



TaxNewsFlash

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Notice 2023-55: Temporary relief for foreign tax credit under sections 901 and 903

The IRS today released an advance version of [Notice 2023-55](#) [PDF 62 KB] announcing temporary relief for taxpayers determining whether a foreign tax is eligible for a foreign tax credit under sections 901 and 903.

For foreign taxes paid during tax years 2022 and 2023, taxpayers may apply:

- Former § 1.901-2(a) and (b), before it was amended by Treasury Decision 9959 (the 2022 FTC final regulations), but subject to a modification to the non-confiscatory gross basis tax rule as described in the notice
- Existing § 1.903-1 without the attribution requirement

The notice also announces that the Treasury Department and the IRS are considering amendments to the 2022 foreign tax credit final regulations and continue to consider whether, and under what conditions, to extend the relief described in the notice to tax years following the 2023 tax year.

Background

Section 901 allows a credit for foreign income, war profits, and excess profits taxes; section 903 allows a credit for taxes paid in lieu of a generally imposed foreign income, war profits, or excess profits tax (collectively, foreign income taxes).

2022 FTC final regulations revised the rules for determining whether a foreign levy is a creditable foreign income tax under both sections 901 and 903, including through the introduction of new attribution requirements under each provision. Read [TaxNewsFlash](#)

The intent behind the 2022 FTC final regulations had been to limit the allowance of an FTC for “novel extraterritorial taxes” (such as digital services taxes (DSTs)) that would undermine the purpose of the

FTCs to limit double taxation of income that is properly attributable to a taxpayer's activities or investment in a foreign country (i.e., income over which the foreign country would have had the primary taxing right under traditional international tax principles).

However, commentators raised concerns that various foreign taxes that would likely have been considered creditable section 903 taxes prior to the 2022 FTC final regulations might fail to satisfy the revised creditability requirements.

Treasury and IRS released two sets of technical corrections in July 2022 (Read [TaxNewsFlash](#)) and proposed regulations in November 2022 (Read [TaxNewsFlash](#)) in an attempt to allay taxpayer concerns. Although welcome, these technical corrections did not address all of the concerns that taxpayers had raised (including, for example, the treatment of the Brazilian corporate income tax prior to its recent amendment to adopt transfer pricing principles consistent with OECD principles). Notice 2023-25 generally allows taxpayers to defer application of the new section 901 regulations until 2024, with the result that any foreign taxes which were creditable under prior regulations can continue to be treated as such at least through the end of 2023.

Temporary relief period

The temporary relief now offered through [Notice 2023-55](#) applies both to foreign taxes paid by the taxpayer itself in a taxable year during the relief period (i.e. the taxpayer's taxable years beginning on or after December 28, 2021 and ending before December 31, 2023) as well as taxes paid by another person (including a CFC) during this period for which the taxpayer would be eligible to claim a credit, as provided in section 901, if the taxpayer applied the temporary relief to such taxes.

A member of a consolidated group may apply the temporary relief to a taxable year during the relief period only if all members of the consolidated group apply the temporary relief to that taxable year.

Digital services taxes remain non-creditable

However, gross basis taxes imposed on the gross receipts or gross income arising from the provision of digital services will continue to not satisfy the net income requirement under section 901, except in the case of a foreign tax whose base consists solely of investment income that is not derived from a trade or business, or wage income (or both).

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