



TaxNewsFlash

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Final and proposed regulations: Foreign tax credit (text of regulations)

The IRS today posted on its website versions of final and temporary regulations (T.D. 9922) and of proposed regulations (REG-101657-20) implementing foreign tax credit measures.

The [final regulations](#) [PDF 1.08 MB] (287 pages) provide guidance relating to:

- The allocation and apportionment of deductions under sections 861 through 865, including rules on the allocation and apportionment of expenditures for research and experimentation (R&E), stewardship, legal damages, and certain deductions of life insurance companies
- The allocation and apportionment of foreign income taxes
- The interaction of the branch loss and dual consolidated loss recapture rules with section 904(f) and (g)
- The effect of foreign tax redeterminations of foreign corporations, including for purposes of the application of the high-tax exception described in section 954(b)(4) (and for purposes of determining tested income under section 951A(c)(2)(A)(i)(III)), and required notifications under section 905(c) to the IRS of foreign tax redeterminations and related penalty provisions
- The definition of foreign personal holding company income under section 954
- The application of the foreign tax credit disallowance under section 965(g)
- The application of the foreign tax credit limitation to consolidated groups

The [proposed regulations](#) [PDF 1.1 MB] (297 pages) relate to the foreign tax credit and provide guidance on:

- The determination of foreign income taxes subject to the credit and deduction disallowance provision of section 245A(d)
- The determination of oil and gas extraction income from domestic and foreign sources and of electronically supplied services under the section 250 regulations
- The impact of the repeal of section 902 on certain regulations issued under section 367(b)
- The sourcing of inclusions under sections 951, 951A, and 1293
- The allocation and apportionment of interest deductions, including rules for allocating interest expense of foreign bank branches and certain regulated utility companies, an election to capitalize

research and experimental expenditures and advertising expenses for purposes of calculating tax basis, and a revision to the controlled foreign corporation (CFC) netting rule

- The allocation and apportionment of section 818(f) expenses of life insurance companies that are members of consolidated groups
- The allocation and apportionment of foreign income taxes, including taxes imposed with respect to disregarded payments
- The definitions of a foreign income tax and a tax in lieu of an income tax, including the addition of a jurisdictional nexus requirement and changes to the net gain requirement, the treatment of certain tax credits, the treatment of foreign tax law elections for purposes of the noncompulsory payment rules, and the substitution requirement under section 903
- The allocation of the liability for foreign income taxes in connection with certain mid-year transfers or reorganizations
- Transition rules to account for the effect on loss accounts of net operating loss carrybacks to pre-2018 tax years that are allowed under the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act)
- The foreign branch category rules in Reg. section 1.904-4(f) and the definition of a financial services entity for purposes of section 904
- The time at which credits for foreign income taxes can be claimed pursuant to sections 901(a) and 905(a)

Both versions of the final and proposed regulations include this statement:

This document is in the process of being submitted to the Office of the Federal Register (OFR) for publication and will be pending placement on public display at the OFR and publication in the Federal Register. The version of the ... regulation released today may vary slightly from the published document if minor editorial changes are made during the OFR review process. The document published in the Federal Register will be the official document.

The purpose of this report is to provide text of these regulations.

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