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IRS directive on U.S. creditability of two French social taxes; change in IRS position

The IRS today posted a joint directive from the Large Business and International (LB&I) and Small Business/Self-Employed (SBSE) divisions as guidance for IRS examiners on the creditability of two French social taxes—the “contribution sociale généralisée” (CSG) and the “contribution pour le remboursement de la dette sociale” (CRDS)—for U.S. federal income tax purposes.

The directive—[LB&I-04-0819-007](#) (dated August 6, 2019, and posted August 19, 2019)—states a change in IRS policy, specifically that the IRS no longer maintains a position that the CSG and CRDS are ineligible for a foreign tax credit under section 901.

IRS examiners are thus directed not to challenge taxpayer claims for foreign tax credit for CSG and CRDS payments (including claims for tax refunds) and are not to assert that the CSG and CRDS are not creditable income taxes for U.S. tax purposes.

According to the directive:

- The CSG and CRDS are French taxes imposed on income and, to the extent imposed on income from employment, they are withheld by the employer in a similar manner to other social levies and appear on the employee’s pay stub as a social contribution.
- Historically, the IRS denied foreign tax credits for CSG and CRDS imposed on employment income.
- A 2014 opinion by the U.S. Tax Court upheld the IRS’s position on concluding that the Social Security totalization agreement between the United States and France applied to the CSG and CRDS levies and that taxpayers were not eligible for a U.S. foreign tax credit. However, on appeal, the U.S. Court of Appeals for the District of Columbia Circuit found that the Tax Court had erred in not sufficiently analyzing evidence of the shared expectations of the signatory countries in its interpretation of the totalization agreement, and thus remanded the case to the Tax Court for further proceedings.
- The U.S. State Department in a May 30, 2019 letter confirmed to the IRS that the United States and France reached “a shared understanding” that the CSG and CRDS levies do not “amend[] or

supplement[]” the totalization agreement and that this shared understanding had been memorialized in diplomatic communications this year.

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