

Income/Franchise:

New York High Court Affirms Inclusion of Royalty Payments from Foreign Affiliates in Tax Base

2024 NY Slip Op 02127 (No. 34 and No. 35), N.Y. (4/23/24). The New York Court of Appeals (Court) affirmed [see *State Tax Matters*, Issue 2022-43 and *State Tax Matters*, Issue 2023-11, for details on the 2022 and 2023 respective rulings issued by the New York Supreme Court, Appellate Division, in these two cases] that while certain payments received by two separate taxpayers from their respective foreign affiliates (as “related members” under the statute) constituted royalties, such intercompany royalty payments could not, under the facts, be excluded under a former statutory royalty exclusion in effect for the prior tax years at issue in computing their respective Article 9-A corporation franchise tax combined return “entire net income.” In doing so, the Court agreed that based on the overall statutory scheme of Tax Law former § 208 (9)(o), the royalty income exclusion provision of one related member is conditioned on the application of the royalty add back by another related member, and any resulting burden on interstate or foreign commerce created by this tax scheme does not violate the Commerce Clause – and the taxpayers failed to show otherwise. Please contact us with any questions.

[URL: https://nycourts.gov/reporter/3dseries/2024/2024_02127.htm](https://nycourts.gov/reporter/3dseries/2024/2024_02127.htm)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2022/STM/221028_3.html](https://dhub.deloitte.com/Newsletters/Tax/2022/STM/221028_3.html)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230317_3.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230317_3.html)

— Don Roveto (New York)
Partner
Deloitte Tax LLP
droveto@deloitte.com

Jack Trachtenberg (New York)
Principal
Deloitte Tax LLP
jtrachtenberg@deloitte.com

Mary Jo Brady (Jericho)
Senior Manager
Deloitte Tax LLP
mabrady@deloitte.com

Ken Jewell (New York)
Managing Director
Deloitte Tax LLP
kjewell@deloitte.com

Jeremy Sharp (Washington, DC)
Senior Manager
Deloitte Tax LLP
jesharp@deloitte.com

Josh Ridiker (New York)
Senior Manager
Deloitte Tax LLP
jridiker@deloitte.com

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte provides industry-leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our professionals deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society and a sustainable world. Building on its 175-plus year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte’s approximately 415,000 people worldwide make an impact that matters at www.deloitte.com.