

US Court of Appeals Affirms Victory for Wal-Mart Puerto Rico Against Discriminatory Alternative Minimum Tax

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On August 24, 2016 the U.S. Court of Appeals' for the First Circuit affirmed a Judgment of the District Court for the District of Puerto Rico enjoining the Secretary of the Treasury of the Commonwealth of Puerto Rico from enforcing the intercompany expense allocation and affiliated company purchases components of Puerto Rico's Corporate Alternative Minimum Tax ("AMT") against Wal-Mart Puerto Rico, Inc. The case is captioned *Wal-Mart Puerto Rico, Inc. v. Juan C. Zaragoza Gómez*, No. 16-1370 & No. 16-1406.

As a threshold matter, the First Circuit affirmed the District Court's finding that it had jurisdiction because Wal-Mart Puerto Rico, Inc. "*did not have a plain, speedy, efficient remedy in the Puerto Rico Courts*" due to the length of time that tax reimbursement cases take to reach resolution and due to changes in legislation and regulation, such as the "*Government of the Commonwealth of Puerto Rico Special Fiscal and Operational Sustainability Act*," Act 66-2014, which caps repayment of judgments against the Commonwealth of Puerto Rico to a maximum of \$3 million a year.

Turning to the merits, the First Circuit found that "*the AMT is a facially discriminatory statute that does not meet the heightened level of scrutiny required to survive under the dormant Commerce Clause.*" The Commerce Clause, contained in Article 1, Section 8, of the Constitution of the United States, prohibits States from unduly burdening interstate commerce even in the absence of federal legislation. Both the U.S. Court of Appeals for the First Circuit and the Puerto Rico Supreme Court have previously held that the Dormant Commerce Clause applies to Puerto Rico.

Juan A. Marqués-Díaz, Francisco G. Bruno and Alejandro J. Cepeda-Díaz from McV's Litigation Practice Group, together with Susman Godfrey LLP, appeared for Wal-Mart both before the U.S. District Court for the District of Puerto Rico and the U.S. Court of Appeals for the First Circuit. Yamary González-Berrios and Edwin O. Figueroa-Álvarez from McV's Tax Practice Group provided technical support on the tax aspects of the case.

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