

Vol. XIII, Issue 10

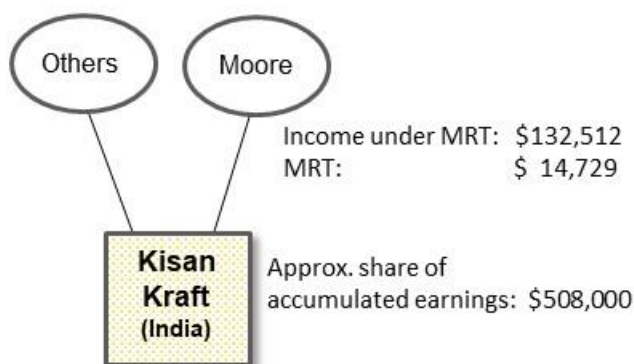
June 2024

Technical Developments and Musings

Moore taxing power. The broad taxing power of Congress was affirmed in the much-anticipated case [Moore v. US](#). The US Supreme Court (Court) held that the one-time repatriation tax under §965—referred to as the mandatory repatriation tax, or MRT—does not exceed Congress’s constitutional authority. At issue was the tax that individual US shareholders paid for their 2017 tax year, which was attributable to their pro

rata share of accumulated earnings of an Indian CFC. The 7-2 opinion was decided on relatively narrow grounds: the Court simply noted that the MRT was consistent with longstanding precedents establishing that, when dealing with an entity’s undistributed income, Congress may either tax the entity or tax the shareholders or partners. The Court traced the history of the question, and noted that the MRT “operates in the same basic way” as partnership taxation, Subchapter S and Subpart F. According to the Court, “it has gone without serious question in both Congress and the federal courts that Congress can attribute the undistributed income of an entity to the entity’s shareholders or partners, and tax the shareholder or partners on their pro rata share of the entity’s undistributed income.” In

Section 965 (MRT) income inclusion in 2017



so concluding, the Court rejected the taxpayers’ reading of *Eisner v. Macomber*, a 1920 case involving the taxation of a stock-on-stock distribution. The Court concluded that *Eisner* did not address the question, “no doubt because the tax at issue there did not attribute income of the corporation to the shareholders.” The narrow opinion leaves unaddressed more fundamental questions about realization as a constitutional requirement for taxation. For further info, see [Tax Alert 2024-1260](#).

Valuing closely-held corporations with redemption obligations. In a much-shorter opinion, the Court also addressed the effect of a closely-held corporation’s contractual obligation to redeem its shares (e.g., from the estate of a deceased shareholder). In [Connelly v. US](#), a unanimous Court concluded that “[i]f life-insurance proceeds payable to a corporation are an asset that increases the corporation’s fair market value,” notwithstanding a contractual obligation on the part of the corporation to redeem a shareholder’s shares. While arising in an estate tax controversy, because the opinion addressed the valuation of a corporation’s shares, it may have relevance for income tax purposes as well.

Partnership basis shifting and economic substance. Treasury and the IRS released a significant package of guidance addressing partnership related-party basis shifting, including proposed regulations ([REG 124593-23](#)), Notice [2024-54](#) and [Rev. Rul. 2024-14](#). The revenue ruling addresses three different fact patterns in which a corporation and its subsidiaries generated basis disparities in a partnership that, in conjunction with later transactions undertaken with a view to exploit those earlier basis disparities, resulted in basis adjustments to either partnership property or distributed property in the hands of a partner. The IRS concluded that the stated business purposes—e.g., cleaning up intercompany accounts or reducing administrative complexity—may be legitimate for nontax economic purposes but are not substantial for economic substance purposes. For further info, see [Tax Alert 2024-1273](#).