

LB&I Process Unit Knowledge Base – International

Library Level	Number	Title
Shelf		Individual Outbound
Book	10	Foreign Tax Credit
Chapter	10.1	Creditability of Foreign Tax Credit Claimed
Section	10.1.2	Exhaustion of Administrative Remedies

Unit Name	Exhaustion of Administrative Remedies	
Primary UIL Code	9432.01-02	Exhaustion of Administrative Remedies

Document Control Number (DCN)	FTC/P/10_01_02-01
Date of Last Update	3/21/18

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Process Overview

Exhaustion of Administrative Remedies

In order for a foreign tax to be creditable under Section 901, it must be compulsory. A payment is compulsory if it is required under the taxing authority of a foreign government. Treasury Regulation (Treas. Reg.) 1.901-2(a)(2)(i) clarifies that penalties, fines, interest, customs, duties, etc. are not taxes and are not creditable. In addition, foreign taxes paid in excess of what is legally required under foreign law are considered noncompulsory, noncreditable payments. Treas. Reg. 1.901-2(e)(2) states, “an amount is not tax paid to a foreign country to the extent that it is reasonably certain that the amount will be refunded, credited, rebated, abated or forgiven. It is not reasonably certain that an amount will be refunded, credited, rebated, abated or forgiven if the amount is not greater than a reasonable approximation of final tax liability to the foreign country.”

In general, the amount of foreign taxes paid does not exceed a taxpayer’s legal liability (in other words, the payment is compulsory) if the following two factors are met:

1. The amount was determined using a reasonable interpretation and application of the foreign tax law.
2. The taxpayer has exhausted all effective and practical remedies to reduce his or her foreign tax liability over time.

When determining whether taxpayers have exhausted all effective and practical remedies to reduce their foreign tax liability over time, the examiner should give consideration to:

1. Whether it is reasonably certain the payment will be returned (refunded, credited, etc.).
2. Whether the taxpayer pursued available means to obtain the refund or credit.
3. Whether there was a foreign income tax audit, which could be contested on several levels (such as Appeals, competent authority of both contracting countries, court system, etc.).
4. Whether the taxpayer’s efforts to contest an issue with the foreign tax authority through available channels (such as Appeals, competent authority, amnesty program, court system, etc.) were adequate and comprehensive. Taxpayers have the burden of proof to show that they exhausted all effective and practical remedies to contest their foreign tax liability.

Detailed Explanation of the Process

Exhaustion of Administrative Remedies

Analysis

The regulations state that foreign taxes are “not paid” to the extent that payments to a foreign taxing authority have exceeded the amount reasonably owed under foreign law, or if the taxpayer has failed to claim a reduced treaty rate. If for whatever reason taxpayers have overpaid their foreign taxes, they must prove that they have exhausted all effective and practical remedies to contest the liability and seek a refund for such taxes. Failing to exhaust such remedies will cause that portion of the foreign tax to be ineligible for the Foreign Tax Credit (FTC). See Treas. Reg. 1.901-2(e)(5).

Example 1:

James, a U.S. taxpayer, earned dividend income of 100y in country X. Twenty percent of income or 20y of foreign taxes was withheld on this income and paid over to country X. However, a tax treaty between country X and the U.S. provides that the maximum rate of withholding on dividend income earned in country X is 15 percent. Therefore, there is an overpayment to country X of 5y. When James files a claim for FTC with the U.S., only 15y (15 percent of 100y) qualifies as foreign taxes paid because this represents the compulsory amount of foreign taxes James was legally liable to pay. James should file a claim with country X as a remedy for the 5y he overpaid through withholding.

If the U.S. Department of the Treasury were to allow FTC without requiring U.S. taxpayers to reduce their foreign tax payments to those legally imposed, taxpayers would have little incentive to challenge any foreign tax, whether or not properly imposed. As a result, the cost of excessive foreign taxes could be improperly shifted to the U.S. Therefore, it is very important when examining FTCs that the examiner analyze whether the foreign taxes claimed are compulsory, because as a general rule, taxpayers cannot claim FTC for amounts paid to foreign taxing authorities when they have failed to exhaust all effective and practical remedies (including competent authority procedures where applicable) to reduce their foreign tax liability.

Detailed Explanation of the Process (cont'd)

Exhaustion of Administrative Remedies

Analysis

Example 2:

James in Example 1 claims the benefit of the treaty by filing for a refund of 5y with country X. The claim is rejected by country X. James then invokes the competent authority procedures of the treaty, the cost of which is reasonable in view of the amount at issue and the likelihood of success is good. Still, the refund is rejected. The cost of pursuing any judicial remedy in country X would be unreasonable in light of the amount at issue and the likelihood of success, so James decides not to pursue any judicial remedy. The 5y is now a compulsory payment and may be eligible for the FTC.

Be aware that competent authority is only available by treaty; it is not an option in all situations. Check each specific tax treaty between the U.S. and the foreign country. The burden of proof that administrative remedies have been exhausted, including invocation of competent authority procedures available under applicable tax treaties, is on the taxpayer. See Field Service Advice (FSA) 1354818 - Request for Competent Authority Assistance; Revenue Ruling (Rev. Rul.) 92-75.

After relying on advice, in good faith, from competent foreign tax advisors, and disclosing all relevant facts to those advisors, the taxpayer should make a reasonable interpretation of foreign law provisions in order to establish an entitlement to a FTC. See Internal Revenue Code (IRC) 905(b); Treas. Reg. 1.901-2(e)(5).


Taxpayers have a duty to evaluate the foreign government's position and take appropriate steps to minimize their foreign tax burden. An interpretation or application of foreign law is not reasonable if there is actual notice or constructive notice (such as a published court decision) to the taxpayer that the interpretation or application is likely to be erroneous.

Detailed Explanation of the Process (cont'd)

Exhaustion of Administrative Remedies

Analysis

The examiner should review the taxpayer's documentation (appropriately translated) that verifies the taxpayer's actions, such as foreign books, records, and foreign tax returns, along with Form 1116 to identify high effective rates of foreign tax that may not have been properly computed or could have been abated, refunded, etc. This will help the examiner identify cases where the taxpayer has not exhausted all effective and practical remedies to pay the correct amount of tax.

 **CAUTION:** It is extremely important that the examiner verifies and documents the filing, payment, and settling of final tax liability to the foreign country. This will help show whether the taxpayer has taken steps to minimize his or her foreign tax burden. If the foreign country has conducted an audit on the taxpayer, ask about the nature of any foreign tax audit adjustments and, where applicable, what steps the taxpayer has taken to minimize any additional foreign taxes that may be due as a result of the foreign tax audit.

In performing the initial risk analysis, keep in mind that an exhaustion of remedies challenge may not result in a current U.S. tax adjustment (though IRC 904(c) carryovers could be affected) if the taxpayer is in an excess credit position or cannot currently use FTCs due to zero or negative taxable income.

A taxpayer's exhaustion of remedies should be practical and cost efficient in relation to amounts at issue and likelihood of success. Reasonable cost for individuals can be an issue because the amount in controversy may not justify spending a lot of resources to contest an item. Thus, taxpayers may ordinarily take a reasonable business approach, weighing costs and benefits, in settling foreign income tax issues. See Example 2 on the previous page.

Detailed Explanation of the Process (cont'd)

Exhaustion of Administrative Remedies

Analysis

The regulations specifically state that a settlement of more than one issue will be evaluated on an overall basis in determining whether the settlement payment is compulsory or noncompulsory. For example, if the taxpayer settles multiple issues with country X, then the settlement should be evaluated on an overall basis rather than on an issue-by-issue basis.

In addition, taxpayers are not required to alter their form of doing business, their business conduct or any business transaction to reduce their foreign tax liability. However, foreign tax payments might be deemed voluntary, and therefore noncompulsory, if the taxpayer has taken options under foreign law that result in an increased tax liability over time. See Treas. Reg. 1.901-2(e)(5)(i).

Example 3:

Individual Z lived and worked in country M during the taxable year. Country M's estimated tax regime is not dissimilar to the U.S. estimated tax regime, requiring quarterly estimated tax payments and imposing a surcharge or penalty for failure to make such payments. When Z filed his country M tax return for the year, he paid 1,000y in tax and paid a 100y surcharge for his failure to timely make estimated tax payments.

The 100y surcharge is not a creditable tax because the taxpayer could have avoided the surcharge by making the required estimated tax payments. The surcharge may also be characterized as a penalty or interest payment, and therefore may not be treated as a creditable tax.

Summary of Process Steps

Exhaustion of Administrative Remedies

Process Steps

Whether or not a treaty provides an avenue for competent authority relief, taxpayers must exhaust all effective and practical local law remedies to reduce their foreign tax. Taxpayers that operate in treaty countries in most cases must utilize favorable treaty provisions or invoke competent authority. Taxpayers are generally required to request competent authority assistance.

Step 1	How does a taxpayer prove exhaustion of local law remedies?
Step 2	How is the exhaustion of remedies analysis affected where a tax treaty applies?
Step 3	Can there be an exhaustion of remedies in a treaty country if a taxpayer does not invoke the right to competent authority assistance?

Step 1: Proof of Exhaustion of Local Law Remedies

Exhaustion of Administrative Remedies

Step 1

How does a taxpayer prove exhaustion of local law remedies?

Considerations	Resources
<ul style="list-style-type: none">▪ A remedy is effective and practical only if its cost is reasonable in light of the amount at issue and its likelihood of success. For example, filing for a refund with a foreign tax jurisdiction would ordinarily be considered a cost effective and practical remedy.▪ A taxpayer is not required to pursue ineffective remedies.▪ A settlement of two or more issues is evaluated on an overall basis, not an issue-by-issue basis.▪ Administrative appeals and court challenges should be pursued if the foreign tax authority's position is unreasonable under local law and the cost of the contest is reasonable in light of the amount at issue and likelihood of success.	<ul style="list-style-type: none">▪ Treas. Reg. 1.901-2(e)(5)(i)▪ IDR - Issue▪ Taxpayer Interview▪ Relevant Foreign Substantive and Procedural Law (Statutes, Administrative Rulings and Court Cases)▪ Foreign Law Legal Opinions

Step 1: Proof of Exhaustion of Local Law Remedies (cont'd)

Exhaustion of Administrative Remedies

Step 1

Considerations	Resources
<ul style="list-style-type: none">▪ Foreign statute of limitations: If taxpayers knew or should have known that they could have pursued effective and practical remedies to reduce their taxes under foreign substantive law, then the failure to preserve available remedies prior to the expiration of the foreign statute will result in a noncompulsory payment. Conversely, if a taxpayer was not under actual or constructive notice that he or she overpaid foreign taxes prior to the expiration of the statute, and no treaty applies to permit the competent authority to waive the procedural bar to relief, then he or she may have exhausted the available remedies.▪ Increasingly, foreign government audits of U.S. taxpayers have become more frequent and, at times, more aggressive. A taxpayer should not simply pay the additional tax due as a result of a foreign audit and then attempt to recoup the tax as part of the IRC 905(c) foreign tax redetermination process. A taxpayer has a duty to evaluate the foreign government's position and take appropriate steps to minimize the foreign tax burden.▪ Ask the taxpayer about the nature of foreign tax audit adjustments and, where applicable, what steps the taxpayer has taken to ameliorate any additional foreign taxes that may be due as a result of the foreign tax audit.	<ul style="list-style-type: none">▪ Treas. Reg. 1.901-2(e)(5)(i)▪ Relevant Foreign Substantive and Procedural Law (Statutes, Administrative Rulings and Court Cases)▪ Foreign Law Legal Opinions ▪ IRC 905(c) Work Papers▪ Translated Documents Related to the Foreign Tax Audit Adjustment▪ Documentation Related to a Foreign Country Tax Amnesty Program

Step 1: Proof of Exhaustion of Local Law Remedies (cont'd)

Exhaustion of Administrative Remedies

Step 1

Considerations	Resources
<ul style="list-style-type: none"> ▪ If a foreign country offers a general or partial tax amnesty, taxpayers should ascertain whether they might be eligible for such amnesty and document the findings. Accepting a foreign tax amnesty may be the best option, but it may also deprive competent authority of the chance to negotiate a better settlement. Relevant issues to consider include the tax issue in question and the foreign countries involved. Review the taxpayer's tax amnesty documentation to verify whether the taxpayer made a good faith effort to inquire into and, if applicable, reduce the tax burden in that country. ▪ If the taxpayer has paid a contested tax, the credit may be claimed while the contest is ongoing, notwithstanding that the tax cannot accrue until the contest is resolved. If the contest is successful and the foreign tax is refunded, a redetermination of U.S. tax will generally be required under IRC 905(c). However, if credit is allowed, the examiner should try to secure a statute extension from the taxpayer in case the taxpayer decides to drop the contest prematurely. 	<ul style="list-style-type: none"> ▪ IRC 905(c) Work Papers ▪ Translated Documents Related to the Foreign Tax Audit Adjustment ▪ Documentation Related to a Foreign Country Tax Amnesty Program ▪ <i>International Business Machines Corporation v. United States</i> - 38 Fed. Cl. 661 (1997) ▪ Rev. Rul. 84-125 - Foreign Tax Credit; Contesting a Foreign Tax Assessment; Refunds ▪ IRC 905(c) ▪ Documentation Related to Foreign Tax Audit or Foreign Court Proceedings

Step 1: Proof of Exhaustion of Local Law Remedies (cont'd)

Exhaustion of Administrative Remedies

[Step 1](#)

Considerations	Resources
<ul style="list-style-type: none"> ▪ What if a taxpayer's position is that available remedies are not effective and practical under the circumstances and has obtained an opinion letter from a foreign counsel or Certified Public Accountant (CPA) firm? ▪ An opinion letter may or may not be sufficient to demonstrate that the taxpayer has exhausted available remedies. The opinion letter should include: <ul style="list-style-type: none"> – A detailed discussion of the relevant legal authorities, – A conclusion that the tax in question was properly assessed or a reasoned explanation why a challenge to the assessment is unlikely to be successful. ▪ If taxpayers do not have an opinion letter, they must demonstrate that they have the requisite foreign tax expertise and that they made a reasonable decision not to pursue the contest given the applicable law . 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.901-2(e)(5)(i) ▪ <i>The Procter and Gamble Company & Subs. v. U.S.</i> - 106 AFTR 2d 2010-5311 (D.C. ch. 2010) ▪ Taxpayer's Opinion Letter



CONSULTATION: Counsel should be consulted when reviewing an opinion letter.

Step 1: Proof of Exhaustion of Local Law Remedies (cont'd)

Exhaustion of Administrative Remedies

[Step 1](#)

Considerations	Resources
<ul style="list-style-type: none">▪ Are there bright-line tests that may be used to conclude a taxpayer has exhausted all available remedies?▪ The determination of whether an amount of tax paid is a noncompulsory amount, and thus ineligible for U.S. foreign tax credit, is a factual determination to be made on a case-by-case basis.▪ The examiner must consider all the facts and circumstances of the issue(s).▪ Consider the taxpayer-provided documentation (appropriately translated) that verifies the taxpayer's actions, relevant foreign law and foreign tax authority outcome.	<ul style="list-style-type: none">▪ Treas. Reg. 1.901-2(e)(5)(i)▪ <i>The Procter and Gamble Company & Subs. v. U.S.</i> - 106 AFTR2d 2010-5311 (D.C. ch. 2010)▪ FSA 1468222 - Exhausting C/A Remedies under the Canadian Treaty

Step 2: Impact of Tax Treaty on Exhaustion of Remedies

Exhaustion of Administrative Remedies

Step 2

How is the exhaustion of remedies analysis affected where a tax treaty applies?

Considerations	Resources
<ul style="list-style-type: none">▪ Local foreign officials may collect foreign tax, but taxpayer must claim the reduced treaty rate via an appropriate remedy. For example, this may occur by:<ul style="list-style-type: none">– claiming a reduced treaty rate on the taxpayer's foreign return,– via a refund claim,– via an objection to a foreign assessment or– requesting competent authority assistance (even if the local statute of limitations has passed or other administrative remedies fail, the taxpayer should invoke competent authority proceedings). <p>T TREATY IMPLICATION: If the taxpayer is subject to double taxation or taxation inconsistent with the treaty, the taxpayer must pursue reasonable remedies, including competent authority assistance, if the cost is reasonable in light of the amount in dispute and likelihood of success. Revenue Procedure (Rev. Proc.) 2015-40 provides the steps a taxpayer must take to pursue U.S. competent authority relief. Note that the U.S. competent authority is also available for informal consultations with taxpayers in respect of any potential competent authority issue and certain aspects of the U.S. foreign tax credit, including those related to exhaustion of remedies.</p>	<ul style="list-style-type: none">▪ Rev. Proc. 2015-40 – Procedures for Requesting Competent Authority Assistance under Tax Treaties

Step 2: Impact of Tax Treaty on Exhaustion of Remedies (cont'd)

Exhaustion of Administrative Remedies


[Step 2](#)

Considerations	Resources
<ul style="list-style-type: none">▪ Credit may be disallowed if remedy is not properly pursued.▪ For example, taxpayer does not seek competent authority relief nor file for refund regarding recoverable taxes in connection with a U.S. initiated IRC 482 adjustment.▪ In the Procter and Gamble case, the taxpayer claimed credit for Korean withholding tax imposed on royalties with respect to which withholding tax had already been paid to Japan and allowed as a credit. The court held that the taxpayer established that the Korean tax was compulsory, but failed to meet its burden to show that it exhausted available remedies under Japanese law and the U.S.- Japan treaty to recover the tax previously paid to Japan. Because the cost of pursuing competent authority relief is generally low, taxpayers that fail to seek competent authority assistance where available must produce evidence to show why it would not have been an effective and practical remedy.▪ Any acts or omissions by the taxpayer that preclude effective competent authority assistance may constitute failure to exhaust all effective and practical remedies.	<ul style="list-style-type: none">▪ Treas. Reg. 1.901-2(e)(5)(ii), Examples (2), (4) and (6)▪ <i>The Procter and Gamble Company & Subs. v. U.S.</i> - 106 AFTR 2d 2010-5311 (D.C. oh. 2010)▪ Rev. Proc. 2015-40 – Procedures for Requesting Competent Authority Assistance under Tax Treaties

Step 2: Impact of Tax Treaty on Exhaustion of Remedies (cont'd)

Exhaustion of Administrative Remedies


[Step 2](#)

Considerations	Resources
<ul style="list-style-type: none"> ▪ The fact that the taxpayer has sought competent authority assistance but obtained no relief generally will not, in and of itself, demonstrate that the taxpayer has exhausted all effective and practical remedies to reduce the taxpayer's liability for foreign tax. The potential effectiveness of administrative and judicial remedies in the foreign country must also be considered. ▪ Did the taxpayer settle the dispute with the foreign tax authority on their own accord? ▪ Such settlement (such as a closing agreement) may preclude negotiation of the issue by the foreign tax authority and thereby prevent the U.S. competent authority from obtaining relief under the treaty. As a result, any foreign taxes paid may be considered noncompulsory. ▪ If the taxpayer settled with a foreign tax authority, ask for copies of the settlement agreement, the original assessment documents, and any correspondence materials exchanged between the taxpayer and the foreign tax authority in relation to the negotiations. <p> CONSULTATION: Competent authority should be consulted as to whether a settlement was reasonable based on its prior experience and thus persuasive as to whether the taxpayer exhausted all available remedies.</p>	<ul style="list-style-type: none"> ▪ Rev. Rul. 92-75 – Foreign Tax Credit; Income Allocation to Domestic Parent ▪ Foreign Settlement Agreement ▪ IRM 4.60.2.5

Step 2: Impact of Tax Treaty on Exhaustion of Remedies (cont'd)

Exhaustion of Administrative Remedies


[Step 2](#)

Considerations	Resources
<ul style="list-style-type: none">▪ What if taxpayers claim they have already gone through the competent authority process?▪ If taxpayers claim that they have obtained competent authority relief, request a “disposition letter” from them.▪ A taxpayer may also be ineligible for competent authority proceedings. There are instances where taxpayers make MAP submissions but the competent authority does not undertake the request (such as a taxpayer missed the period of limitations in the treaty, the request is not suitable, or the taxpayer is not subject to taxation inconsistent with a treaty article).▪ Exam should request from the taxpayer all other correspondence they may have had with competent authority and contact the U.S. competent authority in respect of any unresolved questions or issues.	<ul style="list-style-type: none">▪ Competent Authority Disposition Letter▪ Competent Authority Disposition Memorandum▪ Competent Authority Correspondence
<p> CONSULTATION: Exam should consider checking independently with competent authority to verify taxpayer’s position and supporting documentation. If the MAP determination addressed the foreign tax issues on the merits and was successful, then the taxpayer has properly exhausted the remedies, so long as the taxpayer’s relevant U.S. and foreign tax returns properly reflect the competent authority agreement.</p>	

Step 2: Impact of Tax Treaty on Exhaustion of Remedies (cont'd)

Exhaustion of Administrative Remedies

[Step 2](#)

Considerations	Resources
<p> CONSULTATION (cont'd): Generally, a successful MAP negotiation occurs when an agreement is reached between the two contracting states on the issues presented in the taxpayer's competent authority submission.</p> <ul style="list-style-type: none">▪ What happens when the U.S. and foreign authorities do not agree on a case and the U.S. competent authority refuses a corresponding adjustment (and mandatory arbitration is not available) or when a taxpayer refuses to accept the deal negotiated by the competent authorities?▪ Taxpayers must still exhaust “all effective and practical remedies” and may need to undertake domestic proceedings in the treaty country in order for the IRS to allow a foreign tax credit for the questionable treaty country tax. If taxpayers claim that such effort would be futile, they should support the claim, which may include reliance on an opinion letter, to the effect that domestic proceedings in the foreign country are not likely to be effective and practical to determine such proceedings unnecessary.	<ul style="list-style-type: none">▪ Treas. Reg. 1.901-2(e)(5)(ii)

Step 3: Exhaustion of Remedies Where Taxpayer Does Not Invoke Competent Authority Assistance

Exhaustion of Administrative Remedies

Step 3


Can there be an exhaustion of remedies in a treaty country if a taxpayer does not invoke the right to competent authority assistance?

Considerations	Resources
<ul style="list-style-type: none"> ▪ There are a few exceptions to this rule, but they are narrowly drawn. The burden to prove an exhaustion of remedies without competent authority relief is on the taxpayer. ▪ There are circumstances where competent authority assistance may not be necessary, such as de minimis cases, cases where other administrative remedies or litigation are successful, cases where the taxpayer has received an opinion of local counsel or otherwise has complied with foreign laws to minimize taxes. ▪ Section 6.04 of Rev. Proc. 2015-40 involves U.S. initiated adjustments under the simultaneous appeals procedure. Under this scenario, it is clear that a U.S. taxpayer cannot claim a corresponding adjustment without the involvement of the U.S. competent authority. ▪ Section 7 of Rev. Proc. 2015-40 list several scenarios or factors where competent authority will not accept a request for competent authority assistance or will cease providing assistance to the taxpayer. Such decision by competent authority is final and not subject to administrative review. 	<ul style="list-style-type: none"> ▪ FSA 1354818 - Request for Competent Authority Assistance ▪ Rev. Proc. 2015-40 - Procedures for Requesting Competent Authority Assistance under Tax Treaties ▪ Opinion Letter from Foreign Local Counsel ▪ Rev. Proc. 2015-40, Section 6.04 ▪ Rev. Proc. 2015-40, Section 7 ▪ Documentation of Competent Authority Denial

Step 3: Exhaustion of Remedies Where Taxpayer Does Not Invoke Competent Authority Assistance (cont'd)

Exhaustion of Administrative Remedies

[Step 3](#)

Considerations	Resources
<p>In summary:</p> <ul style="list-style-type: none"> ▪ If competent authority proceedings were initiated and MAP was successful then the taxpayer has properly exhausted remedies, so long as the taxpayer's applicable U.S. and foreign income tax returns properly reflect the competent authority determination. ▪ If the taxpayer fails to pursue competent authority proceedings the issue should be pursued. ▪ If competent authority assistance is denied or if competent authority proceedings were initiated but unsuccessful, then the issue may be pursued. <p> CAUTION: In the event the foreign taxes are not treated as tax payments under exhaustion of remedies principles, a taxpayer may still be able to take a deduction (rather than a FTC) for the noncreditable payment under another code section. IRC 275(a)(4) does not preclude a deduction for amounts that are not considered payments of income tax. However, since the payment is not an amount of tax paid, a taxpayer would need to establish it was an “ordinary and necessary” expense under IRC 162(a).</p>	<ul style="list-style-type: none"> ▪ Competent Authority Disposition Letter ▪ Competent Authority Disposition Memorandum

Other Considerations / Impact to Audit

Exhaustion of Administrative Remedies	
Considerations	Resources
<ul style="list-style-type: none"> Review Form 1116 to determine the country for which the credit is claimed. The taxes must be for a legal and actual foreign tax liability. Once the country is identified, review the tax treaty between the United States and foreign country to determine if the correct rate is used and to determine if the income is subject to a foreign tax. 	<ul style="list-style-type: none"> Pub. 901 – <i>U.S. Tax Treaties</i> Applicable Tax Treaty
<ul style="list-style-type: none"> If credits are claimed on the cash basis, verify that the payments were actually made within the tax year under examination. Examiner should obtain support (cancelled checks) from the taxpayer to determine tax payments made in appropriate year. If credits are claimed on the accrual basis, the taxpayer should provide work papers for calculation of accrual and must also verify that taxes have been paid. 	<ul style="list-style-type: none"> IRC 905(a),(b), (c)(1)(B), (C)(2)(B) IRC 901 IRC 904
<ul style="list-style-type: none"> Examiner should review foreign tax payments from the taxpayer to determine if payments are for an income tax and not a withholding tax (not income tax in the U.S. sense) and/or associated with interest and/or penalties which could make it ineligible for the FTC. 	<ul style="list-style-type: none"> Pub. 514 - <i>Foreign Tax Credit for Individuals</i> Treas. Reg. 1.901-2(e)
<ul style="list-style-type: none"> The amount paid could be noncompulsory tax if the taxpayer failed to claim a reduced treaty rate on the taxpayer's foreign return. 	<ul style="list-style-type: none"> Treas. Reg. 1.901-2(e)(5)(i) Example (6)

Index of Referenced Resources

Exhaustion of Administrative Remedies
IRC 162(a)
IRC 275(a)(4)
IRC 482
IRC 901
IRC 904
IRC 905
Treas. Reg. 1.901-2
<i>International Business Machines Corporation v. United States</i> - 38 Fed. Cl. 661 (1997)
<i>The Procter and Gamble Company & Subs. v. U.S.</i> - 106 AFTR2d 2010-5311 (D.C. oh. 2010)
Rev. Proc. 2015-40 – Procedures for Requesting Competent Authority Assistance under Tax Treaties
Rev. Rul. 84-125 - Foreign Tax Credit; Contesting a Foreign Tax Assessment; Refunds
Rev. Rul. 92-75 - Foreign Tax Credit; Income Allocation to Domestic Parent
FSA 1354818 - Request for Competent Authority Assistance
FSA 1468222 - Exhausting C/A Remedies under the Canadian Treaty
Pub. 514 – <i>Foreign Tax Credit for Individuals</i>
Pub. 901- <i>U.S. Tax Treaties</i>
IRM 4.60.2.5

Index of Referenced Resources (cont'd)

Exhaustion of Administrative Remedies
Applicable Tax Treaty
Mutual Agreement Procedure (MAP)
IDR for Issue
Taxpayer Interview
IRC 905(c) Work Papers
Relevant Foreign Substantive and Procedural Law (Statutes, Administrative Rulings and Court Cases)
Foreign Law Legal Opinions
Taxpayer's Opinion Letter
Translated Documents Related to the Foreign Tax Audit Adjustment
Documentation Related to a Foreign Country Tax Amnesty Program
Documentation Related to Foreign Tax Audit or Foreign Court Proceedings
Competent Authority Disposition Letter
Competent Authority Disposition Memorandum
Competent Authority Correspondence
Form 1116 – <i>Foreign Tax Credit</i>

Training and Additional Resources

Exhaustion of Administrative Remedies	
Type of Resource	Descriptions
White Papers / Guidance	<ul style="list-style-type: none">▪ Internal Revue Manual (IRM) 4.60.2.2 - <i>Role of Examination</i>
Databases / Research Tools	<ul style="list-style-type: none">▪ <i>Kuntz & Peroni - U.S. Int'l Tax Para B4.03[3][c]</i>▪ <i>Bittker & Lokken - Fed. Tax'n Inc, Est and Gift Para 72.4.6</i>
Reference Materials – Treaties	<ul style="list-style-type: none">▪ Applicable Tax Treaty▪ http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/treaties.aspx
Other Training Materials	<ul style="list-style-type: none">▪ FY2011 Continuing Professional Education (CPE) - Training FTC Management July 2011 CPE

Glossary of Terms and Acronyms

Term/Acronym	Definition
C/A	Competent Authority
CPA	Certified Public Accountant
FSA	Field Service Advice
FTC	Foreign Tax Credit
IDR	Information Document Request
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
MAP	Mutual Agreement Procedure
Rev. Proc.	Revenue Procedure
Rev. Rul.	Revenue Ruling
Treas. Reg.	Treasury Regulation

Index of Related Practice Units

Associated UIL	Related Practice Unit	DCN
9432.01	FTC General Principles	FTC/C/10_01-05
9432.01	Creditable Foreign Taxes	FTC/C/10_01-03