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American Citizens Abroad (ACA) recent submission of comments on IRS: REG-112096-22: Regulations Relating to the Foreign Tax Credit.

American Citizens Abroad recently submitted comments on the IRS's regulations REG-112096-22: The regulations relate to the use of Foreign Tax Credits and ACA's comments are with regard to the final regulations and their impact on individual non-resident taxpayers ACA noted the following:

Even Greater Filing complexity

- The final regulations require individual non-resident taxpayers seeking creditable taxes to establish separately whether the income taxes they are subjected to passes the four tests: realization, gross receipts, cost recovery and attribution. The final regulations require all individual non-resident taxpayers who live in jurisdictions without a tax on income to establish whether taxes paid qualify as a tax paid in lieu of a tax on income.

For most, these requirements for establishing whether the taxes paid to the foreign countries where the live and work are creditable will be impossible without professional assistance.

- The Treaty Coordination Rule excuses individual taxpayers living and working in foreign countries that are U.S. tax treaty partners from the chore of establishing whether their foreign taxes are creditable. If the taxpayer claims the benefits of the tax treaty, then they may presume that their income taxes are conforming to U.S. definitions and so are creditable. But many non-resident taxpayers do not live in countries with U.S. tax treaties. Further, some non-resident taxpayers living in tax treaty jurisdictions choose not to claim the benefits of the income tax treaty because to do so would be disadvantageous.

Cost Recovery Test

- Although many non-resident taxpayers have only wage income, those whose income is comprised of wage income and income from other activities (e.g., contract income, small business profits, etc.) may be disallowed FTCs for taxes paid on income from a combination of sources.
- Even those with wage income alone might find the application, in the tax regulations of their country of residence, of a standard allowance against income of unspecified source could render the taxes they paid not creditable.

Source-based Attribution Test

- The new attribution test in the FTC final regulations will deny FTCs to U.S. citizens who live and work in territorial tax systems, such as Hong Kong. U.S. citizens living and/or working in Angola, Guatemala, Honduras, Nicaragua, Panama and Paraguay will similarly be denied FTCs because these countries adopt a territorial tax system and source service income inconsistent with U.S. principles.

Transfer Pricing Rules

- Non-resident taxpayers living in jurisdictions where the transfer pricing rules do not include the OECD's "arm's length principles" – a matter completely unrelated to individual taxation and one in which ordinary, individual taxpayers will certainly have no understanding or orientation - will no longer have access to FTCs and will henceforth be taxed both under the U.S. IRC and the tax jurisdiction of the country where they reside.

Expunged Withholding Exception

- Individuals living and working abroad are exempted from the U.S. federal income tax withholding when income earned in a foreign country is subjected to legally required income tax withholding, and when the amounts withheld are creditable income taxes under U.S. regulations. If, as noted herein, those taxes are no longer creditable, then the U.S. citizen may be relying on an exception to the U.S. federal income tax withholding rules that is no longer available to them.

Click to read ACA's full submission letter [here](#).

Contact: Marylouise Serrato

Marylouise.serrato@americansabroad.org

+1 (202) 322-8441