

Anchin Alert

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The Tax Cuts and Jobs Act Overrides the Tax Court Decision in Grecian Magnesite Mining While the IRS Seeks to Appeal the Same Decision

In a decision handed down in the summer, the U.S. Tax Court refused to accord deference to an Internal Revenue Service (IRS) administrative ruling treating the sale of partnership interests as the sale of assets the partnership uses in a U.S. trade or business, thereby subjecting the resulting gain to taxation as income effectively connected with a U.S. trade or business. The recently passed tax reform law overrides the Tax Court decision. Meanwhile, the IRS intends to appeal against the same decision.

Introduction

In *Grecian Magnesite Mining, Industrial & Shipping Co., SA, v. Commissioner of Internal Revenue, 149 T.C. No.3¹* (“Grecian Magnesite”), the Tax Court declined to accord deference to Rev. Rul. 91-32, an IRS administrative ruling which treats the sale of partnership interests as the sale of assets the partnership uses in its U.S. trade or business, thus subjecting the resulting gain to taxation as income effectively connected with the conduct of a U.S. trade or business. For a detailed discussion of this case, please see our prior client alert: <http://www.anchin.com/news/anchin-alert-tax-court-refuses-to-follow-rev-rul-91-32-in-grecian-magnesite-mining-decision>

Recent Developments

The recently passed Tax Cuts and Jobs Act (H.R. 1) effectively overrides the Tax Court’s decision in *Grecian Magnesite* by codifying Rev. Rul. 91-32. The Act amends Code section 864(c) by adding a provision which would make gain or loss from the sale or exchange of a partnership interest effectively connected income or loss to the extent that the transferor would have effectively connected gain or loss had the partnership sold all its assets at fair market value as of the date of the sale or exchange. This amendment would apply to sales, exchanges, and dispositions occurring on or after November 27, 2017. Since transactions that occurred before November 27, 2017 are not affected by the amendment, such transactions would continue to be guided by the *Grecian Magnesite* decision unless it was overturned on appeal. The IRS has opted to appeal this decision. By opting to file an appeal the IRS is hoping that the *Grecian Magnesite* would be overturned; thus restoring the administrative authority of Rev. Rul. 91-32 and its applicability to transactions that occurred before November 27, 2017.

For more information, contact Laurence I. Feibel or Ronald Kalungi of Anchin’s International Tax Services Group, or your Anchin relationship partner at 212.840.3456.

¹ Decided on July 13, 2017.



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