# IRS Scores $13 Million Victory Against BMC Software

by Frank L. Brunetti on October 2, 2013

The Internal Revenue Service landed a huge victory in U.S. Tax Court recently, and the ruling may have significant implications for multinational companies who have profits abroad.

The court ruled that BMC Software will be forced to pay $13 million - plus penalties and interest - to the IRS in relation to a dispute about a 2004 corporate income tax repatriation holiday. The controversial tax holiday allowed multinational companies holding funds offshore to bring those into the United States at a reduced tax rate of 5.25 percent, rather than the 35 percent statutory rate. The corporate tax holiday was designed to encourage multinational firms with significant holdings to bring those resources into the U.S. and invest in the domestic economy.

Under the tax holiday, BMC repatriated roughly $717.2 million. However, the IRS argued that during this period, BMC was also engaging in transfer pricing abuses by shifting profits from high tax countries to low tax countries, and then stockpiling these funds without paying taxes on them, Forbes reports. The IRS and BMC settled the pricing transfer issues - but because the company's U.S. profits increased under the settlement, the IRS asserted that more taxes were owed under the tax holiday provision.

While the company argued that the pricing transfer settlement and the repatriation tax law were not related, the tax court took a different stance.

"The Commissioner and the taxpayer were bound to treat the payment as a return of principal for all Federal income tax purposes and the repayment was no longer a dividend. In short, we did not permit inconsistent characterizations for Federal income tax purposes," according to Judge Diane Kroupa's court opinion.

Other multinational firms are expected to face similar scrutiny from the IRS in the coming months, including Massachusetts-based Analog Devices.