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Supreme Court Rules on Moore v. U.S. – Upholds Mandatory Repatriation Tax

Tax Talks on **June 20, 2024**

On June 20, 2024, the U.S. Supreme Court ruled 7-2 that the so called mandatory repatriation tax under Internal Revenue Code Section 965 ("MRT") is constitutional.

Justice Kavanaugh wrote the majority opinion. Justice Thomas (joined by Justice Gorsuch) dissented. Justice Barrett (joined by Justice Alito) and Justice Jackson delivered separate concurring opinions. The Court found that the MRT is constitutional under Article I, Sections 8 and 9 and the Sixteenth Amendment. Specifically, the majority's opinion answered affirmatively to the "precise and narrow question" of "whether Congress may attribute an entity's realized and undistributed income to the entity's shareholders or partners, and then tax the shareholders or partners on their portions of that income." The majority's opinion was arguably even narrower than it claimed, specifically eschewing ruling on situations where, for instance, the entity itself is subject to tax on the income in question (such as domestic corporations).

Moore v. U.S. has been widely followed in the tax community as it was the first time in decades in which the U.S. Supreme Court considered the constitutionality of a U.S. federal income tax statute and had the potential to upend years of well-settled tax law and planning principles. The narrow Supreme Court decision relieves these concerns, although the majority opinion explicitly did not address other taxes such as, for example, a wealth tax. The dissent and Justice Barrett's concurring opinion expressed a notably narrower view of the definition of "income" under the Sixteenth Amendment than the majority, and each strongly suggested that a "realization" requirement was required for a tax to be a tax on income under the Sixteenth Amendment.

View full opinion here.

Proskauer attorneys submitted an amicus brief for this case on behalf of the American College of Tax Counsel in support of the government's position.

View original.

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