Whirlpool Financial Corp. & Consolidated Subsidiaries v. Commissioner of Internal Revenue, 154 T. C. No. 9 (2020)

In a landmark decision, the U. S. Tax Court ruled that income from appliance sales by Whirlpool's Luxembourg subsidiary constituted Foreign Base Company Sales Income (FBCSI) under the branch rule of I. R. C. § 954(d)(2). The ruling clarified the tax treatment of income from a branch treated as a subsidiary, preventing tax deferral through a corporate restructuring involving a Mexican manufacturing branch and a Luxembourg sales entity. This decision reinforces the IRS's ability to address tax avoidance strategies involving foreign subsidiaries and branches.

Parties

Whirlpool Financial Corporation & Consolidated Subsidiaries (Petitioner) and Whirlpool International Holdings S. a. r. l. , f. k. a. Maytag Corporation & Consolidated Subsidiaries (Petitioner) v. Commissioner of Internal Revenue (Respondent).

Facts

During 2009, Whirlpool Financial Corporation, through its subsidiaries, engaged in the manufacture and distribution of household appliances. Whirlpool restructured its Mexican operations in 2007-2009, establishing Whirlpool Overseas Manufacturing, S. a. r. l. (WOM) and Whirlpool Luxembourg S. a. r. l. (Whirlpool Luxembourg) in Luxembourg, both controlled foreign corporations (CFCs). Whirlpool Luxembourg operated a branch in Mexico, which nominally manufactured appliances under a maquiladora structure. The Luxembourg entity sold these appliances to Whirlpool and its Mexican subsidiary, generating significant income. The IRS determined that this income constituted FBCSI under I. R. C. § 954(d), taxable to Whirlpool as subpart F income under I. R. C. § 951(a).

Procedural History

Whirlpool filed a motion for partial summary judgment in the U. S. Tax Court, arguing that the sales income was not FBCSI under I. R. C. § 954(d)(1) due to substantial transformation of products by its Mexican branch. The IRS opposed this motion, citing disputes over whether the Luxembourg CFC actually manufactured the products. Both parties filed cross-motions for partial summary judgment on whether the sales income constituted FBCSI under the branch rule of I. R. C. § 954(d)(2). The Tax Court granted the IRS's cross-motion, holding that the sales income was FBCSI under the branch rule.

Issue(s)

Whether the income earned by Whirlpool Luxembourg from sales of appliances to Whirlpool and its Mexican subsidiary constituted Foreign Base Company Sales Income (FBCSI) under I. R. C. § 954(d)(2), the branch rule?

© 2025 SCOTUSreports.com. All rights reserved.

Rule(s) of Law

I. R. C. § 954(d)(2) provides that where a CFC carries on activities through a branch outside its country of incorporation, and the use of the branch has substantially the same effect as if the branch were a wholly owned subsidiary, the income attributable to the branch shall be treated as income derived by a wholly owned subsidiary of the CFC and constitutes FBCSI. The regulations under § 1. 954-3(b), Income Tax Regs. , detail the allocation of income and the comparison of tax rates to determine the application of the branch rule.

Holding

The Tax Court held that the income earned by Whirlpool Luxembourg from the sales of appliances to Whirlpool and its Mexican subsidiary was FBCSI under I. R. C. § 954(d)(2). The court found that the Mexican branch's activities were treated as if conducted by a subsidiary, and the sales income was allocable to Whirlpool Luxembourg, meeting the statutory requirements for FBCSI.

Reasoning

The court's reasoning was based on the application of the branch rule under I. R. C. § 954(d)(2). It found that Whirlpool Luxembourg conducted manufacturing activities through its Mexican branch, which was treated as a subsidiary for tax purposes. The court allocated all manufacturing income to the Mexican branch and all sales income to Whirlpool Luxembourg. The effective tax rate on the sales income was 0%, significantly lower than the hypothetical 28% rate that would apply if the income were treated as sourced in Mexico. This disparity satisfied the conditions for applying the branch rule, resulting in the sales income being classified as FBCSI. The court also rejected Whirlpool's arguments regarding the validity of the regulations and the applicability of the same country exception, emphasizing that the restructuring was designed to avoid U. S. and foreign taxes, precisely the abuse targeted by Congress in enacting subpart F.

Disposition

The court denied Whirlpool's motions for partial summary judgment and granted the IRS's cross-motion regarding the FBCSI issue. The sales income was included in Whirlpool's taxable income under subpart F.

Significance/Impact

This decision reinforces the IRS's enforcement of subpart F rules, particularly the branch rule, to combat tax avoidance strategies involving the separation of sales and manufacturing income through foreign subsidiaries and branches. It clarifies the application of I. R. C. § 954(d)(2) and its regulations, ensuring that income cannot be artificially separated to achieve tax deferral. The ruling may influence future tax planning involving foreign operations and underscores the importance of the branch

© 2025 SCOTUSreports.com. All rights reserved.

rule in preventing tax evasion through corporate restructuring.

© 2025 SCOTUSreports.com. All rights reserved.