

Income/Franchise:

Federal: US Supreme Court Affirms Ninth Circuit's Decision Upholding Constitutionality of Transition Tax

Docket No. 22-800, US (6/20/24). In a case brought forth by a couple challenging the one-time mandatory repatriation tax (“transition tax”) provisions under Internal Revenue Code (IRC) section 965 by claiming it resulted in taxes paid on their 2017 federal income tax return as an unapportioned direct tax with retroactive application that violates the US Constitution’s Apportionment Clause and Due Process Clause [see *State Tax Matters*, Issue 2023-27, for additional details about the couple’s challenge], the US Supreme Court (Court) affirmed the Ninth Circuit’s holding that the transition tax provisions included in Subpart F of the IRC – “which attributes the realized and undistributed income of an American-controlled foreign corporation to the entity’s American shareholders, and then taxes the American shareholders on their portions of that income” – do not exceed Congress’s constitutional authority. In doing so, the Court explained that Congress has “long taxed shareholders of an entity on the entity’s undistributed income,” and it did the same with the transition tax. The Court emphasized that its holding in this case is “narrow” and limited to:

URL: <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/22-800.html>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230707_2.html

1. Taxation of the shareholders of an entity,
2. On the undistributed income realized by the entity,
3. Which has been attributed to the shareholders, and
4. When the entity itself has not been taxed on that income.

In other words, according to the Court, “our holding applies when Congress treats the entity as a pass-through.” Concurring and dissenting opinions follow. Please contact us with any questions.

— Valerie Dickerson (Washington, DC)
Partner
Deloitte Tax LLP
vdickerson@deloitte.com

Alexis Morrison-Howe (Boston)
Principal
Deloitte Tax LLP
alhowe@deloitte.com

Robert Waldow (Minneapolis)
Principal
Deloitte Tax LLP
rwaldow@deloitte.com

Joe Garrett (Birmingham)
Managing Director
Deloitte Tax LLP
jogarrett@deloitte.com

Snowden Rives (Washington, DC)
Senior Manager
Deloitte Tax LLP
srives@deloitte.com

Tyler Greaves (Boston)
Senior Manager
Deloitte Tax LLP
tgreaves@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.