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PRACTICES

International Tax
Tax Controversy & Litigation
Tax Policy

EDUCATION

J.D., The Catholic University of
America, Columbus School of
Law, *magna cum laude*, 1994

B.A., University of California,
Santa Barbara, 1990

Michael J. Desmond

MEMBER
PRACTICE CO-LEAD, TAX CONTROVERSY &
LITIGATION

Michael Desmond's practice covers a broad range of federal tax matters with a focus on administrative tax policy, tax controversy, and litigation. He represents clients in approaches to the Internal Revenue Service (IRS) and the U.S. Department of the Treasury (Treasury) on administrative rulemaking matters and matters relating to tax administration and enforcement, seeking clarity on the application of federal tax laws. He also represents clients before the examination divisions of the IRS, the IRS Independent Office of Appeals, and in the U.S. Tax Court, federal district courts, the Court of Federal Claims, and federal courts of appeal. Mike is described by clients in *Chambers USA* as "very smart, strategic, and knowledgeable of tax law," "responsive and insightful," noting that "[h]is knowledge of complex matters is incredibly valuable."

Prior to joining Miller & Chevalier, Mike was a partner with a global law firm. Before that, he served as the 48th Chief Counsel of the IRS, nominated by the president and confirmed by the Senate. As Chief Counsel, he was the principal legal officer for the IRS, overseeing a staff of nearly 1,500 lawyers responsible for interpreting and providing advice on all aspects of the federal tax law. During his tenure as Chief Counsel, the Office issued more than 100 sets of proposed and final regulations implementing the landmark Tax Cuts and Jobs Act of 2017 (TCJA) and published dozens of guidance items implementing legislation enacted in response to, and providing other relief relating to, the COVID-19 pandemic. The Office was also responsible for litigating nearly 25,000 cases pending in the U.S. Tax Court and working with the Tax Division of the U.S. Department of Justice (DOJ) on cases pending in other courts around the country, including the U.S. Supreme Court.

Mike previously served as Tax Legislative Counsel at the Treasury, where he was the principal legal advisor to the Secretary and Assistant Secretary (Tax Policy) on all domestic aspects of the federal tax law other than employee benefits. As Tax Legislative Counsel, he worked closely with the tax writing committees in Congress to advance the administration's tax policy objectives and worked with the IRS to implement those objectives. Earlier in his career, he served as a Trial Attorney in the DOJ Tax Division, where he litigated dozens of cases pending in courts throughout the western U.S. He served as a law clerk for the Honorable Ronald S.W. Lew of the U.S. District Court for the Central District of California.

In private practice, Mike has been counsel of record in numerous docketed tax matters, litigating many of them to published decision. These cases cover a range of federal tax issues, including application of the "property for services" rules to a contractual earn-out right, compliance with the partnership refund claim filing requirements, transferee liability, the tax treatment of partnerships holding distressed assets and debt contributed by foreign partners, interpretation of a tolling agreement in a partnership tax proceeding, fraud penalties and related adjustments,

debt versus equity treatment for a partnership investment, and the valuation of customer-based intangibles. His clients have included businesses and individuals in a wide range of industries, including real estate, financial services, publishing, technology, medical services and devices, and entertainment.

Mike currently serves as President of the American College of Tax Counsel and Vice Chair of Government Relations for the Tax Section of the American Bar Association. He previously served as an adjunct professor at Georgetown University Law Center and has been a guest lecturer at law schools around the country. He served as Executive Editor of the *Catholic University Law Review* while attending the Catholic University of America, Columbus School of Law.

Representative Engagements

- *Patel Amicus* Brief (U.S. Tax Court 2024). On behalf of the National Association of Manufacturers in support of neither party in *Patel v. Commissioner*, concerning whether there is a threshold "relevance" inquiry to application of the codified economic substance doctrine.
- *Liberty Global Amicus* Brief (10th Circuit 2024). On behalf of the National Association of Manufacturers in support of neither party in *Liberty Global, Inc. v. United States*, concerning whether there is a threshold "relevance" inquiry to application of the codified economic substance doctrine.
- *Tricarichi v. Commissioner*, T.C. Memo. 2015-201, *aff'd*, 908 F.3d 588 (9th Cir. 2018) (whether taxpayer is liable as a transferee for corporation's unpaid tax debt).
- *Greiner v. United States*, 122 Fed. Cl. 139 (Ct. Fed. Cl.), *aff'd*, 651 Fed. Appx. 1000 (Fed. Cir. 2016) (considering the proper character of income arising from the termination of contractual earn-out rights).
- *Candyce Martin 1999 Irrevocable Trust v. United States*, 822 F. Supp. 2d 968 (N.D. Cal. 2011), *aff'd*, 739 F.3d 1204 (9th Cir. 2014) (partnership proceeding involving applicable assessment limitations period).
- *TIFD III-E Inc. v. United States (Castle Harbour)*, 342 F. Supp.2d 94 (D. Conn. 2004), *rev'd*, 459 F.3d 220 (2d Cir. 2006), *on remand*, 660 F. Supp. 2d 367 (D. Conn. 2009), *rev'd*, 666 F.3d 836 (2d Cir. 2012), *on remand*, 8 F. Supp.3d 142 (D. Conn. 2014) (debt versus equity issues and treatment and allocation of income and loss from partnership).
- *Trigon Insurance Co. v. United States*, 234 F. Supp.2d 581 (E.D. Va. 2002) (refund action involving identification and valuation of customer-based intangibles).
- *Western Center for Journalism v. Cederquist*, 1999 WL 357932 (E.D. Cal. 1999), *aff'd*, 235 F.3d 1152 (9th Cir. 2000) (damages action arising from allegations of unconstitutional tax enforcement action).
- *Robinson v. United States*, 84 F. Supp.2d 1124 (D. Or. 1999) (refund action involving substantiation and allocation of partnership income and losses).

- *Shackleford v. United States*, 1999 WL 744121 (E.D. Cal. 1999), *aff'd*, 262 F.3d 1028 (9th Cir. 2001) (federal estate tax treatment of lottery annuity payments).

Government Experience

- Chief Counsel, Internal Revenue Service, and Assistant General Counsel, U.S. Department of the Treasury, 2019 - 2021
- Tax Legislative Counsel, Office of Tax Policy, U.S. Department of the Treasury, 2005 - 2008
- Trial Attorney, Tax Division, U.S. Department of Justice, 1995 - 2000
- Special Assistant to the Chief of Staff, House Committee on Veterans' Affairs, 1991
- Legislative Assistant, Congressman Douglas H. Bosco, 1990 - 1991

Rankings and Recognition

- *The Best Lawyers in America*®, Tax Law, 2012 - 2025; Tax Litigation and Controversy, Lawyer of the Year, 2023
- *Chambers High Net Worth USA*, Tax: Private Client (Nationwide), 2023 - 2024
- *Chambers USA*: Tax: Controversy (Nationwide), 2008 - 2019 and 2023 - 2024
- *Legal 500*: Tax: U.S. Taxes: Contentious, 2008 - 2018 and 2022 - 2024; Hall of Fame, 2024
- IRS Commissioner's Award, 2008 and 2021
- IRS Chief Counsel's Award, 2008
- Treasury Secretary's Honor Award, 2007
- U.S. Department of Justice, Tax Division Award for Sustained Superior Performance, 1998

Affiliations

- President, American College of Tax Counsel
- Vice Chair, Government Relations, Tax Section, American Bar Association
- Former Chair, Committee on Government Submissions, Standards of Tax Practice Committee and Tax Shelters Committee, Tax Section, American Bar Association
- Trustee, Southern Federal Tax Institute

Admissions

STATE ADMISSIONS

- California
- District of Columbia
- New York

Clerkships

- Clerk, The Honorable Ronald S.W. Lew, U.S. District Court for the Central District of California, 1994 - 1995