



U.S. v. Deloitte: Tax Accrual Workpapers Can Contain Attorney Work Product

09.09.2010

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On June 29, 2010, the U.S. Court of Appeals for the District of Columbia Circuit found that documents the government subpoenaed from Dow Chemical Company's independent auditors were protected from discovery under the work-product doctrine. *U.S. v. Deloitte*, LLP, 106 AFTR 2d 2010-5053.

The Current Debate

The question of whether tax accrual workpapers are protected from discovery under the work-product doctrine is being hotly debated among the U.S. Courts of Appeals and anxiously watched by corporate taxpayers. The IRS won a victory in *U.S. v. Textron Inc.*, 577 F.3d 21 (1st Cir. 2009), where the U.S. Court of Appeals for the First Circuit rejected the taxpayer's argument that its tax accrual workpapers were entitled to work-product protection. The IRS followed its victory in *Textron* with Announcement 2010-9 and Draft Schedule UTP, declaring its intent to require corporate taxpayers to disclose "Uncertain Tax Positions" on their tax returns. *Deloitte* may cause the IRS to reconsider Announcement 2010-9 and Draft Schedule UTP.

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