



TaxNewsFlash

United States

No. 2025-252
August 22, 2025

Tenth Circuit: Section 904(f)(3)(A) does not prevent recognition of gain in excess of overall foreign loss account

The U.S. Court of Appeals for the Tenth Circuit today affirmed the U.S. Tax Court and held that section 904(f)(3)(A) did not apply to prevent the taxpayer's recognition of approximately \$2.8 billion in gain (the amount of its gain in excess of its overall foreign loss (OFL) account) upon its sale of controlled foreign corporation (CFC) stock or to recharacterize such gain as foreign source income such that the taxpayer could claim more than \$240 million in foreign tax credits.

The case is: *Liberty Global Inc. v. Commissioner*, No. 24-9004 (August 22, 2025). Read the Tenth Circuit's [decision](#)

Summary

At the beginning of 2010, the taxpayer had an OFL account balance of approximately \$474 million. That year, the taxpayer sold all its stock in a CFC, realizing gain of more than \$3.25 billion. On its 2010 return, the taxpayer reported approximately \$438 million of the gain as dividend income pursuant to section 1248 and approximately \$2.8 billion as foreign source income, taking the view that Treas. Reg. § 1.904(f)-2(d)(1) required this result. The increased foreign source income allowed the taxpayer to claim foreign tax credits of more than \$240 million for the year.

The IRS determined that the taxpayer overstated its foreign source income for the year and consequently overstated its foreign tax credit, and the taxpayer petitioned the Tax Court for redetermination of the resulting assessed deficiency. The Tax Court in November 2023 held that the IRS was correct in its assertion that section 904(f)(3)(A) does not govern the treatment of the taxpayer's \$2.8 billion in gain (which is instead subject to the rules of sections 865, 1001, and 1248) and Treas. Reg. § 1.904(f)-2(d)(1) does not require that such gain be recharacterized as foreign source. [Read TaxNewsFlash](#)

The Tenth Circuit today affirmed the Tax Court and held that the taxpayer's gain was not foreign source income, and thus the taxpayer was not eligible for the foreign tax credits it claimed.

kpmg.com/socialmedia



The information contained in TaxNewsFlash is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230, as the content of this document is issued for general informational purposes only, is intended to enhance the reader's knowledge on the matters addressed therein, and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

KPMG International Limited is a private English company limited by guarantee and does not provide services to clients. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm.

Direct comments, including requests for subscriptions, to [Washington National Tax](#). For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at +1 202.533.3712, 1801 K Street NW, Washington, DC 20006-1301.

To unsubscribe from TaxNewsFlash, reply to [Washington National Tax](#).

[Privacy](#) | [Legal](#)