

Income/Franchise:

New York City: Deemed Commission Payments to Federal “DISC” Held as Nondeductible for UBT Purposes

Decision No. TAT(H)17-21(UB), N.Y.C. Tax App. Trib., ALJ Div. (7/30/21). In a ruling involving a limited liability partnership (LLP) that made payments in the form of commissions to a federally-recognized domestic international sales corporation (DISC) with no employees and whose shareholders were all partners in the LLP, an administrative law judge (ALJ) with the New York City Tax Appeals Tribunal, ALJ Division, held that when the economic substance of the circumstances is analyzed as a whole, the payments effectively were made to the LLP’s partners for services or for their benefit and thus were nondeductible for New York City (City) Unincorporated Business Tax (UBT) purposes. The LLP unsuccessfully claimed that the payments at issue were deductible for UBT purposes because they were made to the federally-recognized DISC, which is not a partner, and none of the payments at issue were made on a partner’s behalf. The ALJ reasoned that the payments made to the DISC were effectively made to the LLP’s partners, and therefore, the LLP must add back its federal deduction for payments made to the DISC under City law that bars UBT deductions for amounts paid or incurred to a proprietor or partner for services or the use of capital. Please contact us with any questions.

URL: <https://www1.nyc.gov/assets/taxappeals/downloads/pdf/1721DET0721.pdf>

— Jack Trachtenberg (New York)
Principal
Deloitte Tax LLP
jtrachtenberg@deloitte.com

Dennis O’Toole (New York)
Managing Director
Deloitte Tax LLP
deotoole@deloitte.com

Mary Jo Brady (Jericho)
Senior Manager
Deloitte Tax LLP
mabrady@deloitte.com

This document contains general information only and Deloitte is not, by means of this document, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This document is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this document.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. In the United States, Deloitte refers to one or more of the US member firms of DTTL, their related entities that operate using the “Deloitte” name in the United States and their respective affiliates. Certain services may not be available to attest clients under the rules and regulations of public accounting. Please see www.deloitte.com/about to learn more about our global network of member firms.