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Ninth Circuit: Debt vs. equity implications for foreign tax credits

The U.S. Court of Appeals for the Ninth Circuit today affirmed a decision of the U.S. Tax Court, finding that the taxpayer's transaction was debt, and as such, could not be treated as equity for which the taxpayer could have claimed foreign tax credits.

The case is: *Hewlett-Packard Co. v. Commissioner,* No, 14-73047 (9th Cir. November 9, 2017). Read the Ninth Circuit's **decision** [PDF 99 KB]

Summary

The taxpayer bought preferred stock in a Dutch company. The Dutch company bought contingent interest notes, from which its preferred stock received dividends that the taxpayer claimed as foreign tax credits between 1997 and 2003, and then exercised its option to sell its preferred shares for a capital loss of more than $16 million.

The Tax Court characterized the transaction as debt, and thus upheld the tax deficiency related to the foreign tax credits.

The Ninth Circuit concluded that the Tax Court did not err in finding the taxpayer's investment was best characterized as debt and affirmed. The Ninth Circuit also upheld a determination that the taxpayer's purported capital loss was "really a fee paid for a tax shelter" which could not be deducted.

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