 2019) *Coindesk*: Eversheds Sutherland Partner James Mastracchio is quoted in this Coindesk article discussing the recent cryptocurrency guidance issued by the IRS. Jim said “The new guidance allows for first-in, ...
- **Options Few for Willful Offshore Tax Cheats as OVDP Ends** (Sept. 27, 2018) Law360: Eversheds Sutherland Partner James Mastracchio is quoted in this Law360 article discussing which Internal Revenue Service offshore leniency programs will remain open after the shutdown of the ...
- **Tax Controversies Common in Latin America** (June 28, 2018) *Bloomberg BNA*: Eversheds Sutherland Partner James Mastracchio is quoted in this Bloomberg BNA article discussing Latin America’s high interest rates and penalties on tax controversy cases. Jim said, “Jurisdictions ...
- **FBARs: A Changing Landscape** (April 4, 2018) Law360: Eversheds Sutherland’s videocast regarding civil and criminal enforcement of Foreign Bank and Financial Accounts (FBAR) is featured in Law360. In this video,

Eversheds Sutherland Partners James ...

- **Supreme Court: IRS Went Too Far with Taxpayer Obstruction Charge** (March 22, 2018) *Bloomberg Tax: Daily Tax Report*: Eversheds Sutherland Partner Jim Mastracchio is quoted in this Bloomberg Tax article commenting on the Supreme Court's recent *Marinello v. United States* decision, in which the court ruled that the ...
- **IRS Winds Down Voluntary Disclosure, Ramps Up Investigations** (March 19, 2018) *Compliance Week*: Eversheds Sutherland Partner James Mastracchio is quoted in this Compliance Week article discussing what the elimination of the Offshore Voluntary Disclosure Program means moving forward. "After the ...
- **Life After OVDP** (March 19, 2018) *Wealth Management*: Eversheds Sutherland Partner James Mastracchio is quoted in this Wealth Management article regarding the elimination of the Offshore Voluntary Disclosure Program (OVDP). "Several other procedures ...
- **Offshore Voluntary Disclosure Program Shutdown Fuels Speculation** (March 15, 2018) *Bloomberg BNA – Daily Tax Report*: Eversheds Sutherland Partner Jim Mastracchio is quoted in this Bloomberg BNA article discussing the possible short-term impacts from the ending of the Offshore Voluntary Disclosure Program (OVDP). ...
- **IRS issues new guidance on tax treatment of virtual currencies** *Compliance Week*: Eversheds Sutherland Partner James Mastracchio is quoted in this Compliance Week article discussing the new guidance issued by the IRS on tax treatment of virtual currencies...

BLOG

Taking Aim: IRS's Compliance Campaign Makes Sports Industry Target of Enforcement Measures

APRIL 9, 2024

BLOG

Winston & Strawn Monthly Tax Controversy Update – October 2023

NOVEMBER 6, 2023

BLOG

Lights, Camera, Audit: High-Income Taxpayers, Partnerships, Corporations, and Promoters Headline Recently Announced IRS Enforcement Priorities

OCTOBER 26, 2023

BLOG

IRS Backtracks on Penalties and Seeks to Settle Case Involving Backdated Documents

OCTOBER 2, 2023

BLOG

Tax Court Reproach of "Cut-and-Paste" Notice Another Blow to IRS Documentation Credibility

SEPTEMBER 14, 2023

BLOG

IRS Announces Increased Scrutiny of High-Income Taxpayers, Partnerships, Corporations, and Promoters

SEPTEMBER 13, 2023

BLOG

Bangladesh and Hong Kong Sign Income Tax Agreement

SEPTEMBER 5, 2023

BLOG

Fallout from Backdated Documents Lands IRS in Hot Seat

AUGUST 31, 2023

BLOG

IRS Clarifies Federal Credit Unions May Claim Employee Retention Credit For 2021

AUGUST 18, 2023

BLOG

Winston & Strawn Tax Impacts Monthly Tax Controversy Update – July 2023

AUGUST 7, 2023

BLOG

IRS Cites Progress as House Committee Hearing Seeks Solutions to Employee Retention Tax Credit Woes

JULY 31, 2023

BLOG

IRS's Strategic Operating Plan Includes Objective Targeting High-Income Taxpayers and Large Corporations and Partnerships

APRIL 17, 2023

Capabilities

Tax Controversy & Criminal Tax

Government Investigations, Enforcement & Compliance

Litigation/Trials

Government Program Fraud, False Claims Act & Qui Tam Litigation

Compliance Programs

eDiscovery & Information Governance

Privacy & Data Security

Tax

Financial Services

Insurance

Professional Services