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U.S. Tax Court: U.S. parent company not allowed foreign tax credits under former section 902 and section 960

The U.S. Tax Court today held, based on the plain text of former section 902 (as it existed prior to 2018) and section 960, that a U.S. parent company was not allowed foreign tax credits (FTCs) for income taxes paid or accrued by lower tier controlled foreign corporations (CFCs) owned by the company through upper tier CFCs and a U.S. partnership interposed between the two tiers.

The case is: *Eaton Corporation and Subsidiaries v. Commissioner,* 164 T.C. No. 4 (February 24, 2025). Read the Tax Court's opinion

Summary

The taxpayer was a U.S. corporation and parent of two tiers of CFCs with a U.S. partnership interposed between the two tiers. For 2007 and 2008, the U.S. partnership included in its gross income under section 951 the subpart F income of the lower tier CFCs, as well as amounts determined under section 956. The partnership made no distributions to its partners in 2007 or 2008, and the taxpayer did not increase its gross income on account of the partnership's inclusions under section 951.

In a prior opinion in this case (152 T.C. 43, 54 (2019)), the Tax Court held that the partnership's inclusions under section 951 increased the earnings and profits (E&P) of its partners—the upper tier CFCs. In this opinion, the court considered the question of whether the taxpayer was entitled to FTCs with respect to taxes paid or accrued by the lower tier CFCs owned by the partnership under sections 901, 902, and 960.

The court concluded that the taxpayer was not entitled to FTCs (i) under section 902 because there was no dividend distribution from the lower tier CFCs or (ii) under section 960 because the section 951(a) inclusions with respect to the lower tier CFCs were not taken into gross income directly by a U.S. corporation, but instead by a U.S. partnership with CFC partners. Because the taxpayer could not show that it was entitled to be deemed to have paid foreign income tax, it was not entitled to a credit on account of the same under section 901(a).

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