Tax Court Invalidates Another Tax Cut and Jobs Act Regulation under *Loper Bright*

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Two years ago, in August 2024, the Tax Court in *Varian Medical Systems, Inc. v. Commissioner*, 163 T.C. 76 (2024), faced the issue of whether a regulation issued under the provisions of the Tax Cuts & Jobs Act (TCJA) was valid. In that case, the taxpayer claimed a deduction for dividends paid by a foreign subsidiary under Internal Revenue Code sec. 245A for amounts treated as IRC sec. 78 dividends due to a mismatch between the effective date of sec. 245A and that of the TCJA amendments to sec. 78. Applying *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), the Tax Court invalidated a regulation that gave the amendments to sec. 78 an earlier effective date than TCJA provided, holding that "No matter what the revised regulation intended to interpret, it cannot contradict the clear effective date provided for in the statutory text."

Loper Bright overturned the Court's decision in *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), which held that where a statute is ambiguous or leaves gaps to be filled, the courts are to defer to agency regulation as long as the regulation is a reasonable interpretation of the statute. *Loper Bright* held that a statute can have only one interpretation and that the federal courts are the final arbiters of that interpretation.

Now, almost two years after the *Varian* opinion, another TCJA regulation dealing with the dividend received deduction was invalidated under *Loper-Bright* in *Siemens Medical Solutions USA v. Commissioner*, 167 T.C. No. 5 (July 15, 2026). Which gets us to our two cases.

The Facts in Siemens Medical Solutions USA

Siemens Medical Solutions USA ("SMS") is a wholly-owned subsidiary of the German corporation Siemens Healthineers AG ("SHAG"). A subsidiary of SMS, Siemens Healthcare Diagnostics, Inc. ("SHD"), owned 67.78% of Siemens Medical Solutions Diagnostics Holdings IBV ("SMS BVI"), a Dutch company. In the tax year ended September 30, 2018, SMS BVI sold two 100% owned foreign companies to other foreign members of the Siemens group. These two sales increased SMS BVI's earnings and profits by €819,000,000.

On March 19, 2019, SMS BVI made a pro rata distribution to its shareholders of €1.75 billion. As the owner of 67.78% of SMS BVI's stock, SHD received €1,186,073,740, of which

$670,616,109 was made out of SMS BVI's earnings and profits. The entire dividend was foreign source. All but $40,639,184 of the dividend was attributable to the two sales in 2018.

On its 2019 consolidated corporate income tax return, SMS claimed a deduction for the full amount of the March 2019 dividend. The return noted that the dividend might be subject to the "extraordinary disposition rule." The "extraordinary disposition rule" allowed the deduction of dividend attributable to an "extraordinary disposition" to 50%. SMS filed a Form 8275-R, Regulation Disclosure Statement, setting out the facts and legal analysis on why the extraordinary disposition rule may be invalid. The IRS disallowed $314,992,962 of the sec. 245A deduction claimed and determined deficiencies of $5,581,518 for 2019 and $1,452,606 for 2021.

SMS moved for summary judgment and the IRS filed a cross-motion for summary judgement. Since there were no disputes as to any material fact, the Court stated that it could decide the case on summary judgment.

Statutory Background and the Dividend Received Deduction under IRC Sec. 245A

Historically, the United States has taxed its citizens and domestic corporations on their worldwide income. Subpart F was added to the Code in 1962 in response to the erosion of the U.S. tax base. Its goal was to tax currently specified earnings of controlled foreign corporations ("CFCs"), but since it applied primarily to the passive income of CFCs its effects were limited. This means that taxation of most CFC income is deferred until it is repatriated in the form of a dividend or other distribution. The TCJA alter the U.S.'s approach to international corporate taxation to encourage Americans with CFCs to invest in U.S. their earnings from CFCs.

Three provisions of the TCJA are key to understanding the issues raised in the Siemens case. These are:

- IRC secs. 245A, which provides an exemption from taxation of foreign source dividends received by a domestic corporation from a CFC;
- IRC sec. 965, the Mandatory Repatriation Tax ("MRT"), which added accumulated foreign earnings of foreign corporations to U.S. shareholders' subpart F income for the transition year, but taxed at a lower-than-normal rate; and
- IRC sec. 951A, which provides for current year inclusion for GILTI.

All three of these sections have different effective dates. Sec. 245A applied "to distributions made after" December 31, 2017. Sec. 951A applied to taxable years beginning after December 31, 2017, and to taxable years of U.S. shareholders in which or with which such taxable years of the CFC ends. Income subject to the MRT of sec. 965 is generally measured as of December 31, 2017. The different effective dates caused gaps between their applicability for certain taxpayers, such as taxpayers with a tax year that is not a calendar year. The difference between the application of the MRT and the start of the GILTI regime results in certain dividends being eligible for deduction under sec. 245A despite the underlying earnings not being taxed by the MRT or included in income under sec. 951A.

Treasury's Final Temporary Regulation and the Extraordinary Disposition Rule

On June 18, 2019, Treasury issued its final temporary regulation, T.D. 9865, providing for a limitation on the sec. 245A deduction to address cases where the deduction eliminates income under sec. 965 and is the type of income subject to tax under subpart F and sec. 951A. The preamble to the temporary regulation states that Treasury doesn't believe that "Congress intended section 245A to defeat the purposes of subpart F and GILTI" and that it acted with authority under section 245A(g) to issue regulations. The preamble expressed Treasury's belief that the sec. 245A deduction should only apply to earnings that are not subject to subpart F, MRT and GILTI. Regarding the effective date mismatch and the gap between when sec. 951A first applies and the date earnings and profits are measured for MRT. This gap period, from January 1, 2018, to the start of the next tax year for fiscal year taxpayers, is referred to in the regulation as the "disqualified period." Treasury was concerned that this disqualified period would not be subject to any tax. To limit the sec. 245A deduction for such income, the regulation created the Extraordinary Disposition Rule.

For purposes of the Extraordinary Disposition Rule, an extraordinary disposition is a disposition of property by a CFC outside the ordinary course of business to a related party during the disqualified period. Any earnings and profits from an extraordinary disposition during the disqualified period are posted to an extraordinary disposition account. All other earnings and profits during that period are posted to a non-extraordinary disposition account. Under the regulation, any distribution by the CFC to the American owner is considered as coming first from the non-extraordinary disposition account. After the non-extraordinary disposition account is zeroed out, distributions are out of the extraordinary disposition account. Only half of the dividends paid out of the deductible under sec. 245A.

The Issue Before the Tax Court and the Parties' Arguments

The Tax Court framed the issue before it as whether the extraordinary disposition rules apply to limit a taxpayer's claimed sec. 245A deduction. The Court held it did not. The parties agreed that Siemans was eligible for the dividends received deduction and that the two sales by SMS BVI in 2018 were extraordinary distributions within the meaning of the regulation. The parties further agreed that since the taxpayer's tax year ended September 30, the dispositions, which occurred between January 1 and September 30, 2018, occurred during the disqualified period.

SMS argued that it is entitled to the deduction under sec. 245A, that Congress never limited the dividends received deduction, that there is a conflict between the plain language of the statute and the regulation and, therefore, the regulation must give way to the statute. It also argued that the regulation was issued in violation of the Administrative Procedures Act (APA).

The Commissioner argued that under sec. 245A(g), it could issue all "necessary and proper" regulations to carry out the purpose of sec. 245A, including the treatment of American shareholders of a CFC through a partnership. It also argued that the APA was inapplicable to the final temporary regulation.

The Tax Court's Determination that the Extraordinary Disposition Rule Is Invalid

The Tax Court began its analysis with a set of familiar maxims, (i) that courts presume a legislature means what is said in a statute and (ii) that when Congress includes particular language in one part of a statute but not in another, it does so purposefully.

In the case before it, the March 2019 distributions were made after the effective date of sec. 245A, SMS owned 67.78% of SMS BVI, which therefore was a CFC of SMS, sec. 245A only applies to the foreign source portion of distributions from a CFC, and all of the March 2019 distribution was foreign source. Since all elements of sec. 245A were met, under the plain language of the statute SMS was entitled to the dividends received deduction for the entire distribution.

The Tax Court pointed out that in *Varian, supra*, it noted the effective date mismatch between sec. 245A and the TCJA's amendments to sec. 78:

> As in Varian, Congress "chose the rule it adopted over a readily available alternative." Since the House and the Senate versions of the TCJA had different effective dates for section 245A, Congress had to choose what the effective date should be in the final version. Congress chose to have section 245A apply to distributions made after December 31, 2017. [¶] Additionally, Congress chose the effective date for the start of the GILTI regime. ... [¶] Congress also chose the measurement date for determining income subject to the MRT. The income included is the greater of two measurements of certain foreign income of a CFC as of November 2, 2017, or as of December 31, 2017. There is no ambiguity regarding the effective dates of the start of the GILTI regime and the end of the MRT.

Slip op. at 14. The legislative history shows that Congress was aware of the mismatch between the effective dates and since Congress chose the effective dates "we will respect the choice that Congress made." *Id*.

While the extraordinary disposition rule did not specifically change a TCJA effective date, unlike the regulation at issue in *Varian*, Treasury "specifically drafted the Extraordinary Disposition Rules to address a gap created solely by different effective dates. Thus, while the mechanism for addressing the perceived problem is different, the effect is materially the same." *Id*. at 15. The Court found irrelevant the Commissioner's argument that the regulation was narrowly tailored for a specific situation since "limiting the section 245A deduction to certain transactions is inconsistent with the plain reading of the statute. Thus, the Extraordinary Disposition Rule cannot govern the outcome here."

The Cout also rejected the Commissioner's argument that Congress gave it broad authority to promulgate "necessary and appropriate rules" to define the limits of the sec. 245A deduction under sec. 245A(g) and the general rulemaking authority of sec. 7805(a) and that the Court must read the statute in context:

> Post *Loper Bright*, the Supreme Court stated that "appropriate" is a "quintessentially 'context dependent' term [that] often draws its meaning from surrounding provisions." But context does not help respondent. Here, Treasury is not trying to construe the language of section 245A. Instead, Treasury is trying to correct the mismatch in effective dates by changing the plain meaning of the statute.

Slip op. at 17.

The statute allows a 100% deduction, and the regulation seeks to limit it to a 50% deduction of dividends received that are attributable to an extraordinary disposition. The statute contains no hint of such a rule. "Where there is a direct conflict between a statute and a regulation, the statute prevails." It was Treasury, not Congress, that was concerned about foreign income earned after the MRT measurement date and before the start of the GILTI regime being eligible for the sec. 245A deduction and Treasury which unilaterally decided limit deductions to 50% of dividends attributable to "extraordinary dispositions." The agency cannot "rewrite clear statutory terms to suit its sense of how the statute should operate." The Court concluded:

> Before Loper Bright, courts often applied *Chevron* deference to defer to agencies' "permissible" interpretation of ambiguous statutes even when the reviewing court read the statute differently. *Id*. at 2254. The Supreme Court

> has made it clear that courts should "use every tool at their disposal to determine the best reading of the statute and resolve the ambiguity." *Id*. at 2266.
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> As we concluded in *Varian*, 163 T.C. at 107, the rulemaking authority "does the Commissioner no good here." Section 245A makes it clear that there is no limitation like the one Treasury proposed on the dividends-received deduction. The Extraordinary Disposition Rules fall outside the boundaries of any authority that Congress may have delegated under section 245A(g) or 7805. See *Varian*, 163 T.C. at 107. Therefore, because the Extraordinary Disposition Rules conflict with the statute, they do not affect our conclusion that petitioner is entitled to the full dividends-received deduction for the March 2019 Dividend.

Would the Tax Court Have Ruled Differently Under *Chevron*?

Some jaded individuals think that the courts normally rubber-stamped regulations under *Chevron*. This is not correct. In *Intermountain Insurance Service of Vail v. Commissioner*, 134 T.C. 11 (2010), the Tax Court invalidated regulations issued by Treasury to support a litigating position that it had lost in court. The Tax Court prior to *Loper Bright* invalidated regulations that were contrary to an unambiguous statute. See, *Abdo v. Commissioner*, 162 T.C. 148 (2024). In the *Siemens Medical Solutions USA* case, the statute purposefully had different effective dates. This was something Congress built into the TCJA statutory scheme. This led to results that the Treasury may have disapproved of did not make the statutory scheme ambiguous or leave gaps for Treasury to fill. Since there were no gaps and nothing ambiguous, the regulation was in conflict with the statute and, under *Chevron*, the regulation did not need to be interpreted by the agency.

Even if there was ambiguity in the statute, an interpretation that created a new category of income and limited the deduction to 50% of dividends attributable to such income is not a construction of an ambiguous statute and did not "fill in" any gaps in the statute. It is an arbitrary act by Treasury that, in my view, would not pass step two of *Chevron*.

The *Siemens Medical* and *Varian* cases are not the only post-Loper Bright cases where the Court invalidated a regulation. In *JM Assets LP v. Commissioner*, 165 TC No. 1 (2025), the Court held that a BBA partnership regulation concerning the event that triggered the period for issuing a Notice of Final Partnership Adjustments conflicted with the statute and therefore was invalid. The Tax Court in *Siemens Medical, Varian* and *JM Assets LP* dealt with regulations that were inconsistent with or contrary to the plain language of the statute. In each case, the Court held that the regulation was invalid. It remains to be seen what the

Court will do when there is a clearly ambiguous statute-will the Court hold that Treasury's interpretation of the statute is the best reading of the statute or will it adopt a different interpretation?[1]

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[1] There have been over thirty opinions and orders of the Tax Court in which a taxpayer sought to challenge a regulation under *Loper Bright*. In those cases where the Tax Court addressed the merits of the *Loper Bright* claim, has normally upheld the regulation. Various grounds have been given for upholding the regulation, including: (i) that the regulation was promulgated under a specific grant of authority (see, *Island Shoals Henry 430, LLC v. Commissioner*, 2025 US Tax Ct. LEXIS 2550 (TEFRA regulation valid where issued under a specific grant of authority in IRC §6223(c)(2)): *St. Andrews Plantation LLC v. Commissioner*, 2025 US Tax Ct. LEXIS 341 (summary appraisal regulation valid where promulgated under a specific grant of authority in §155(a)(1)(B) of the Deficit Reduction Act of 1984)); (ii) that under *stare decisis* the regulation was valid (see *Facebook, Inc. v. Commissioner*, 165 TC 19 (2025) (upholding IRC §462 cost-sharing regulations based in part on the decision in *Altera Corp. v. Commissioner*, 926 F.3d 1066 (2019)); *Hamel v. Commissioner*, T.C. Memo 2025-19 (TEFRA regulation regarding statute of limitations on assessing penalties against unidentified partners valid under prior Tax Court precedent); (iii) that while there was a "certain amount of ambiguity" the statute "clearly favors" the IRS's position that penalties under TEFRA are not subject to deficiency procedures (*Moxon Corp. v. Commissioner*, 165 T.C. 19 (2025). In *Bloomberg LP v. Commissioner*, T.C. Memo 2024-108, the Tax Court rejected the IRS's interpretation of a regulation but held that the regulation was valid under the Tax Court's interpretation that harmonized it with the statute.