

## **Protective Refund Claims in Light of Pending *Moore v. United States* Decision**

Taxpayers, including some of the firm's current and former clients, may be affected by the outcome of the Supreme Court case *Moore v. United States*, which will address the constitutionality of the Section 965 "Transition Tax," enacted as part of the Tax Cuts and Jobs Act in 2017. The petitioners in *Moore* are individual shareholders of an Indian company who had not received distributions from the company during the period of their investment, but who paid the Transition Tax on their proportionate share of the company's reinvested earnings. The petitioners sued for a refund, arguing that the Transition Tax is unconstitutional. The U.S. Court of Appeals for the Ninth Circuit affirmed the lower court opinion that ruled against the taxpayers, but the Supreme Court agreed to hear the case.

Impacted taxpayers should discuss with their tax return preparers whether it may be advisable to file a protective claim for refund considering these developments. It is possible that filing a protective claim for refund may preserve the ability to recover some portion of the Transition Tax paid in the event that the Transition Tax is ultimately held to be unconstitutional. Whether doing so may preserve this ability depends on a number of factors, including whether a taxpayer has elected to pay the Transition Tax in installments. Protective refund claims may be accepted by the IRS in cases where there is pending litigation as a method to protect the taxpayer's right to recover tax before the expiration of the statute of limitations. In general, the statute of limitations for filing a claim for refund is three years from when the original tax return was filed or two years from the date of payment, whichever is later.

Impacted taxpayers should discuss a potential protective refund with their tax preparers as soon as possible in case a relevant statute of limitations period may otherwise close prior to resolution of this issue by the Supreme Court.

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[Dahlia B. Doumar](#)  
[Jenny L. Longman](#)

212.336.2988  
212.336.2409

[dbdoumar@pbwt.com](mailto:dbdoumar@pbwt.com)  
[jllongman@pbwt.com](mailto:jllongman@pbwt.com)

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Patterson Belknap Webb & Tyler LLP  
1133 Avenue of the Americas  
New York, NY 10036-6710  
212.336.2000  
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