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KPMG report: Initial impressions of final and proposed foreign tax credit regulations

The IRS and U.S. Treasury Department on September 29, 2020, released an unofficial advance version of final regulations related to the determination of the foreign tax credit (“FTC”) ahead of their being published by the Federal Register.

Read an [October 2020 report](#) [PDF 378 KB] about these regulations as prepared by KPMG LLP

Overview

The final regulations (T.D. 9922, or the “2020 Final Regulations”) finalize aspects of the proposed regulations published on December 17, 2019 (“2019 Proposed Regulations”). Read the [final regulations](#) [PDF 1.07 MB] (287 pages).

The 2020 Final Regulations provide guidance related to the FTC, including the allocation and apportionment of deductions for stewardship, research and experimental (“R&E”) expenditures, damages and other payments arising from litigation, and creditable foreign taxes; the effect on foreign tax redeterminations; the availability of FTCs under the section 965 transition tax; and the application of the FTC limitation to consolidated groups.

The 2020 Final Regulations also include guidance regarding adjustments to hybrid deduction accounts to take into account certain inclusions in income by a U.S. shareholder, conduit financing arrangements involving hybrid instruments, and the treatment of certain payments under the global intangible low-taxed income (“GILTI”) provisions.

Also a version of proposed regulations (REG-101657-20) (the “2020 Proposed Regulations”) were released to provide additional guidance related to the FTC, including the allocation and apportionment of interest expense and foreign income tax expense, transition rules regarding the impact on loss accounts of net operating loss (“NOL”) carrybacks, the definitions of foreign branch category and financial services income, and the definition of a creditable foreign income tax and “in lieu of” tax under section 903.

Many aspects of the new definitions of a creditable foreign income tax represent significant departures from existing law and reflect a concern by Treasury that an increasing number of taxes are being adopted worldwide that diverge from traditional international norms of income taxation, including norms as to jurisdictional reach. The 2020 Proposed Regulations also include guidance with respect to the disallowance of FTCs under section 245A(d) and the determination of GILTI and foreign-derived intangible income ("FDII") under section 250. Read the [proposed regulations](#) [PDF 1.10 MB] (297 pages).

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