United States Tax Court

T.C. Memo. 2026-84

SYSCO CORPORATION,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. 5728-23. Filed September 14, 2026.

Joseph B. Judkins, *George M. Clarke III*, *Cameron C. Reilly*, and *Varuni Balasubramaniam*, for petitioner.

Jan M. Geht, *H. Barton Thomas*, *Justyna W. Jozwik*, *Le Chen*, *Shane M. Ward*, and *Steven L. Williams*, for respondent.

MEMORANDUM OPINION

TORO, *Judge*: This deficiency case concerns issues identical to those we addressed in *Varian Medical Systems, Inc. & Subs. v. Commissioner* (*Varian I*), 163 T.C. 76 (2024) (reviewed), and *Varian Medical Systems, Inc. & Subs. v. Commissioner* (*Varian II*), No. 8435-23, 166 T.C. (Apr. 8, 2026).

In *Varian I*, 163 T.C. at 89, we held that, for a taxpayer in materially the same position as Sysco Corporation (Sysco) (the petitioner here), section 245A[1] authorized a deduction for certain amounts treated as dividends under section 78. We also held that section 245A(d) limited the amount of foreign tax credits such taxpayers

[1] Unless otherwise indicated, statutory references are to the Internal Revenue Code, Title 26 U.S.C. (I.R.C. or Code), in effect at all relevant times, and regulation references are to the Code of Federal Regulations, Title 26 (Treas. Reg.), in effect at all relevant times.

[*2] could claim and set out a formula for computing the disallowed amount. *Varian I*, 163 T.C. at 110–12.

In *Varian II*, 166 T.C., slip op. at 20, we held that section 246(c)(1) limits the deduction available under section 245A to amounts treated as dividends on shares directly held by the relevant taxpayer. We further held that the formula used to compute the foreign tax credit disallowance under section 245A(d)(1) must include the post-section 965(c) amount in the denominator of the fraction. *Varian II*, 166 T.C., slip op. at 33.

After we issued *Varian I*, we sought Sysco's and the Commissioner's views on *Varian I*'s application to the Motions they had previously filed on the same issues (the first set of Motions). They agreed that the Motions could be decided by following *Varian I*. So, we resolved those Motions by order. *See* Order (Sep. 13, 2024) (granting in part and denying in part the parties' cross-motions for partial summary judgment).

After we issued *Varian II*, we again sought the parties' views on whether two pairs of Cross-Motions for Partial Summary Judgment, which are now pending before us (the second set of Motions), could be resolved by following *Varian II*. The Commissioner told us they could. Sysco, by contrast, told us they could not. In Sysco's view, the interpretation we set out in *Varian II* is wrong in light of additional arguments not made by the taxpayer in *Varian II*.

As we show below, the taxpayer in *Varian II* did not miss any winning arguments, and any additional arguments Sysco offers are unpersuasive. The holdings in *Varian II* suffice to resolve the Cross-Motions now before us. We will therefore grant the Commissioner's Motions and deny Sysco's.

Background

The following facts are derived from the parties' pleadings and Motion papers, as well as their First Stipulation of Facts together with Exhibits. These facts are stated solely for the purpose of ruling on the Cross-Motions before us and not as findings of fact in this case. *See Rowen v. Commissioner*, 156 T.C. 101, 103 (2021) (reviewed).

As relevant to the issues we analyze here, the facts of this case are substantially similar to those we described in *Varian I* and *II*. Namely, Sysco is a U.S. corporation that is the common parent of a

[*3] worldwide group of affiliates.[2] For the taxable year 2018, Sysco and certain of its affiliates were fiscal year, rather than calendar year, taxpayers.

During the taxable year 2018, Sysco also directly and indirectly owned foreign corporations that were treated as specified foreign corporations under section 965(e).[3] Some of Sysco's specified foreign corporations included deferred foreign income in their subpart F income under section 965(a), and foreign taxes related to those amounts were deemed paid by Sysco under sections 902 and 960. Sysco elected to claim foreign tax credits for 2018 and, under section 78, was required to include in income as a dividend an amount equal to the foreign taxes deemed paid. On its return, Sysco did not claim the dividends received deduction under section 245A with respect to any amounts treated as dividends under section 78.

The Commissioner examined Sysco's federal income tax return and issued a Notice of Deficiency. Sysco timely petitioned our Court to redetermine the deficiency. In its Petition, Sysco alleged for the first time that the Commissioner "erred by not accounting for a section 245A dividends received deduction for section 78 dividends in an amount of not less than $323,924,795." Pet. at 9.

After we issued *Varian I*, Sysco filed a Motion for Partial Summary Judgment regarding the proper application of section 245A(d) to the facts here. The Commissioner filed a Cross-Motion for Partial Summary Judgment. The parties filed their respective Responses and Replies.

On the same day that Sysco filed its Motion for Partial Summary Judgment regarding section 245A(d), the Commissioner filed a Motion for Partial Summary Judgment regarding the proper application of section 246(c)(1) to the facts here. In time, Sysco filed a Cross-Motion

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[2] Sysco's principal place of business is in Houston, Texas. Absent stipulation to the contrary, *see* I.R.C. § 7482(b)(2), appeal of this case would lie to the U.S. Court of Appeals for the Fifth Circuit, *see* I.R.C. § 7482(b)(1).

[3] For background on the technical terms used in this paragraph and elsewhere in this Opinion, see *Varian I* and *II*.

[*4] for Partial Summary Judgment. The parties filed their respective Responses and Replies.[4]

As we have discussed, after we issued *Varian I*, the parties in that case filed similar motions addressing the same issues under sections 246(c)(1) and 245A(d).

In April 2026, the Court issued *Varian II*, which resolved the issues under sections 246(c)(1) and 245A(d) in the Commissioner's favor. By Order served shortly thereafter, we asked Sysco and the Commissioner to address the effect of the opinion on their pending Cross-Motions in this case.

The parties filed a joint response to the Court's Order that included views from both Sysco and the Commissioner. Sysco asserted that "[its] motions and cross-motions for partial summary judgment pending in this case raised arguments that the taxpayer in *Varian* did not raise and that impact the Court's conclusions." Joint Resp. to Order at 3 (May 20, 2026). The Commissioner asserted that "[t]he Court's decision . . . resolves the questions presented in the motions, and cross-motions, filed by the parties." *Id.* at 6.

In light of the joint response, the Court held a hearing to give the parties the opportunity to present their arguments, with a focus on arguments that differed from those presented in *Varian II*.

Discussion

The Court's opinions in *Varian I* and *II* included a comprehensive review of the applicable law, which we will not repeat here. The opinions also included a comprehensive review of the factual background in that case. As relevant to our legal analysis, the corporate structure here is materially the same as the structure described in *Varian I* and *II*, and the applicable law is identical.

We now address Sysco's claim that the outcome in *Varian II* should be revisited because the taxpayer there missed winning

[4] Taken together, these Cross-Motions constitute the second set of Motions filed in this case, as we describe in the introduction above. The parties filed the first set of Motions, which we do not address further here, before we issued our opinion in *Varian I*.

[*5] arguments on both the section 246(c)(1) issue and the section 245A(d) issue. We disagree, as we explain below.

I. *Section 246(c)(1)*

In *Varian II*, we described section 246(c)(1) as follows:

> Section 246 sets out certain rules that limit the deductions available to taxpayers under [sections 243, 245, and 245A]. Relevant here are the holding periods provided in section 246(c). Specifically, section 246(c)(1) provides that "[n]o deduction shall be allowed under section 243[,] 245, or 245A, in respect of any dividend on any share of stock . . . which is held by the taxpayer" for fewer than a specified number of days within a defined window that straddles the "ex-dividend" date.[5] For purposes of section 245A deductions, section 246(c)(5) modifies the holding period: Paragraph (5)(A) increases the period's duration and paragraph (5)(B) establishes that ownership thresholds set by section 245A must also be maintained at all times during the period.

Varian II, 166 T.C., slip op. at 6 & n.4 (original footnote renumbered).

As described above, we went on to hold that section 246(c)(1) limits the deduction available under section 245A to amounts treated as dividends on shares directly held by the relevant taxpayer. *Varian II*, 166 T.C., slip op. at 20.

Sysco offers three principal arguments in support of its view that *Varian II* incorrectly interpreted section 246(c)(1). We address each in turn.

A. *"Held by the Taxpayer" and "U.S. Shareholder"*

Sysco's first argument with respect to section 246(c)(1) centers on the phrase "held by the taxpayer." In Sysco's view, the phrase, at least as applied to this case, can only mean "held by a U.S. shareholder within

[5] "The ex-dividend date is '"[t]he date on or after which the buyer of a security does not acquire the right to receive the recently declared dividend."' *Ex-Dividend Date*, *Black's Law Dictionary* (12th ed. 2024). The parties do not seem to dispute that the section 78 dividends at issue are deemed paid to the U.S. shareholder on the last day of the CFC's taxable year. *See* I.R.C. § 951(a)(1); Treas. Reg. § 1.78-1(d)(2)."

[*6] the meaning of section 951(b)." And, Sysco says, because section 951(b) contemplates indirect ownership, so must section 246(c)(1).

Sysco's analysis runs as follows. The operative provision here is section 245A, and, under the terms of that section, only a U.S. shareholder of a specified foreign corporation is eligible to claim a deduction. *See* I.R.C. § 245A(a).[6] The term "U.S. shareholder" is defined in section 951(b), which, Sysco highlights, applies "[f]or purposes of this title" (that is, the entire Code).

Section 951(b) provides that "the term '[U.S.] shareholder' means, with respect to any foreign corporation, a [U.S.] person . . . who owns (within the meaning of section 958(a)), or is considered as owning by applying the rules of ownership of section 958(b)," at least ten percent of the stock of the foreign corporation. Section 958(a) provides that, "[f]or purposes of [subpart F] . . . stock owned means" stock owned directly and stock owned directly or indirectly through a foreign corporation, foreign partnership, foreign trust, or foreign estate. Section 958(b), which applies for purposes of section 951(b) and a few other provisions, overlays the constructive ownership rules of section 318(a).

Putting all this together, Sysco points out that, under section 951(b), a U.S. shareholder of a foreign corporation is a U.S. person who owns, either directly under section 958(a)(1)(A), indirectly through a foreign entity under section 958(a)(1)(B) and (2), or constructively under section 958(b), ten percent or more of the foreign corporation's stock. On this much there is no dispute.

But we do not share Sysco's view on the significance of these observations in the context of section 246(c)(1). According to Sysco, when the provision says a share of stock must have been "held by the taxpayer" for a specified number of days, it means that it must have been owned by a U.S. shareholder within the meaning of section 951(b). And, in Sysco's view, because the definition under section 951(b) incorporates the indirect and constructive ownership rules in section 958(a) and (b), stock owned directly, indirectly through a foreign entity, or constructively must all be taken into account for purposes of

[6] Section 245A(a) provides as follows:

> Sec. 245A(a). In general.—In the case of any dividend received from a specified 10-percent owned foreign corporation by a domestic corporation which is a [U.S.] shareholder with respect to such foreign corporation, there shall be allowed as a deduction an amount equal to the foreign-source portion of such dividend.

[*7] applying section 246(c)(1) to a U.S. shareholder. In other words, Sysco argues that the phrase "held by the taxpayer" in section 246(c)(1) imports the ownership standards of section 958.

If this interpretation were adopted, Sysco would win on this issue. But Sysco's interpretation is erroneous.

We begin as always with the text. *Twitter, Inc. v. Taamneh*, 143 S. Ct. 1206, 1218 (2023); *see also Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019) ("In statutory interpretation disputes, a court's proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself." (citing *Schindler Elevator Corp. v. United States ex rel. Kirk*, 563 U.S. 401, 407 (2011))); *AbbVie Inc. & Subs. v. Commissioner*, 164 T.C. 340, 352 (2025). And, when the statute does not define a term, "we ask what that term's 'ordinary, contemporary, common meaning' was when Congress enacted" the relevant provision. *Food Mktg. Inst.*, 139 S. Ct. at 2362 (quoting *Perrin v. United States*, 444 U.S. 37, 42 (1979)); *see also Dynamo Holdings Ltd. P'ship v. Commissioner*, 150 T.C. 224, 234 (2018) (reviewed).

The phrase "held by the taxpayer" is not defined by the Code, but "taxpayer" is. As we discussed in *Varian II*, section 7701(a)(14) defines "taxpayer" as "any person subject to any internal revenue tax." The term is not limited to a U.S. shareholder, as Sysco would have us hold. This is strike one against Sysco's interpretation.

As for the term "held," as we also discussed in *Varian II*, ordinary meaning, longstanding principles of law, and "statutory clues" in other provisions of the Code all suggest that the term refers to the direct ownership of stock. *See Varian II*, 166 T.C., slip op. at 10–13. Sysco's interpretation of section 246(c)(1) runs counter to those indicators of the statute's meaning.

The history of section 246(c)(1) further undermines Sysco's interpretation. Congress enacted section 246(c)(1) in 1958. The original provision disallowed deductions under the then-existing sections 243, 244, and 245 for "any dividend on any share of stock . . . which is sold or otherwise disposed of in any case in which the taxpayer has held such share for 15 days or less." I.R.C. § 246(c)(1) (1958). Because the subpart F regime had not yet been enacted, the dividends received deductions under sections 243, 244, and 245 had nothing to do with U.S. shareholders under section 951(b) or indirect or constructive ownership

[*8] under section 958. *See* Revenue Act of 1962, Pub. L. No. 87-834, § 12(a), 76 Stat. 960, 1006 (introducing subpart F of part III, subchapter N of chapter 1 of subtitle A of the Code). Indeed, sections 243, 244, and 245 did not include *any* reference to indirect or constructive ownership.

Congress amended section 246(c)(1) in the Tax Reform Act of 1986, Pub. L. No. 99-514, § 1804(b)(1)(A), 100 Stat. 2085, 2798, to more closely resemble its current formulation. After that amendment, the provision read as follows: "No deduction shall be allowed under section 243, 244, or 245, in respect of any dividend on any share of stock . . . [w]hich is held by the taxpayer for 45 days or less." I.R.C. § 246(c)(1) (1986). The 1986 text is identical to the current phrasing except that, in the current list of provisions that potentially permit dividends received deductions, section 244 has been replaced by section 245A.[7]

In 1986, each of sections 243, 244, and 245 allowed corporate taxpayers to claim a dividends received deduction subject to certain conditions. But, as was the case in 1958, none of those conditions related to subpart F or the definition of a U.S. shareholder under section 951(b).

At the same time, some of the conditions found in sections 243 and 245 supplied rules that contemplated indirect share ownership.[8] *See, e.g.*, I.R.C. § 243(a)(3), (b)(1) and (2) (permitting an increased deduction for dividends from members of the same affiliated group, as defined by section 1504(a)); I.R.C. § 245(b)(1) (authorizing an increased deduction if the recipient domestic corporation "owns (directly or indirectly) all of the outstanding stock of [the payor] foreign corporation" during the taxable year). That Congress had distinguished between direct ownership, indirect ownership, and other ownership requirements in neighboring provisions to section 246, and that it did not adopt similar distinguishing terms in section 246(c)(1), further supports our conclusion that section 246(c)(1) requires direct ownership.[9] *See also Varian II*, 166 T.C., slip op. at 14–15 (discussing

[7] Section 244, which previously provided a dividends received deduction for dividends received on certain preferred stock, was repealed in 2014. *See* Act of Dec. 19, 2014, Pub. L. No. 113-295, div. A, § 221(a)(41)(A), 128 Stat. 4010, 4043.

[8] For a discussion of how such provisions operate in tandem with the direct ownership requirement of section 246(c)(1), see *Varian II*, 166 T.C., slip op. at 18–19.

[9] Additionally, the legal landscape regarding indirect ownership was well known by the time Congress amended section 246(c)(1)—without modifying the phrase "held by the taxpayer"—in 2017. Before 2017, the Supreme Court decided *Dole Food Co. v. Patrickson*, 538 U.S. 468 (2003). In that case, as we explained in *Varian II*, 166

[*9] other Code provisions in which "held" or variants thereof are used in combination with the phrase "directly or indirectly").

The history of section 246(c)(1) allows us to draw several conclusions. First, when Congress adopted the phrase "held by the taxpayer" in section 246(c)(1), subpart F concepts, including indirect and constructive ownership under section 958(a) and (b), were not in the picture. Second, Congress has in the past expressly differentiated between direct and indirect ownership requirements in rules regarding dividends received deductions. And third, as Congress amended section 246(c)(1) through the years, it retained the phrase "held by the taxpayer" rather than replacing it with more expansive terms or incorporating tests from other provisions.

There is no indication that, when Congress amended section 246(c)(1) to include section 245A in its list of covered provisions, the meaning of "held by the taxpayer" changed to incorporate concepts from subpart F. If that were true, the text of section 246(c)(1) would adopt an entirely different meaning depending on the provision under which the taxpayer claims a dividends received deduction. Specifically, "held by the taxpayer" would mean "owned, as described in section 958, by the U.S. shareholder as defined in section 951(b)" only when a taxpayer claimed a dividends received deduction under section 245A.

This is not how statutes work. The text of section 246(c)(1) means the same thing whether the relevant deduction is under section 243, 245, or 245A.[10] Moreover, it means the same thing today as it did when it was enacted—namely, that the taxpayer (i.e., the person subject to any

T.C., slip op. at 10–11, the Supreme Court held that indirect ownership was insufficient to satisfy a statute that asked whether "a majority of . . . shares or other ownership interest" in an entity "[was] owned by a foreign state or political subdivision thereof." *Dole Food*, 538 U.S. at 473 (quoting 28 U.S.C. § 1603(b)(2)). The Supreme Court explained that "[a] corporate parent which owns the shares of a subsidiary does not, for that reason alone, own or have legal title to the assets of the subsidiary; and, it follows with even greater force, the parent does not own or have legal title to the subsidiaries of the subsidiary." *Id.* at 475. Nonetheless, when Congress amended section 246(c)(1), it chose to leave the phrase "held by the taxpayer" untouched.

[10] It is a "normal rule of statutory interpretation that identical words used in different parts of the same statute are generally presumed to have the same meaning." *IBP, Inc. v. Alvarez*, 546 U.S. 21, 34 (2005); *see also United States v. Castleman*, 572 U.S. 157, 174 (2014) (Scalia, J., concurring in part and concurring in judgment) (discussing the "presumption of consistent usage—the rule of thumb that a term generally means the same thing each time it is used"). Sysco's interpretation runs against this presumption in the extreme, assigning different meanings to the *same* statutory term depending on the circumstances in which it is applied.

[*10] internal revenue tax) who is claiming the deduction must have held (i.e., owned) the share of stock on which the dividend was paid for the required period. *See New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 539 (2019) ("It's a fundamental canon of statutory construction that words generally should be interpreted as taking their ordinary meaning at the time Congress enacted the statute." (quoting *Wis. Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2074 (2018) (cleaned up))). And, for the reasons explained in *Varian II* and in this discussion, that ownership must have been direct.

The changes that Congress did make to sections 245A and 246(c) in 2017 also suggest that Sysco's interpretation of section 246(c)(1) is incorrect. When Congress enacted the section 245A dividends received deduction, it made that deduction subject to the requirements of section 246(c)(1). And it added additional requirements applicable only to deductions claimed under section 245A in section 246(c)(5). Neither of these steps would have made sense if Sysco's interpretation of section 246(c)(1) were correct.

First, under Sysco's interpretation, the holding period requirements for section 245A would be unique to that section. The meaning of "held" would be different, and the length of the period would also be different. So there would have been little reason for Congress to add the section 245A holding period requirements to section 246(c); instead, Congress could have kept the requirements in section 245A.[11] *See, e.g.*, *Knight v. Commissioner*, 552 U.S. 181, 188 (2008) ("The fact that [Congress] did not adopt [a] readily available and apparent alternative strongly supports rejecting [a] reading [that relies on the rejected alternative text]."); *Thomas v. Commissioner*, 160 T.C. 371, 382–83 (2023) (reviewed) (same).

Second, Sysco's interpretation would leave section 246(c)(5)(B) with no work to do. Section 246(c)(5)(B) provides that, "[f]or purposes of applying [section 246(c)(1)] with respect to section 245A, the taxpayer shall be treated as holding the stock referred to in [section 246(c)(1)] for any period only if" the U.S. shareholder and specified ten-percent owned foreign corporation maintain those statuses "at all times during such period." Under Sysco's reading, however, the "held by the taxpayer" requirement in section 246(c)(1) is met if the taxpayer is a U.S.

[11] The special holding period in section 246(c)(5)(A) renders section 246(c)(2) inapplicable in the context of a section 245A deduction, as section 246(c)(5)(A)(ii) recognizes. And if Congress had wanted to apply the rules of section 246(c)(3) and (4), it could have done so by cross-reference to those provisions.

[*11] shareholder throughout the relevant holding period, leaving no apparent room for a situation in which section 246(c)(1) and (5)(B) would not operate in tandem.[12] Such a reading is not correct. *See Pulsifer v. United States*, 144 S. Ct. 718, 731–32 (2024) ("When a statutory construction renders an entire subparagraph meaningless, this Court has noted, the canon against surplusage applies with special force." (cleaned up)). Moreover, as we discussed in *Varian II*, 166 T.C., slip op. at 18, Congress's use of "only if" in section 246(c)(5)(B) tells us that the rule is an additional condition to the rule in section 246(c)(1). It does not supplant it, as Sysco would have us believe.[13]

Third, Sysco, like Varian, offers an interpretive framework in which sections 243, 245, and 245A provide the "ownership proximity" requirements while section 246(c) provides only "ownership duration" requirements. But section 246(c)(4) would seem to refute that framework. Specifically, it excludes from the relevant holding period any period in which a taxpayer has reduced its risk of loss with respect to stock—for example, by acquiring an option to sell the stock or granting an option to buy the stock (or substantially identical stock). These rules go to the nature of the taxpayer's ownership, contradicting Sysco's claims.

In short, Sysco's valiant efforts to find a statutory hook for its position do not carry the day.[14]

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[12] Further, because section 245A(b) defines (subject to an exception for passive foreign investment companies) a "specified 10-percent owned foreign corporation" as "any foreign corporation with respect to which any domestic corporation is a [U.S.] shareholder with respect to such corporation," there is no doubt that section 246(c)(5)(B)(i) and (ii) would both be satisfied.

[13] This is in contrast to the rule in section 246(c)(5)(A)—the neighboring subparagraph—which "substitut[es]" its contents for the rule in section 246(c)(1). In other words, Congress knew how to replace the rule in section 246(c)(1) if it wanted to. It opted to do so for the length of the holding period (section 246(c)(5)(A)) but not for the meaning of "held" (section 246(c)(5)(B)). *See Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 161 (2018) ("[W]hen Congress includes particular language in one section of a statute but omits it in another[,] . . . this Court presumes that Congress intended a difference in meaning." (quoting *Loughrin v. United States*, 573 U.S. 351, 358 (2014))).

[14] Of course, there is no disagreement that indirect ownership is relevant to the section 245A deduction. Indirect ownership counts for determining whether a taxpayer is a U.S. shareholder with respect to a foreign corporation and thus eligible to claim the deduction at all. For example, if a taxpayer owns 5% of a foreign corporation's stock directly and the remaining 95% indirectly, then the taxpayer is a U.S. shareholder with respect to that corporation. Therefore, the taxpayer is eligible

[*12] B. *Treasury Regulation § 1.245A-5*

Sysco's next argument is that Treasury regulations concede that section 245A authorizes a deduction for dividends received from indirectly owned foreign corporations. Therefore, Sysco says, it does not make sense to interpret section 246(c)(1) to preclude a deduction that section 245A and the implementing Treasury regulations authorize. The relevant portion of Sysco's brief reads as follows:

> Even Treasury and the IRS have acknowledged that section 245A authorizes a [dividends received deduction] for dividends received from indirectly owned foreign corporations. Treas. Reg. § 1.245A-5(b)(1) provides that "[a] section 245A shareholder is allowed a section 245A deduction for *any* dividend received from [a specified foreign corporation] . . . ." (Emphasis added.) And Treas. Reg. § 1.245A-5(i)(21) defines the term "section 245A shareholder" as "a domestic corporation that is a United States shareholder with respect to [a specified foreign corporation] and that owns directly or *indirectly* stock of the [specified foreign corporation]." (Emphasis added.) Consequently, Respondent's own regulations confirm that section 245A provides a deduction for dividends received from indirectly owned foreign corporations.

Pet'r's Br. in Supp. of Mot. for Partial Summ. J. 8.

The Commissioner does not dispute here that, in specified circumstances, the deduction under section 245A may be available for dividends treated as received with respect to shares held indirectly. Hearing Tr. 39–40 (outlining the Commissioner's view that the references to indirect ownership in Treasury Regulation § 1.245A-5(i)(21) were intended to accommodate potential deductions for amounts treated as dividends under sections 964 and 1248); *see also* Treas. Reg. § 1.245A-5(g) (supporting the Commissioner's contention). But, in the Commissioner's view, that is because of the specific text of sections 964

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to claim the deduction with respect to dividends on shares in the corporation the taxpayer owns directly. (Without including the indirectly owned shares, the taxpayer would not be a U.S. shareholder and would not qualify for the deduction at all.) But that does not mean that "held by the taxpayer" in section 246(c)(1) encompasses indirect ownership, or that taxpayers are eligible to deduct deemed dividends from corporations in which they own no shares directly.

[*13] and 1248, which are not at issue here and with respect to which we express no view.

We do, however, credit the Commissioner's explanation as to what Treasury and the IRS were doing in the regulation and conclude that Sysco's reliance on Treasury Regulation § 1.245A-5 is misplaced. At bottom, Sysco urges us to hold the Commissioner to a concession the Commissioner never made. Throughout the litigation in *Varian* and here, the Commissioner has consistently maintained that the deduction under section 245A is not available for amounts treated as dividends pursuant to section 78. Indeed, Treasury and the IRS adopted a regulation to that effect. *See* Treas. Reg. § 1.78-1(a), (c); *see also Varian I*, 163 T.C. at 104 ("The rule adopted by the revised regulations essentially gives one of the TCJA's amendments to section 78 an earlier effective date than provided for in the TCJA to prevent taxpayers like Varian from deducting section 78 dividends.").

In *Varian I*, 163 T.C. at 109, we concluded that the regulation could not change the outcome required by the plain text of the statute. But our holding does not permit Sysco to attribute to the Commissioner views the Commissioner has not adopted. Whatever the scope of Treasury Regulation § 1.245A-5 might be, and whatever it might say about circumstances that are not before us, it cannot fairly be read to support a concession by the Commissioner with respect to an outcome Treasury and the IRS expressly disclaimed elsewhere in the regulations.

Furthermore, the regulation on which Sysco relies does not bear the reading Sysco gives it. Treasury Regulation § 1.245A-5(a) provides "rules that limit a deduction under section 245A(a)." In other words, on its face, the regulation describes dividends for which a deduction is not allowed, not dividends for which a deduction is allowed. This aspect of the regulation becomes apparent when we consider the full text of the rule in Treasury Regulation § 1.245A-5(b)(1), which Sysco quoted only in part:

> A section 245A shareholder is allowed a section 245A deduction for any dividend received from [a specified foreign corporation] (provided all other applicable requirements are satisfied) only to the extent that the dividend exceeds the ineligible amount of the dividend.

The rule tells us that the section 245A deduction will be disallowed for any dividend amount equal to or less than the ineligible amount defined

[*14] by the regulation. It does not, by contrast, tell us that dividends in excess of that amount will necessarily be allowed.[15] As the regulation notes, such dividends remain subject to "all other applicable requirements." One of those requirements is found in section 246(c)(1).

In short, Sysco's arguments concerning Treasury Regulation § 1.245A-5 do not support a conclusion different from the one we reached in *Varian II*.

C. *Legislative History*

Sysco also contends that legislative history supports its view. But, as the Supreme Court recently reminded us: "Congress expresses itself as a body through the text it enacts." *FS Credit Opportunities Corp. v. Saba Cap. Master Fund, Ltd.*, 146 S. Ct. 1546, 1558 (2026); *see also id.* (observing that the views of congressional committees "are not the law"). That is "why statutory interpretation must focus on the text." *Id.* at 1558–59; *see also id.* at 1559 ("[T]o borrow from Justice Robert Jackson, . . . interpretation must be driven by 'analysis of the statute' rather than 'psychoanalysis of Congress.'" (quoting *United States v. Public Util. Comm'n of Cal.*, 345 U.S. 295, 319 (1953) (R. Jackson, J., concurring))).

Moreover, Sysco's argument fails on its own terms. Sysco relies on the conference report to the Tax Cuts and Jobs Act, H.R. Rep. No. 115-466 (2017). In relevant part, that report states:

> Under proposed section 245A(e), the Secretary of the Treasury may prescribe such regulations or other guidance as may be necessary or appropriate to carry out the rules of section 245A, including clarifying the intended broad scope of the term "dividend received."
>
> For example, if a domestic corporation indirectly owns stock of a foreign corporation through a foreign partnership and the domestic corporation would qualify for the participation [dividends received deduction] with respect to dividends from the foreign corporation if the

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[15] The regulations Sysco cites appear in Treasury Regulation § 1.245A-5. Rules under Treasury Regulation §§ 1.245A-1, -2, -3, and -4 were all reserved when the rules under -5 were promulgated. That is because the rules in -5 are not the broadly applicable rules explaining and interpreting the statute that one might expect to find in the introductory sections of a regulatory package.

> **[*15]** domestic corporation owned such stock directly, the domestic corporation would be allowed a participation [dividends received deduction] with respect to its distributive share of the partnership's dividend from the foreign corporation.

Id. at 595.[16]

Even "[f]or those who consider legislative history relevant," *Warger v. Shauers*, 574 U.S. 40, 48 (2014), the conference report simply does not speak to the issue we face here. Everyone, including the Commissioner, agrees that indirect ownership through a partnership is permissible in this context. But, as we explained in *Varian II*, partnerships and corporations are not equivalent for tax purposes. That the conference report articulated a view as to the proper rule for partnerships without expanding that rule to encompass corporations would seem to suggest that the conference committee was not prepared to go so far. Further, the report contemplates that the Secretary will promulgate regulations to clarify these rules. No such regulations are implicated here. In short, the conference report offers no quarter for Sysco's position.

II. *Section 245A(d)*

In *Varian II*, 166 T.C., slip op. at 20–21, we described the parties' dispute with respect to section 245A(d)(1) as follows:

> Section 245A(d)(1) provides in relevant part that "[n]o credit shall be allowed under section 901 for any taxes paid or accrued (or treated as paid or accrued) with respect to any dividend for which a deduction is allowed under this section." We held in our prior opinion that, because Varian was allowed a deduction under section 245A with respect to its section 78 dividend, section 245A(d)(1) required a corresponding reduction to its foreign tax credit.

[16] Sysco also relies on the General Explanation of Public Law No. 115–97 prepared by the Staff of the Joint Committee on Taxation and known as the "Blue Book." It contains a passage similar to the one in the conference report. *See* Staff of J. Comm. on Tax'n, 115th Cong., General Explanation of Public Law 115–97, JCS-1-18, at 349 (J. Comm. Print 2018). "We have recognized that the Blue Book is not legislative history but, 'like a law review article, may be relevant to the extent it is persuasive.'" *Rafizadeh v. Commissioner*, 150 T.C. 1, 6 n.4 (2018) (quoting *United States v. Woods*, 571 U.S. 31, 48 (2013)); *accord JM Assets, LP v. Commissioner*, 165 T.C. 1, 10 n.5 (2025) (reviewed).

[*16] *Varian* [*I*], 163 T.C. at 110–12. The amount of the reduction, we said, would be the amount of Varian's deemed paid foreign tax credit that was attributable to the foreign earnings reflected in its deductible section 78 dividend. *Varian* [*I*], 163 T.C. at 111–12.

> We expressed the amount of the reduction in the following equation:
>
> $$\textit{Disallowed Foreign Tax Credit} = \textit{Deemed Paid Foreign Tax Credit} \times \left(\frac{\textit{Section 78 gross-up}}{\textit{Net section 965 inclusion + section 78 gross-up}} \right)$$
>
> *Id.* at 111. We provided a simplified example of how the equation would apply to a situation in which a U.S. shareholder owned 100% of a foreign corporation with earnings that qualified as subpart F income for U.S. tax purposes. *Id.* We did not provide an example of an inclusion under the Mandatory Repatriation Tax of section 965 (MRT) and so did not opine on the nuances of that provision.
>
> We now consider those nuances. Specifically, the parties dispute the meaning of "net section 965 inclusion" in the denominator of the equation.

We went on to conclude that "the 'net section 965 inclusion' in our formula is the section 965(a) inclusion amount with respect to" the taxpayer's first-tier CFCs, "reduced by the associated section 965(c) deduction." *Varian II*, 166 T.C., slip op. at 33.

Sysco disagrees with our conclusion and offers two principal arguments in support of its view that *Varian II* wrongly decided the section 245A(d) issue. We address them in turn.

A. *Apples and Income Inclusions*

First, Sysco invokes our observation in *Varian II*, 166 T.C., slip op. at 33, that "apples must be compared with apples." In that opinion, we observed that "[u]sing the post-section 965(c) amount for the net section 965 inclusion compares apples to apples and preserves a meaningful ratio; namely, that approach identifies the percentage of the

[*17] already-reduced foreign taxes attributable to the already-reduced section 78 dividend." *Id.* at 31.

Sysco purports to agree that apples must be compared to apples. But, whereas in *Varian II* we asked whether each of the three elements of the formula—foreign tax credits, the section 78 dividend, and the net section 965 inclusion—was reduced to account for the section 965(c) deduction, Sysco directs our attention elsewhere. Specifically, in what it claims is an apples-to-apples comparison, Sysco asks us to evaluate whether each amount in the formula was the full amount included as gross income or credit on its tax return. To illustrate, in Sysco's view, because the section 78 dividend amount used in the formula was the full amount included in income on its return—albeit, as Sysco acknowledges, "reduced by [section 965](g)(4) and (c)"—the net section 965 inclusion must also be only the full amount included in gross income on its return. Hearing Tr. 48. Sysco repeatedly emphasizes that section 965(c) does not reduce a taxpayer's gross income inclusion, which is computed under section 965(a) and (b), and instead provides an additional deduction to the taxpayer. So, in Sysco's view, section 965(c) must be ignored under the formula.

We are puzzled by this attempted distinction. Sysco admits that the other amounts in the formula are reduced to account for the section 965(c) deduction. Sysco's foreign tax credits are reduced by section 965(g)(1) and its section 78 dividend is reduced by section 965(g)(4). So the distinction on which Sysco relies appears to be in the timing of the reduction. But why should this make a difference? Sysco does not explain.

Moreover, like the other elements of the formula on which Sysco focuses, the section 965(c) deduction is, of course, also reported on Sysco's tax return. And it does *offset* Sysco's income inclusion. This is by design, to achieve what is in effect a reduced rate of tax on the included income. In this respect, Sysco's argument is essentially the same as those we addressed in *Varian II*. There, we observed:

> The crux of Varian's argument seems to be that, as a technical matter, section 965(c) does not reduce Varian's section 965(a) inclusion amount. Instead, it simply offsets that amount through a deduction to achieve the target tax rates. But in this context it is the effect and not the formal mechanism that matters. We can see this in Varian's own analysis. Varian analogizes the haircuts in

> [*18] section 965(g)(1) and (4) to rate reductions—for example, to allowing a foreign tax credit at 30 cents on the dollar or allowing only a 50% deduction for section 78 dividends. But section 965(c) operates in the exact same way with respect to the section 965(a) inclusion amount. It provides a deduction to achieve a lower rate of tax. And Varian does not dispute that the reductions under section 965(g)(1) and (4) are required as a direct result of, and operate in tandem with, the section 965(c) deduction. We are therefore unconvinced by Varian's inconsistent view of which reductions the formula should recognize.

Varian II, 166 T.C., slip op. at 32 (footnotes omitted).

Sysco offers no compelling response as to why we should focus exclusively on the gross income inclusion reported on its return. As we explained in detail in *Varian II*, it is the net, post-section 965(c) amount that matters for determining Sysco's ultimate tax liability under section 965 and the associated consequences, including the reductions to Sysco's foreign tax credits and the section 78 dividend under section 965(g)(1) and (4). Thus, Sysco's arguments fare no better than Varian's.

B. *Double-Benefit and Alternative Formulas*

Sysco next argues that, if we interpret the formula as described in *Varian II* rather than adopting its preferred interpretation, the formula does not properly express the rule in section 245A(d)(1). Sysco proposes two alternative formulas for our consideration. But neither of the proposed formulas addresses the task before the Court—applying the rule set out in section 245A(d)(1).

In describing its formulas, Sysco explains that taxpayers who claim both a section 245A deduction and associated foreign tax credits obtain a double benefit. It is this double benefit, Sysco says, that section 245A(d) is intended to eliminate, although the section does not prescribe a specific formula. According to Sysco, its alternative formulas accomplish the statute's objective by isolating that double benefit and making commensurate reductions to either foreign taxes or to foreign tax credits.

In simplified terms, Sysco's first proposed alternative compares a taxpayer's tax liability under section 965 depending on whether the taxpayer claims or does not claim a section 245A deduction for its

[*19] section 78 dividend (without any foreign-tax-credit limitation under section 245A(d)(1)). In Sysco's view, the difference in U.S. tax liability between the two scenarios reflects the incremental reduction in tax attributable to the section 245A deduction, and so that amount is removed from the taxpayer's foreign tax pool.

Sysco's second proposed alternative (again in simplified terms) computes the taxpayer's tax liability under section 965 assuming the taxpayer claims the full section 245A deduction for section 78 dividends (again without applying section 245A(d)(1)). Next, it applies the taxpayer's blended section 965 tax rate (some combination of 8% and 15.5%) to the taxpayer's allowed foreign tax credits under section 965(g)(1) and (2). In Sysco's view, the resulting amount approximates the foreign tax credits associated with the reduction in U.S. tax liability resulting from the section 245A deduction.

Sysco's proposed alternatives, while novel, share a common defect. Specifically, they focus on eliminating a double benefit. This approach, while interesting, does not track the text of section 245A(d)(1). That text instructs us to disallow credits for "taxes paid" in the foreign jurisdiction "with respect to [the] dividend." In other words, under section 245A(d)(1), we must identify the *foreign taxes* paid with respect to the *foreign earnings* the dividend represents and allocate the taxes to those earnings.

Sysco's approach, which under both alternatives allocates foreign taxes based on U.S. tax rates and U.S. tax effects, is wholly unmoored from the statutory task. It may (or may not, as we will see) reach similar results in certain fact patterns. But it is an entirely separate analysis from the one mandated by section 245A.

Illustrating this issue, Sysco's formulas do not work when applied to the straightforward example of a real dividend subject to foreign withholding tax. Assume a U.S. corporation wholly owns a foreign corporation in a country that imposes no income tax but imposes withholding taxes. The foreign corporation has earnings of $100 and distributes those earnings as a dividend to the U.S. shareholder. The foreign country applies a 30% withholding tax and retains $30. The U.S. shareholder has $100 of income and claims a deduction for the full amount under section 245A.

In applying section 245A(d)(1), it is unnecessary to have a formula to see that the taxes paid with respect to the dividend of $100 are $30.

[*20] Even so, the formula the Court adopted in *Varian II* produces the correct answer. To refresh, the formula was as follows:

$$\begin{array}{c}\textit{Disallowed}\\ \textit{Foreign Tax}\\ \textit{Credit}\end{array} = \begin{array}{c}\textit{Deemed Paid}\\ \textit{Foreign Tax}\\ \textit{Credit}\end{array} \times \left(\frac{\textit{Section 78 gross-up}}{\begin{array}{c}\textit{Net section 965 inclusion +}\\ \textit{section 78 gross-up}\end{array}}\right)$$

Adapted to a situation with earnings and a real dividend rather than a subpart F inclusion and related section 78 gross-up, the revised formula would be as follows:

$$\begin{array}{c}\textit{Disallowed}\\ \textit{Foreign Tax}\\ \textit{Credit}\end{array} = \begin{array}{c}\textit{Withholding}\\ \textit{Tax}\end{array} \times \left(\frac{\textit{Dividend distributed}}{\textit{Earnings subject to foreign tax}}\right)$$

And the formula produces the following result:

$$\begin{array}{c}\textit{\$30}\\ \textit{(Disallowed}\\ \textit{FTC)}\end{array} = \begin{array}{c}\textit{\$30}\\ \textit{(Withholding}\\ \textit{Tax)}\end{array} \times \left(\frac{\textit{\$100 (dividend distributed)}}{\textit{\$100 (earnings)}}\right)$$

Sysco acknowledges that both its proposed formulas would produce a disallowed foreign tax credit amount less than $30 because they are keyed to the lower U.S. tax rate.[17] Thus, Sysco's formulas would allow excess foreign tax credits to offset U.S. tax on unrelated income. This

[17] Consider, for example, how Sysco's first proposed alternative fares if we assume a U.S. tax rate of 21%. If the U.S. shareholder claimed a $100 deduction under section 245A, it would have $0 taxable income ($100 dividend income – $100 deduction = $0 taxable income) and $0 U.S. tax on the dividend. On the other hand, if the U.S. shareholder claimed no deduction under section 245A, it would owe U.S. tax of $21 ($100 dividend income × 21% U.S. tax rate = $21). In this situation, Sysco's first proposed alternative would call for the disallowance of $21 of foreign tax credits, equal to the difference in U.S. tax liability between the two counterfactuals ($21 – $0 = $21). On this approach, the U.S. shareholder would be able to deduct the full amount of its dividend under section 245A, resulting in U.S. tax on the dividend of $0, and would also be allowed $9 of foreign tax credits with which to offset tax it owes on other items of income.

If the U.S. tax rate in our hypothetical were higher than the foreign withholding tax rate, a different result would occur. Applying a 35% U.S. rate, Sysco's first proposed alternative would purport to disallow $35 of the U.S. shareholder's foreign tax credits—more than the amount it paid in withholding tax. Either way, Sysco's approach deviates from the instruction in section 245A(d)(1) to disallow credits "for any taxes paid or accrued (or treated as paid or accrued) with respect to any dividend for which a deduction is allowed under this section."

[*21] suffices to show that Sysco's formulas do not appropriately express the rule in section 245A(d)(1).

Sysco suggested at the hearing that, although its formulas do not necessarily work for a straightforward dividend example, they do work in the more complex environment of section 965 and a section 78 dividend. But the rule that section 245A(d)(1) expresses is straightforward. And a formula that works for one example should be adaptable to another example. Sysco offers no persuasive reason why the Court should abandon a simple approach that tracks the statutory rule and works perfectly well across multiple examples for a less adaptable approach that does not address the statute's mandate.

III. *Conclusion*

For the reasons we have described, the additional arguments Sysco presents are unpersuasive. The holdings in *Varian II* suffice to resolve the Cross-Motions now before us. We will therefore grant the Commissioner's Motions and deny Sysco's.

We have considered all other arguments made by the parties, and to the extent not discussed above, find those arguments to be irrelevant, moot, or without merit.

To reflect the foregoing,

An appropriate order will be issued.