

## Income/Franchise:

### **Alabama Circuit Court Says Exceptions to Intercompany Expense Addback Statute Do Not Apply and Subpart F Income Exclusion Overrides these Exceptions**

*Case No. CV-2022-901481*, Ala. Cir. Ct. (2/26/25). Reversing a 2022 Alabama Tax Tribunal ruling which held in an Alabama taxpayer's favor that certain interest paid to a related member in Ireland is excepted from Alabama's intercompany expense "addback statute" because the payments were "subject to tax" on the related member's net income in that country [see previously issued Multistate Tax Alert for more details on the 2022 Alabama Tax Tribunal ruling], an Alabama circuit court (Court) held that based on the evidence at trial and applicable state law, neither the statutory subject-to-tax nor conduit exceptions applied in this case. Moreover, the Court explained that because certain payments to the foreign affiliate at issue were deducted by the taxpayer and the resulting "Subpart F income" was also excluded from the taxpayer's income in calculating its Alabama taxable income, "one of them must yield to the other" to prevent a "double tax benefit" of both an exclusion and deduction relating to the same transfer of intangible expenses and costs to a foreign related member. The Court concluded that state law (specifically Ala. Code section 40-18-35(d)) requires Alabama's intercompany expense addback statute exceptions to yield to the statutory exclusion of Subpart F income – thus constituting an "alternative ground" disallowing the taxpayer's claim for exception from adding back certain interest payments made to its affiliate in Ireland. Accordingly, the Court reduced the taxpayer's underlying Alabama corporate income tax net operating losses (NOLs) and resulting NOL carryforward amounts for the tax years at issue. Please contact us with any questions.

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-alabama-opinion-allows-intercompany-interest-expense-exception-under-income-tax-addback-statute.pdf>

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