

## Court of Federal Claims 2019 Judicial Conference

### Tax Refund Suit Discovery, FBAR Litigation, and Upcoming Issues

#### Moderator

Judge Richard A. Hertling

#### Panelists

Fred Crombie – Coblenz Patch Duffy & Bass, LLP

Professor Andrew Weiner – Temple Law School

G. Robson Stewart – Department of Justice

Jason Selmont – Department of Justice

- I. Discovery in COFC Tax Refund Suits
  - a. The Scope of Discovery in Tax Refund Suits, *Flamingo Fishing Corp. v. United States*, 31 Fed. Cl. 655, 658 (Fed. Cl. 1994); *Perfect Form Manufacturing LLC v. United States*, 142 Fed. Cl. 778 (2019).
  - b. E-Discovery, *Fairholme Funds, Inc. v. United States*, 134 Fed. Cl. 680 (2017).
  - c. Contention Interrogatories, *California Ridge Wind Energy LLC and Invenergy Wind LLC v. United States*, No. 14-250 C, 2016 WL 7373889 (Fed. Cl. Dec. 20, 2016).
  - d. Privileges and Deliberative Process Privilege, *Marriott International Resorts, L.P. v. United States*, 437 F.3d 1302 (Fed. Cir. 2006); *Pacific Gas & Electric Co. v. United States*, 70 Fed. Cl. 128 (2006);
  - e. Subpoenas, RCFC 45(d)(2)(B)(ii), *Starr Int'l Co. v. United States*, 856 F.3d 953, 965 (Fed. Cir. 2017).
- II. Litigating FBAR Penalty Cases
  - a. Jurisdiction, Burden of Proof, and Evidentiary Issues.
  - b. Recent cases: *Norman v. United States*, 138 Fed. Cl. 189 (2018) *appeal docketed*, No. 18-2408 (Fed. Cir. Sept. 21, 2018); *Bedrosian v. United States*, 912 F.3d 144 (2018); *United States v. Toth*, No. 15-CV-13367-ADB, 2018 WL 4963172 (D. Mass. Oct. 15, 2018).
- III. Tax Issues on the Horizon
  - a. Recent Changes in Partnership Tax Law: Should the CFC adopt rules similar to those in the Tax Court? *Tax Court Rules, Title XXIV.A, Partnership Actions Under BBA Section 1101, Rules 255.1-255.7*.
  - b. Conservation Easements, I.R.C. § 170(h).