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Q&A

Interview with a Newsmaker: Leigh Griffith

Premium content from Birmingham Business Journal by Anna Thibodeaux, Sections coordinator

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Leigh Griffith is a partner and manages the tax practice at **Waller Lansden Dortch & Davis** LLP. He is experienced in international tax law, as well as state and federal taxes. He has been recognized in The Best Lawyers in America since 1995.

BBJ: *How important is the auto industry to Alabama?*

Griffith: Automobiles represented 30 percent of Alabama's 2010 total exports and 16 percent of manufacturing GDP. Over the past 10 years, the industry has invested over \$7 billion and created over 35,000 new jobs in Alabama. Because of the dominance of foreign automotive companies (Mercedes-Benz, Honda and **Hyundai**) and their suppliers in the state.

BBJ: *Why is international tax law important to the auto industry?*

Griffith: Today's auto industry is a truly global business with autos designed and produced throughout the world using the intellectual property developed by each auto company and its suppliers. Many of the parts for autos manufactured in one country are often made in another country. The taxing authorities of each country desire to tax the auto company and its suppliers on profits generated from the intellectual property, manufacturing and sales within their country and attempt to achieve this through requiring arms-length "transfer pricing" among affiliates. As a result, the primary focus of international tax law, with respect to the automotive industry, is the cross-border redeployment of assets, personnel, functions, risks and the creation of intellectual

property in such a manner that the international group maximizes opportunities without running afoul of transfer pricing rules in the various jurisdictions.

BBJ: *Why is transfer pricing an issue?*

Griffith: Many countries, including the U.S. are ramping up audits of transfer pricing, often with different views of what should be charged for what. The large business and international division of the **Internal Revenue Service** is adding approximately 875 employees to its international workforce and politicians are vocally expressing the view that companies doing business in the U.S. are "hiding" vast amount of profits offshore in their affiliates. The global nature of the automotive business and the increased development of technology and other intellectual property for use worldwide puts the automotive industry on a collision course with the IRS.

BBJ: *Where could this collision course with the IRS take the auto industry?*

Griffith: Auto companies and their suppliers should be concerned about the potential for being taxed more than once by different countries on the same income due to countries' varying rules and opinions regarding transfer pricing. These companies should also be concerned about withholding taxes imposed by many countries (including the U.S.) on payments of dividends, interest and royalties, although withholding taxes are often reduced or eliminated by treaty. Companies should plan carefully to minimize withholding taxes.

BBJ: *What areas of this law have posed the biggest headache?*

Griffith: The U.S. has one of the highest corporate tax rates in the developed world. Having income unexpectedly moved by the IRS from a foreign country to the U.S. for taxation by the U.S. can be very expensive and disruptive. Companies assume certain tax levels on their income when they design, manufacture, price and sell vehicles, and having a major tax surprise can be very detrimental to these companies.

BBJ: *What special concerns does dealing with these countries pose?*

Griffith: When there is a large rate differential between countries, companies will attempt to structure their affairs to increase their profits in the lower taxed countries while decreasing (or eliminating) their profits in the higher taxed countries. This leads to the IRS being more aggressive in their transfer pricing audits.

BBJ: *What's pushing interest in these laws?*

Griffith: The disparity of corporate income tax rates across the world has fueled a great interest in international tax planning designed to reduce a company's worldwide effective tax rate. This extensive, and sometimes aggressive, tax planning along with the revenue needs of the respective governments has led to aggressive "enforcement" by taxing authorities of both the U.S. and many other countries. The transfer pricing issues are increasing exponentially and the taxing authorities are much more aggressive.

BBJ: *What countries pose the greatest threat?*

Griffith: Low-tax jurisdictions or those with special tax regimes pertaining to certain specified assets or groups of assets. Ireland, the Netherlands and Switzerland all have low-taxed regimes

(around 12 percent) suitable for developing and owning intangibles (such as intellectual property and technology patents or secrets), which then can be licensed out to automotive sectors in high-tax jurisdictions. High tax jurisdictions such as the U.S. aggressively scrutinize (audit) the intangible dealings with these and other low tax countries. At this point in time, many would say the U.S. is a problem country.

BBJ: *Will there be conflicts?*

Griffith: The ramping up of IRS transfer pricing audits and the political environment of the country needing additional revenue is going to create conflicts with the United States' trading partners and impose additional burdens on companies (U.S. and foreign) engaged in multi-national business activities. The risk that an auto company's expected pricing relationships between its U.S.-based operations and their foreign affiliates will not be respected could discourage additional U.S. activity beyond simply exploiting the markets of the U.S.

BBJ: *What's the outlook?*

Griffith: High taxation on income may deter companies from expanding operations in Alabama, performing research and development or even increasing manufacturing capacity past the levels primarily needed for U.S. markets.

Anna Thibodeaux handles focus sections, special publications and nominations for the Birmingham Business Journal.