



Was the Door Left Open for a Wealth Tax?

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On June 20, 2024, the Supreme Court released a much-anticipated decision in *Moore vs United States*. The dispute was viewed by many as a pre-emptive challenge to prohibit Congress from passing a wealth tax. The specific question before the Court was whether a provision of corporate tax law passed in 2017 that taxes the undistributed profits of U.S. shares of foreign corporations, known as the mandatory repatriation tax (MRT), is allowed under the Constitution.

Moore's attorneys argued that the Sixteenth Amendment, which authorizes a federal income tax, can only be applied to realized gains or money that was paid out. In contrast, the Government argued that realization is not a Constitutional requirement. The most extreme ruling in favor of the Moore's position would have prohibited a wealth tax but could have rendered vast swaths of the Internal Revenue Code unconstitutional - reducing revenue by as much as \$5.7 trillion over 10 years.

Writing for the majority, Justice Kavanaugh phrased the question before the Court as a narrow one: whether Congress may attribute a pass-through entity's realized and undistributed income to the entity's shareholders or partners, and then tax the shareholders or partners on their portion of that income. In a 7-2 decision siding with the government the justices held that there is a long-standing precedent for taxing a shareholder or partner of a business entity on the entity's undistributed income.

While the majority decision noted that there were broader issues at play, they did not address or resolve any of those issues – as Justice Kavanaugh stated, “leaving them for another day.” So, at least for today the issues around whether Congress can impose a tax on wealth as President Biden and other Democrats have proposed remains unresolved.



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