



TaxNewsFlash

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Section 250 deduction subject to limitation under each of section 250(a)(2), 246(b)(3)(A), and 246(b)(3)(B) (IRS Chief Counsel memorandum)

The IRS concluded in Office of Chief Counsel memorandum* [AM 2024-002](#) (released October 11, 2024, and dated August 19, 2024) that a domestic corporation's deduction under section 250, equal to 37.5% of its foreign-derived intangible income (FDII) and 50% of the sum of its global intangible low-taxed income (GILTI) inclusion and related gross-up for deemed paid foreign tax credits under section 78, after taking into account the taxable income limitation of section 250(a)(2), is further subject to the limitation in section 246(b)(1), which limits the aggregate amount of a domestic corporation's deductions allowed under section 243(a)(1), section 245(a) and (b), and section 250 to a percentage of taxable income (determined without regard to these deductions) that is specified in section 243(b)(3)(A) and (B).

The IRS applied, first, the 65% limitation in section 246(b)(3)(A) to the aggregate of the corporation's section 250 deduction (as limited by section 250(a)(2)) and the corporation's dividends received deduction (DRD) attributable to dividends from 20%-owned corporations, and, then, the 50% limitation in section 246(b)(3)(B) to the aggregate of the corporation's section 250 deduction (as limited by section 243(b)(3)(A)) and the DRD attributable to dividends not from 20%-owned corporations.

KPMG observation

Prior to the issuance of this memorandum, it was not clear whether, or how, section 246(b) applies to the section 250 deduction. The memorandum, although nonprecedential, sets forth the IRS view not only that the limitation applies, but that it applies under each of the two different limitation provisions governing different types of DRDs.

*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.

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