

Client Advisory

August 2001

Appellate Court to Consider Granting Interest on HMT Refunds

In its Order dated July 31, 2001, the U.S. Court of Appeals for the Federal Circuit (CAFC) has ordered parties in *United States Shoe Corporation v. United States* to present briefs on whether the government should pay interest on refunds of export Harbor Maintenance Tax (HMT) payments, indicating the court's intent to rule upon this issue. Any such ruling would not be issued for several months.

The *Shoe* case was the action that resulted in the U.S. Supreme Court's 1998 ruling that HMT as applied to exports was unconstitutional. Subsequent to the Supreme Court's decision in *Shoe*, Customs issued export HMT refund checks under procedures established by the U.S. Court of International Trade (CIT). The checks covered a refund period starting with the date two years prior to an exporter's action having been filed at the CIT, due to *Shoe* having claimed jurisdiction under 28 U.S.C. § 1581(i). Interest on HMT export refunds covering earlier periods under *Swisher International, Inc. v. United States* are a separate matter, as in that action jurisdiction was claimed under 28 U.S. § 1581(a).

The CIT's refund procedures in *Shoe* permitted interest payments contingent upon the success of the case *IBM v. United States*. However, the *IBM* action failed to obtain interest payments when before the CAFC, and the U.S. Supreme Court declined to review the CAFC's decision. The government had argued in *Shoe* that *IBM* settled the issue of interest with finality. In its July 31, 2001 Order, the CAFC indicated its willingness to consider in *Shoe* arguments favoring the payment of interest that were not brought before the CAFC in *IBM*.

The CAFC's July 31, 2001 Order represents a favorable development in the fight for interest payments on previously refunded *Shoe*-type export HMT payments. Katten Muchin Zavis Rosenman will notify its clients of the CAFC's ruling on interest in *Shoe* as soon as it is issued.

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