No. 2026-171
August 7, 2026

U.S. Tax Court: Qualified dividend income treatment and FTCs denied under section 246(c) anti-abuse rule

The U.S. Tax Court on August 6, 2026, held that that a partnership was ineligible for qualified dividend income (QDI) treatment under sections 1(h)(11)(B)(iii)(I) and 246(c) and corresponding foreign tax credits (FTCs) because its holding period in Swiss equities was reduced under the anti-abuse rule of Treas. Reg. § 1.246-5(c)(1)(vi).

The case is: *SIH Partners LLLP v. Commissioner*, 167 T.C. No. 8 (August 6, 2026). Read the Tax Court's **opinion**.

Summary

The taxpayer, a partnership, entered into a portfolio swap transaction centered on four Swiss equities. While the taxpayer held long positions in these equities, it simultaneously held identical short positions through a portfolio swap that also included other equity positions that were part of a longstanding firm risk hedge. The taxpayer reported $170,764,863 in QDI from the Swiss equities and claimed a corresponding FTC of $25,614,729 for withholding taxes paid in Switzerland.

The IRS issued a notice of final partnership administrative adjustment (FPAA) reclassifying the QDI as ordinary dividend income and denying the FTCs, asserting that the taxpayer's risk of loss was systematically diminished by holding positions in substantially similar or related property as defined in section 246(c)(4). Thus, according to the IRS, the taxpayer could not satisfy the holding period requirements to qualify the dividend as QDI under section 1(h)(11)(B)(iii) or the dividend withholding taxes as FTCs under section 901(k)(5).

The Tax Court found that although the mechanical substantial overlap test under Treas. Reg. § 1.246-5(c)(1)(iii) was not met because the overlap was only 64%—below the 70% threshold—the anti-abuse rule under Treas. Reg. § 1.246-5(c)(1)(vi) applied because the Court found that (i) the Swiss equities and the short positions in the swap were reasonably expected to virtually track each other and (ii) the transaction was part of a plan with a principal purpose of obtaining tax savings that were significantly in excess of the expected pre-tax economic profits.

Because the Swiss equities were deemed substantially similar or related property, the taxpayer's holding period was reduced, making it ineligible for QDI treatment under section 1(h)(11) and barring it from claiming the FTC under section 901(k)(1).

kpmg.com/socialmedia

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.

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