



MULTISTATE INCOME/FRANCHISE TAX

## Massachusetts issues guidance interpreting *VAS Holdings* Tax Alert

### Overview

On May 16, 2022, the Massachusetts Supreme Judicial Court issued an opinion in [VAS Holdings & Investment LLC v. Commissioner](#) (“VAS Holdings”). The court ruled in *VAS Holdings* that while it would be constitutionally permissible for a state to apportion the gain on the sale of a partnership recognized by a partner based on the activities of the underlying partnership, the commonwealth’s existing statutes did not authorize such treatment unless the partner and the partnership were part of a unitary business. Please see this [Tax Alert](#) from July 15, 2022 for a detailed discussion of the opinion.

On November 30, 2022, the Massachusetts Department of Revenue (“Department”) issued [Technical Information Release 22-14](#) (“TIR 22-14”), discussing the Department’s interpretation of the applicability of *VAS Holdings* to other taxpayers.

This Tax Alert summarizes the release.

### Applicability of *VAS Holdings* to other taxpayers

The Department stated its intention to continue to source gains from the sale of a passthrough entity (“PTE”) to Massachusetts based on the entity’s apportionment factor in the following cases:

- Where a PTE and the non-domiciliary seller are engaged in a unitary business, either directly or through “tiers” of PTEs;
- Where the investment in the PTE served an operational function with respect to the business of such seller; and
- Where the seller is an individual non-resident who was “actively engaged” in the in-state business of the PTE, either in the year of the sale or in a prior year.

The Department clarified that to the extent any gain on the sale of a PTE is recognized by a Massachusetts individual resident or is otherwise allocable to Massachusetts, the entire amount would be taxable in Massachusetts. The Department also clarified that *VAS Holdings* does not apply to distributive share income from a PTE's regular business operations.

Accordingly, where a non-resident seller is not unitary with the underlying PTE or otherwise actively engaged in the PTE's business, the Department will apply the holding in *VAS Holdings* that the gain or loss is not apportioned.

## Abatement issues

The Department indicated that they intend to grant abatements for open periods where the non-resident taxpayer clearly demonstrates that it apportioned the gain from the sale of the PTE interest based entirely on the PTE's apportionment attributes and no other entity's.

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