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CFC not entitled to section 245A dividends received deduction (IRS Chief Counsel memorandum)

The IRS concluded in Office of Chief Counsel memorandum* 2024-36010 (released September 6, 2024, and dated July 31, 2024) that a controlled foreign corporation (CFC) is not entitled to a dividends received deduction (DRD) under section 245A.

*The IRS Office of Chief Counsel issues memoranda to IRS personnel who are national program executives and managers to assist them by providing authoritative legal opinions on certain matters, such as industry-wide issues. The memoranda cannot be used or cited as precedent.

Facts presented in the memorandum

USP is a domestic corporation, and FC1 and FC2 are foreign corporations. USP wholly owns FC1, and thus FC1 is a CFC within the meaning of section 957(a). FC1 owns 45% of the single class of stock of FC2, and the remaining stock of FC2 is owned by a nonresident alien individual. FC2 is not a CFC but is a specified 10% owned foreign corporation (SFC) within the meaning of section 245A(b). FC1 receives a dividend from FC2.

IRS conclusion

The IRS concluded that FC1 is not allowed a DRD under section 245A(a) for the dividend received from FC2 because FC1 is not a domestic corporation and is not a U.S. shareholder with respect to FC2, as required by the statute. The IRS argued that Footnote 1486 in the Conference Report to the TCJA, which indicated that a CFC treated as a domestic corporation under Treas. Reg. § 1.952-2 could claim a section 245A DRD, is contrary to the plain language of the statute and represents a misreading of the regulation. The IRS also rejected arguments that the broader statutory context necessitates a different conclusion.

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