



Controversial Section 245A Regulations Challenged in Court

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A U.S. subsidiary of British media conglomerate Liberty Global has become the first taxpayer to mount a judicial challenge against controversial section 245A temporary regulations. The subsidiary petitioned a federal district court in Colorado this past week for a \$109M refund on the basis that the regulations are invalid "for multiple reasons." Section 245A, created by the 2017 Tax Cuts and Jobs Act, allows many U.S. taxpayers to receive tax-free dividends from foreign subsidiaries. The temporary regulations, issued in June of 2019, however, would deny a deduction under sections 245A and 954(c)(6) with respect to certain dividends.

Ivins, Phillips & Barker has stood at the forefront of taxpayer backlash against these regulations since their promulgation. We questioned their validity and urged their withdrawal. We proposed a carve-out for transactions integrating recently acquired businesses and advocated for it at a public hearing on the regulations. Throughout, our attorneys have advised clients as they adopt a position on the regulations, strategize to challenge them and vindicate their position.

Our firm has significant experience successfully challenging regulations, including litigating the first Court of Appeals case to result in invalidation of an IRS regulation under the APA arbitrary and capricious standard. We stand ready to assist businesses facing exposure under the section 245A regulations.

If you have questions about the section 245A regulations, please contact a member of our team: Jamie Brown, Eric Fox, Hank Gutman, Jon Holbrook, Mindy Herzfeld, Helna Klumpp, Jeff Moeller, Les Schneider, or Pat Smith.