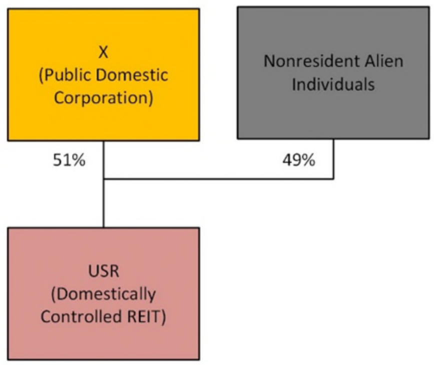
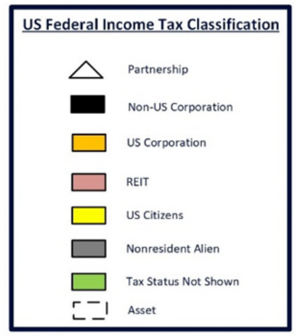
APPENDIX A – FINAL REGULATIONS EXAMPLES

Example 1 – Base Case: REIT Stock Held by Public Domestic C Corporation





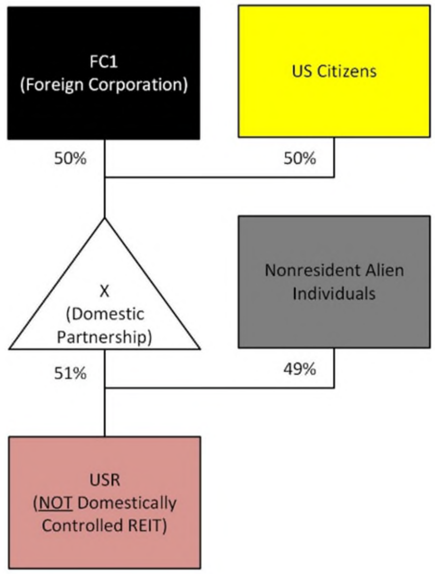
Facts

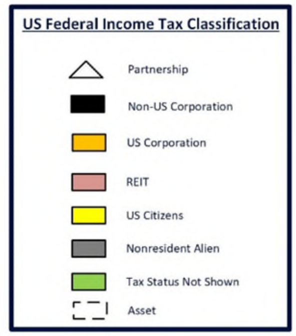
USR is a REIT, 51 percent of the stock of which is held by X, a public domestic C corporation, and 49 percent of the stock of which is held by nonresident alien individuals, which are foreign persons.

Analysis

USR is a REIT. Because X is a public domestic C corporation, it cannot be a foreign-controlled domestic corporation, and therefore, X is a non-look-through person. Thus, X is considered as holding directly or indirectly stock of USR for purposes of determining whether USR is a domestically controlled REIT. The USR stock held directly or indirectly by X is not considered held directly or indirectly by any other person, including the shareholders of X. Because X is not a foreign person and holds directly or indirectly 51 percent of the single class of outstanding stock of USR, foreign persons hold directly or indirectly less than 50 percent of the fair market value of the stock of USR, and USR therefore is a domestically controlled REIT.

Example 1 – Alternative Facts A: REIT Stock Held by Domestic Partnership





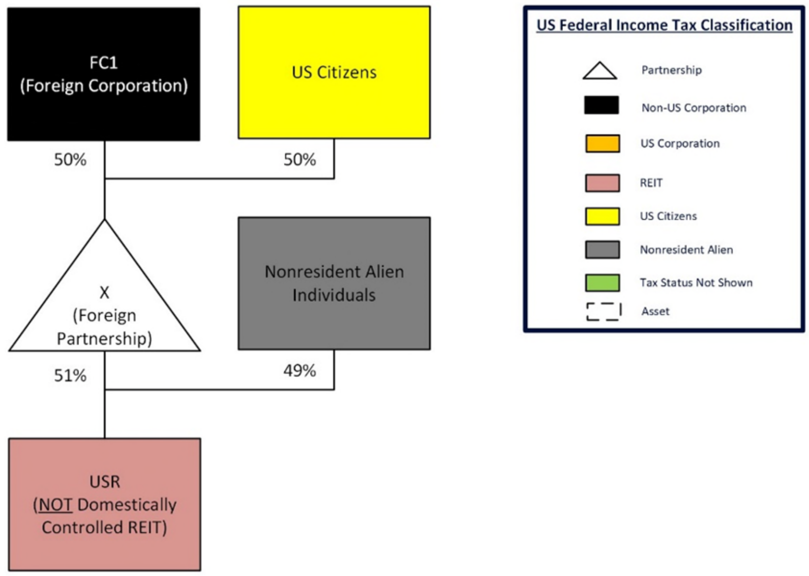
Facts

The facts are the same, except that, instead of being a public domestic C corporation, X is a domestic partnership that is not a publicly traded partnership. In addition, FC1, a foreign corporation, holds a 50 percent interest in X, and the remaining interests in X are held by U.S. citizens.

Analysis

X is not a "non-look-through person", and therefore is a look-through person and is not considered as holding directly or indirectly stock of USR for purposes of determining whether USR is a domestically controlled REIT. The stock of USR that, but for the requirement that only a non-look-through person is considered to hold directly or indirectly stock of a REIT, is considered held by X, a look-through person, is instead considered held proportionately by X's partners that are non-look-through persons. Accordingly, because FC1 and the U.S. citizen partners in X are non-look-through persons, 25.5 percent of the stock of USR is considered as held directly or indirectly by FC1 (50% x 51%), a foreign person, and 25.5 percent (in the aggregate) of the stock of USR is considered as held directly or indirectly by the U.S. citizen partners in X (50% x 51%), who are not foreign persons. Foreign persons therefore hold directly or indirectly 74.5 percent of the stock of USR (49 percent of the stock of USR held directly or indirectly by nonresident alien individuals, who are non-look-through persons plus the 25.5 percent held directly or indirectly by FC1), and USR is not a domestically controlled REIT.

Example 1 – Alternative Facts B: REIT Stock Held by Foreign Partnership



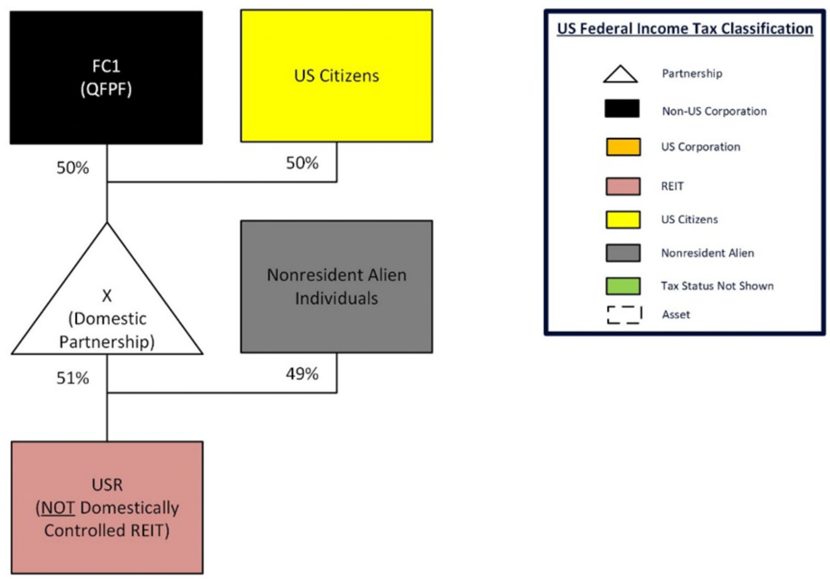
Facts

The facts are the same as in Alternative Facts A, except that, instead of being a domestic partnership, X is a foreign partnership.

Analysis

The result is the same as Alternative Facts A.

Example 1 – Alternative Facts C: REIT Stock Held by Qualified Foreign Pension Fund (QFPF)



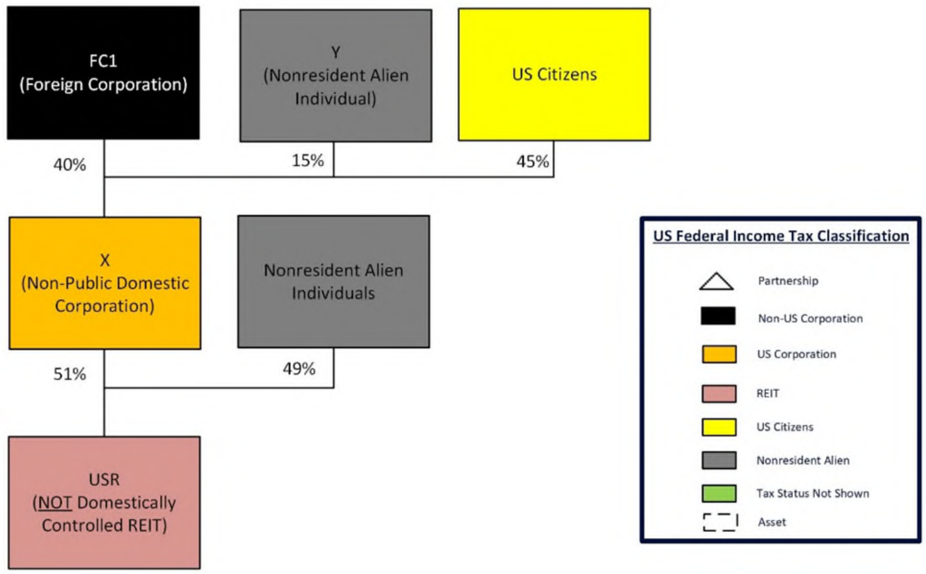
Facts

The facts are the same as in Alternative Facts A, except that, instead of being a foreign corporation, FC1 is a qualified foreign pension fund.

Analysis

X is treated as a look-through person. FC1, a foreign person, is a non-look-through person. Because FC1 and the U.S. citizen partners in X are non-look-through persons, 25.5 percent of the stock of USR is considered as held directly or indirectly by FC1 (50% x 51%), and 25.5 percent (in the aggregate) of the stock of USR is considered as held directly or indirectly by the U.S. citizen partners in X (50% x 51%). For the same reasons described in Example 1, foreign persons therefore hold directly or indirectly 74.5 percent of the stock of USR, and USR is <u>not</u> a domestically controlled REIT.

Example 2 – Base Case: REIT Stock Held by Non-Public Domestic C Corporation That is a Foreign-Controlled Domestic Corporation



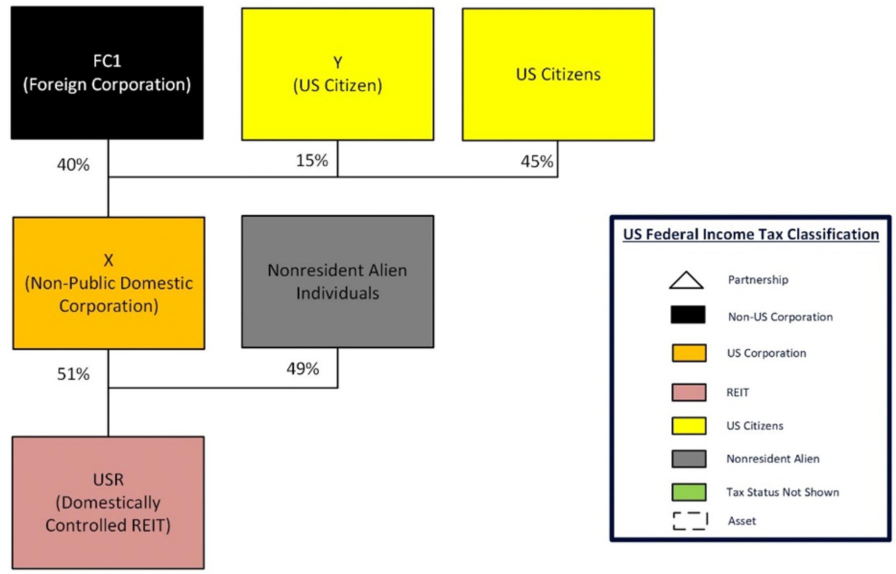
Facts

USR is a REIT, 51 percent of the stock of which is held by X, a non-public domestic C corporation, and 49 percent of the stock of which is held by nonresident alien individuals, which are foreign persons. FC1, a foreign corporation, holds 40 percent of the stock of X, and Y, a nonresident alien individual, holds 15 percent of the stock of X. The remaining 45 percent of the stock of X is held by U.S. citizens.

Analysis

X, a non-public domestic C corporation, is a non-look-through person, unless the C corporation look-through rule applies to treat X as a look-through person because it is a foreign-controlled domestic corporation. FC1, Y, and the U.S. citizen shareholders of X are non-look-through persons. FC1, Y, and the U.S. citizen shareholders are all considered as holding directly or indirectly stock of X for purposes of determining whether X is a foreign-controlled domestic corporation. The stock held directly or indirectly by FC1, Y, and the U.S. citizen shareholders is not considered held directly or indirectly by any other person. Because FC1 and Y, both foreign persons, hold directly or indirectly 40 percent and 15 percent of the stock of X, respectively, foreign persons hold directly or indirectly more than 50 percent of the fair market value of the stock of X, and X is a foreign-controlled domestic corporation. Accordingly, X is a look-through person and, therefore, is not considered as holding directly or indirectly stock of USR for purposes of determining whether USR is a domestically controlled REIT. The stock of USR that, but for the requirement that only a non-look-through person is considered to hold directly or indirectly stock of a REIT, is considered held by X, a look-through person, is instead considered held proportionately by X's shareholders that are non-look-through persons. Accordingly, because FC1, Y, and the U.S. citizen shareholders of X are non-look-through persons, 20.4 percent of the stock of USR is considered as held directly or indirectly by FC1 (40% x 51%), 7.65 percent of the stock of USR is considered as held directly or indirectly by Y (15% x 51%), and 22.95 percent (in the aggregate) of the stock of USR is considered as held directly or indirectly by the U.S. citizen shareholders (45% x 51%). Foreign persons therefore hold directly or indirectly 77.05 percent of the stock of USR (49 percent of the stock of USR held directly by nonresident alien individuals, who are foreign persons and non-look-through persons, plus the 20.4 percent and 7.65 percent held indirectly by FC1 and Y, respectively), and USR is not a domestically controlled REIT.

Example 2 – Alternative Facts A: REIT Stock Held by Non-Public Domestic C Corporation That is Not a Foreign-Controlled Domestic Corporation



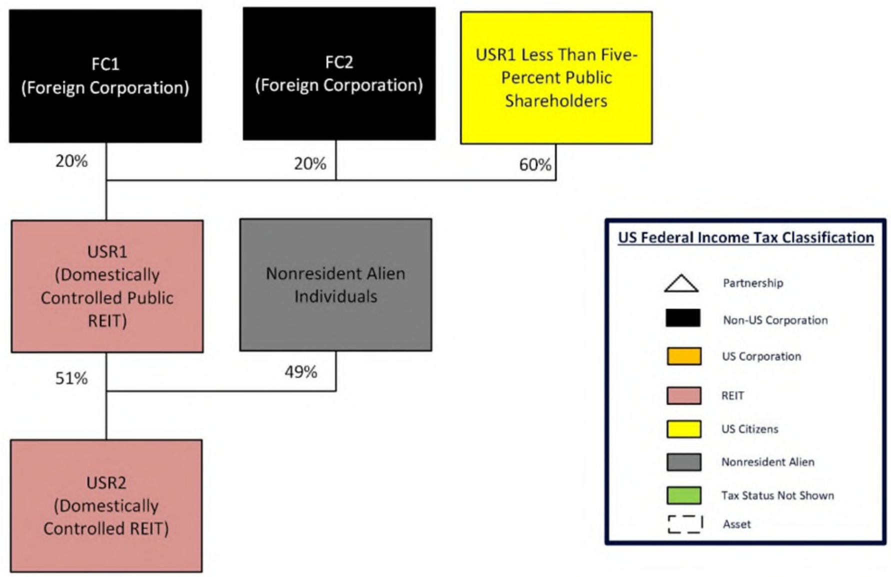
Facts

The facts are the same, except that, Y is a U.S. citizen instead of a nonresident alien individual.

Analysis

If Y were a U.S. citizen instead of a nonresident alien individual, X would be a non-look-through person because it is not a foreign-controlled domestic corporation (the only foreign non-look-through person to hold directly or indirectly stock in X is FC1, which holds a 40-percent interest). Consequently, USR would be a domestically controlled REIT because foreign persons hold directly or indirectly less than 50 percent of the stock of USR.

Example 3 – Base Case: REIT Stock held by Public REIT that is a Domestically Controlled REIT



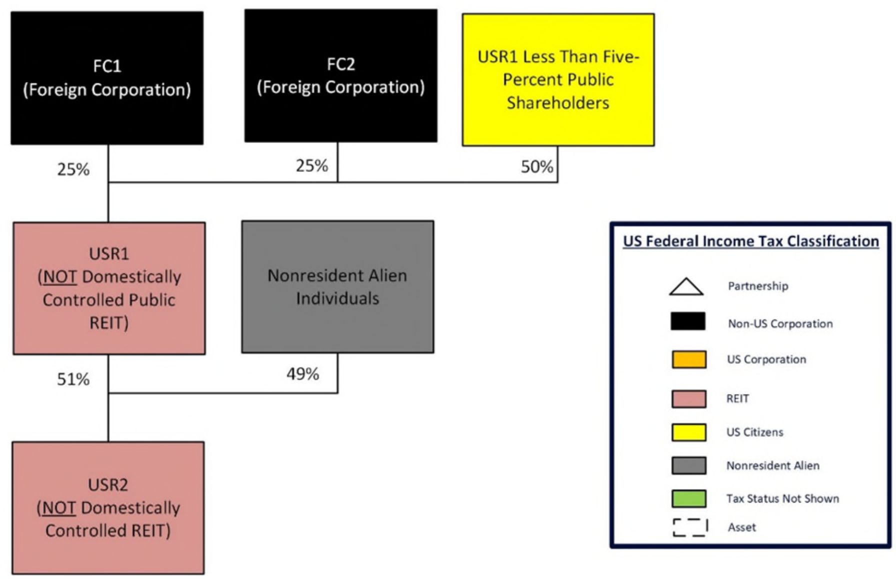
Facts

USR2 is a REIT, 51 percent of the stock of which is held by USR1, a REIT that is a public REIT, and 49 percent of the stock of which is held by nonresident alien individuals, which are foreign persons. The stock of USR1 is U.S. publicly traded REIT stock. FC1 and FC2, both foreign corporations, each hold 20 percent of the stock of USR1. The remaining 60 percent of the stock of USR1 is held by persons that each hold less than 5 percent of the stock of USR1 and with respect to which USR1 has no actual knowledge that such person is not a United States person or is foreign controlled (by treating any person that is not a non-public domestic C corporation as if it were a non-public domestic C corporation for this purpose) (USR1 less than five-percent public shareholders).

Analysis

Each of the USR1 less than five-percent public shareholders is treated as a United States person that is a non-look-through person. Consequently, USR1 is a domestically controlled REIT because FC1 and FC2, each a foreign person that is a non-look-through person, together hold directly or indirectly only 40 percent of the stock of USR1 and, thus, foreign persons hold directly or indirectly less than 50 percent of the fair market value of the stock of USR1. In addition, the USR2 stock held by USR1 is treated as held directly or indirectly by a United States person that is a non-look-through person. Because USR1 holds directly or indirectly 51 percent of the stock of USR2, foreign persons hold directly or indirectly less than 50 percent of the fair market value of the stock of USR2, and USR2 is a domestically controlled REIT.

Example 3 – Alternative Facts A: REIT Stock held by Public REIT that is Not a Domestically Controlled REIT



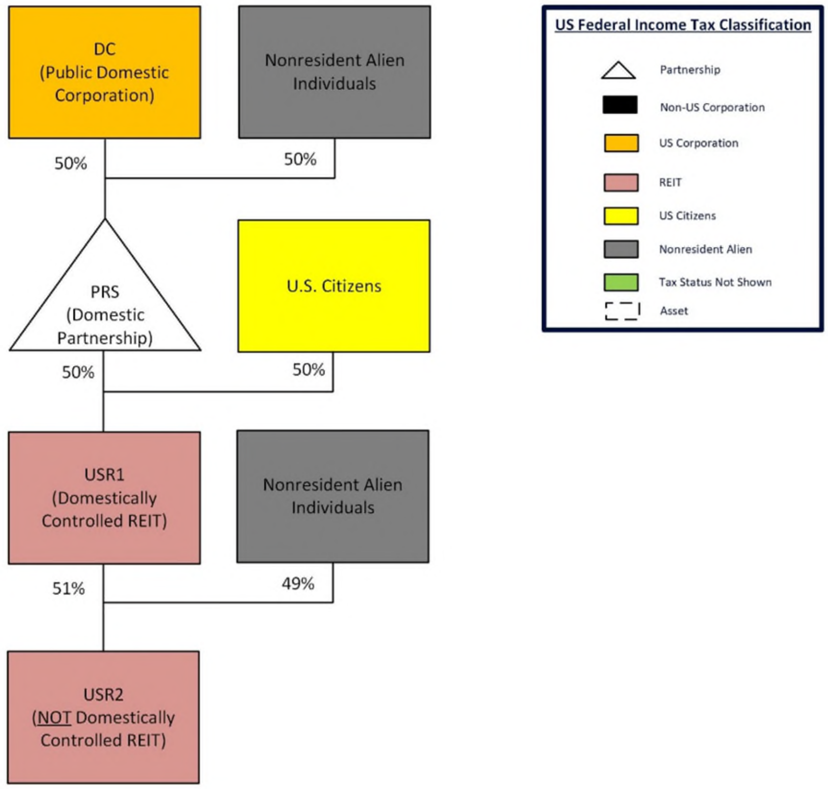
Facts

The facts are the same, except that 25 percent of the stock of USR1 is held by each of FC1 and FC2, with the remaining 50 percent of the stock of USR1 held by the USR1 less than five-percent public shareholders.

Analysis

Regardless of the treatment of the USR1 less than five-percent public shareholders, USR1 is not a domestically controlled REIT because FC1 and FC2, each a foreign person that is a non-look-through person, together hold directly or indirectly 50 percent of the stock of USR1 and, thus, foreign persons do not hold directly or indirectly less than 50 percent of the fair market value of the stock of USR1. In addition, the USR2 stock held by USR1 is treated as held by a foreign person that is a non-look-through person. Because USR1 holds directly or indirectly 51 percent of the stock of USR2, foreign persons do not hold directly or indirectly less than 50 percent of the fair market value of the stock of USR2, and USR2 is not a domestically controlled REIT.

Example 4: REIT Stock Held by Non-Public REIT



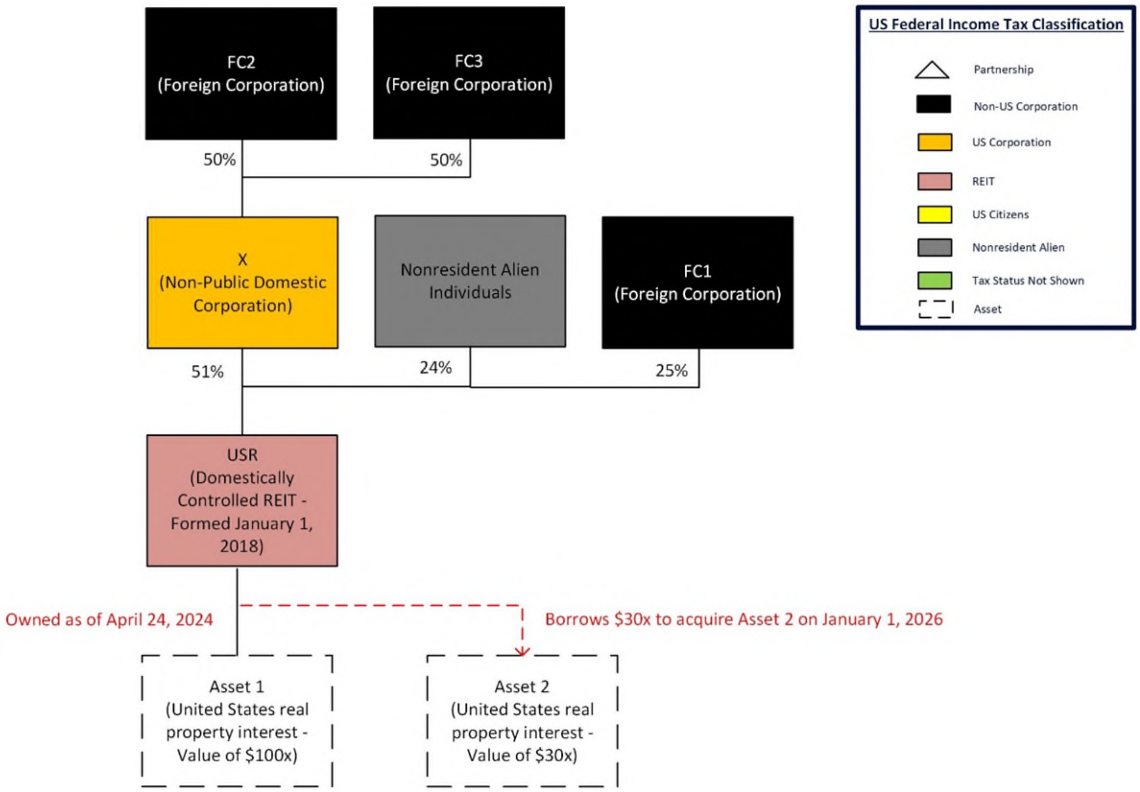
Facts

USR2 is a REIT, 49 percent of the stock of which is held by nonresident alien individuals, and 51 percent of the stock of which is held by USR1, a REIT. USR1 is not a public REIT. U.S. citizens hold 50 percent of the stock of USR1. The remaining 50 percent of the stock of USR1 is held by PRS, a domestic partnership, 50 percent of the interests in which are held by DC, a public domestic C corporation, and 50 percent of the interests in which are held by nonresident alien individuals.

Analysis

USR1 is not treated as a non-look-through person because USR1 is not a public REIT. Each of USR1 and PRS is a look-through person that is not treated as holding directly or indirectly stock in USR2 for purposes of determining whether USR2 is a domestically controlled REIT. Because the U.S. citizens who hold USR1 stock are non-look-through persons, those U.S. citizens are treated as holding directly or indirectly 25.5 percent of the stock of USR2 through their USR1 stock interest (50% x 51%). Similarly, because DC and the nonresident alien partners in PRS are non-look-through persons, each is treated as holding directly or indirectly the stock of USR2 through its interest in PRS and PRS's interest in USR1. Thus, DC is treated as holding directly or indirectly 12.75 percent of the stock of USR2 (50% x 50% x 51%) and the nonresident alien individual partners, which are foreign persons, are treated as directly or indirectly holding a 12.75 percent aggregate interest in the stock of USR2 (50% x 50% x 51%). Foreign persons therefore hold directly or indirectly 61.75 percent of the stock of USR2 (the 49 percent stock in USR2 directly held by nonresident alien individuals, who are foreign persons and non-look-through persons, plus the 12.75 percent in stock indirectly held by the nonresident alien individual partners in PRS), and USR2 is not a domestically controlled REIT.

Example 5 - Transition Rule Asset Requirement



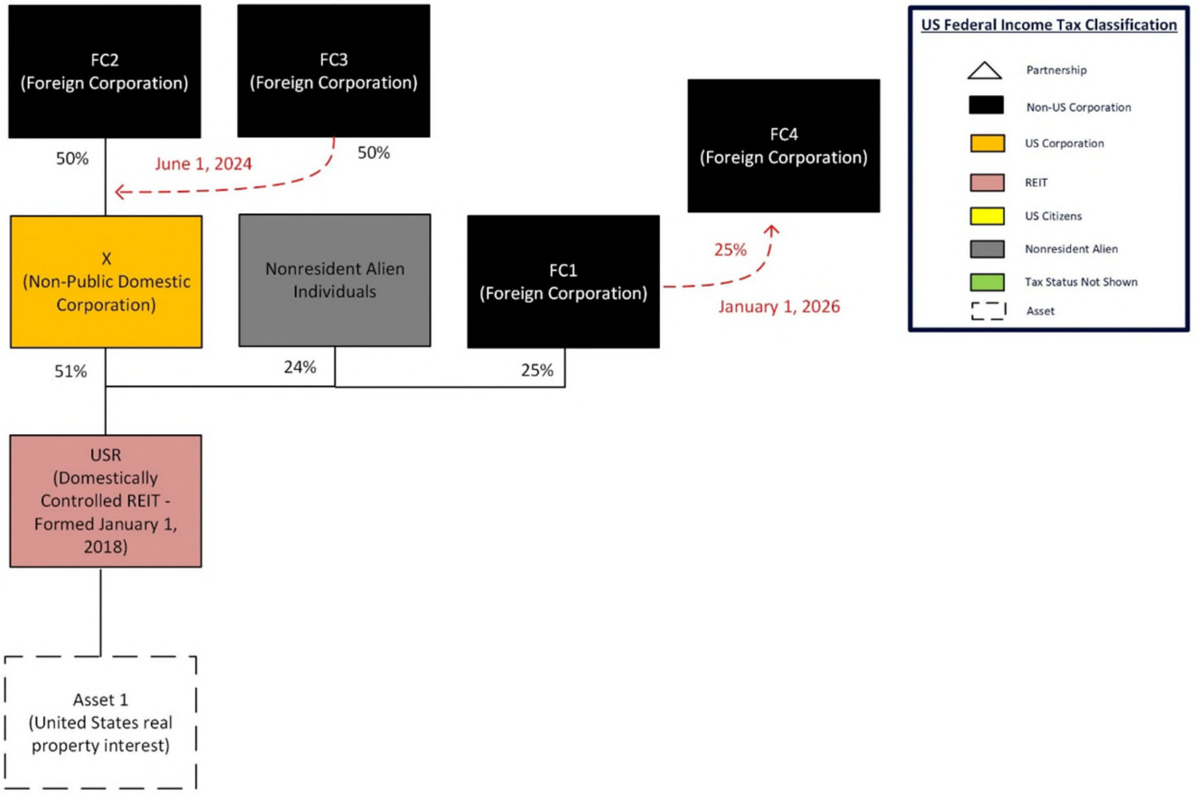
Facts

USR is a REIT formed on January 1, 2018. From formation, 51 percent of the stock of USR is held by X, a non-public domestic C corporation, 25 percent of the stock of USR is held by FC1, a foreign corporation, and 24 percent of the stock of USR is held by nonresident alien individuals. FC2, a foreign corporation, and FC3, also a foreign corporation, each hold 50 percent of the stock of X. On April 24, 2024, USR's only property is Asset 1, a United States real property interest. The value of Asset 1, calculated under section 856(c)(4) as of the most recent quarter of USR's taxable year before April 24, 2024, is $100x. On January 1, 2026, USR borrows $30x and acquires Asset 2, a United States real property interest, for $30x.

Analysis

As of April 24, 2024, USR is a domestically controlled REIT, X is a non-look-through person and, consequently, foreign persons hold directly or indirectly less than 50 percent of the stock of USR. Accordingly, USR satisfies the requirement that it is a domestically controlled REIT without regard to the application of the C corporation look-through rule. USR also satisfies the asset and ownership requirements, respectively, as of such date, because USR has not acquired directly or indirectly any United States real property interests, and the ownership of stock of USR has not changed. Thus, as of April 24, 2024, USR qualifies for the transition relief. However, on January 1, 2026, USR no longer meets the requirement for transition relief because the fair market value of Asset 2, $30x, is 30 percent (which is more than 20 percent) of $100x, which is the fair market value of USR's United States real property interests, namely Asset 1, as of April 24, 2024. Therefore, the transition rule ceases to apply to USR and, thus, the C corporation look-through rule applies for purposes of determining whether USR is domestically controlled with respect to transactions occurring after January 1, 2026. Because FC2 and FC3 are non-look-through persons that hold more than 50 percent of the stock of X, X is a foreign-controlled domestic corporation under the C corporation look-through rule, and USR will not be a domestically controlled REIT as of January 2, 2026, because foreign non-look-through persons (FC1, 25 percent, FC2, 25.5 percent, FC3, 25.5 percent, and the nonresident alien individuals, 24 percent) directly or indirectly hold more than 50 percent of the stock of USR.

Example 5 - Alternative Facts A: Transition Rule Ownership Requirement



Facts

The facts are the same, except that instead of USR borrowing funds and acquiring Asset 2, FC3 sells its 50-percent stock interest in X to FC2 on June 1, 2024, and, on January 1, 2026, FC1 sells its 25-percent stock interest in USR to FC4, a foreign corporation. Following FC3's sale of its X stock to FC2 on June 1, 2024, FC2's stock interest in USR has increased by 25.5 percentage points, from 25.5 percent on April 24, 2024 (which is 50 percent of 51 percent), to 51 percent. Following FC1's sale of its USR stock to FC4 on January 1, 2026, FC4's stock interest in USR has increased by 25 percentage points, from zero percent on April 24, 2024, to 25 percent.

Analysis

In the aggregate, non-look-through persons have increased their ownership in USR by 50.5 percentage points (25.5 percent and 25 percent for FC2 and FC4, respectively), and USR no longer meets the requirement for transition relief as of January 1, 2026. Therefore, the transition rule ceases to apply to USR and, thus, the C corporation look-through rule applies for purposes of determining whether USR is domestically controlled with respect to transactions occurring after January 1, 2026. Because FC2, a non-look-through person, holds more than 50 percent of the stock of X, X is a foreign-controlled domestic corporation, and USR will not be a domestically controlled REIT because foreign non-look-through persons (FC2, 51 percent, FC4, 25 percent, and the nonresident alien individuals, 24 percent) directly or indirectly hold more than 50 percent of the stock of USR.