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U.S. Tax Court: Compute foreign tax credit using same method that CFC used to apportion interest expense

The U.S. Tax Court today issued an opinion concluding that the taxpayer must use the same method to characterize its controlled foreign corporation (CFC) stock for purposes of computing its foreign tax credit under section 904 as the method used by the CFC for interest expense apportionment.

The case is: *AptarGroup, Inc. v. Commissioner*, 158 T.C. No. 4 (March 16, 2022). Read the Tax Court's **opinion** [PDF 150 KB] (nine pages)

Summary

The Tax Court briefly summarized the facts of the case as follows:

- The taxpayer owned stock in a CFC that apportioned interest expense under the "modified gross income method."
- The taxpayer claimed a foreign tax credit of approximately $3.5 million under section 904 with respect to tax imposed on its income from the CFC.
- To determine the amount of its foreign tax credit, the taxpayer characterized its stock in the CFC using the "asset method."
- Thus, the taxpayer did not use the same method that the CFC used for interest expense apportionment.
- The IRS issued a notice of deficiency to the taxpayer denying the foreign tax credit of $3.5 million.
- The parties filed cross-motions for partial summary judgment on the issue of whether the taxpayer must use the modified gross income method to characterize the stock of its CFC for purposes of computing the foreign tax credit because it was the method that the CFC used to apportion interest expense.

The Tax Court briefly summarized its holding as follows:

- The taxpayer's position was inconsistent with the proper application of Temp. Reg. section 1.861-9T(f)(3)(iv), which requires the U.S. shareholder of a CFC to characterize the stock of the CFC using the same method that the CFC used to apportion its interest expense and which was not limited by Temp. Reg. section 1.861-12T.

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