



Internal Revenue Service

DEPARTMENT OF THE TREASURY

LB&I Process Unit

Unit Name	Substantiation Requirements	
Primary UIL Code	9432.01	Creditability of Foreign Tax Credit Claimed

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Chapter	Creditability of Foreign Tax Credit Claimed

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Process Overview

Substantiation Requirements

Because the United States (U.S.) taxes U.S. persons on their world-wide income, foreign source income may be subject to tax in both the U.S. and in the source country, resulting in double taxation. The Foreign Tax Credit (FTC) regime attempts to mitigate double taxation by providing a credit against the U.S. tax on foreign source income. To claim the credit, individual taxpayers must submit Form 1116 attached to their duly filed income tax returns. In addition, at the request of the Internal Revenue Service (IRS), the taxpayer must provide evidence supporting the foreign taxes claimed on Form 1116.

In general, the taxpayer must provide a receipt of each tax payment if the taxes are already paid. If the foreign tax is accrued, but not yet paid, the taxpayer should provide a copy of the foreign tax return on which the accrual is based. Where it is established that it is impossible for the taxpayer to furnish the aforementioned documentation, the IRS may accept secondary evidence.

This Unit discusses in detail the rules of the substantiation requirements.

Step 1: Obtain and Review Form 1116

Substantiation Requirements

Step 1

Form 1116 must be supported by evidentiary documentation.

Considerations	Resources
<ul style="list-style-type: none">▪ All information provided on Form 1116 must be supported by evidence.<ul style="list-style-type: none">– Receipt for each foreign tax payment if the tax is already paid.– For foreign taxes accrued, tax returns on which accrual is based.▪ Receipt or return can be the original, a duplicate of the original, or a duly certified or authenticated copy.▪ If the receipt or return is in a foreign language, a certified translation must be furnished by the taxpayer.▪ Any additional information required to support income sourced outside of the U.S. from each foreign country shall be provided by the taxpayer, including evidence of allocations and apportionments of deductions to gross income.▪ The burden of proof is generally on the taxpayer.	<ul style="list-style-type: none">▪ Treas. Reg. 1.905-2(a)(1)-(2) ▪ Treas. Reg. 1.861-8(f)(5) ▪ IRC 905(b)

Step 2: Review Secondary Evidence

Substantiation Requirements

Step 2

If it is determined that it is impossible for the taxpayer to provide direct evidence as outlined in Step 1, secondary evidence may be accepted.

Considerations	Resources
<ul style="list-style-type: none"> ▪ In lieu of a receipt for the payment of foreign taxes, the taxpayer can submit a photo copy of the check, draft or other medium of payment showing the amount and date of payment, together with certification identifying it with the tax paid and establishing that the tax was paid for taxpayer's account as his own tax on his own income. ▪ In case the credit is claimed on an accrual method, and the receipt of payment is not available, the taxpayer must show that the tax accrued in the taxable year. ▪ If the foreign tax return is not available, the credit is claimed on an accrual method, and the foreign tax has not been paid, the taxpayer must provide the following: <ul style="list-style-type: none"> – A certified statement of the amount accrued. – Excerpts from the taxpayer's books and records showing amounts of foreign income and related tax. – Documentation substantiating the computation of the foreign tax, established by foreign legal authority such as foreign law, assessment notices or other evidence. – A bond, if deemed necessary by the IRS. In case a bond is not required, there must be a specific agreement wherein the taxpayer shall recognize his/her obligation to report the correct amount of when ascertained. 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.905-2(b)(1) ▪ Treas. Reg. 1.905-2(b)(2) ▪ IRC 905(c)

Step 2: Review Secondary Evidence (cont'd)

Substantiation Requirements

[Step 2](#)

Considerations	Resources
<ul style="list-style-type: none">▪ If at any time the foreign tax receipts or foreign tax returns become available, the taxpayer must promptly submit them to the IRS.▪ In the case of taxes withheld at source from dividends, interest, royalties, compensation, or other form of income, where evidence of withholding and of the amount withheld cannot be secured from those who have made the payments, the IRS may accept secondary evidence of such withholding and of the amount of the tax so withheld, having due regard to the taxpayer's books of account and to the rates of taxation prevailing in the particular foreign country during the period involved.	<ul style="list-style-type: none">▪ Treas. Reg. 1.905-2(b)(2)(v)▪ Treas. Reg. 1.905-2(b)(3)

Examples of the Process

Substantiation Requirements

Description

Example 1:

Taxpayer A elects the paid method on Form 1116. Upon request by the examiner, Taxpayer A must provide a receipt of the payment(s) to substantiate the foreign taxes claimed. If instead Taxpayer A elects the accrued method on Form 1116, Taxpayer A must provide the return on which each such accrued tax was based. If the receipt or return is in a foreign language, a certified translation must be furnished by the taxpayer.

Example 2:

In example 1, Taxpayer A established to the satisfaction of the IRS examiner that it is impossible to furnish a receipt of such foreign tax payment or the foreign tax return. The examiner in this case can accept secondary evidence. The type of secondary evidence allowed is listed under Treas. Reg. 1.905-2(b).

Other Considerations / Impact to Audit

Substantiation Requirements	
Considerations	Resources
<ul style="list-style-type: none">▪ In case of withholding taxes, the taxpayer must be able to document not only that the tax was withheld, but also that it has been paid.	<ul style="list-style-type: none">▪ <i>Continental Illinois Corp. v. Commissioner</i> - 72 AFTR 2d 93-5308 (ca7 1993)
<ul style="list-style-type: none">▪ Official tax receipt issued by a foreign government is entitled to the presumption of regularity. The IRS bears the burden to rebut this presumption through clear and specific evidence that the tax has not been paid.	<ul style="list-style-type: none">▪ <i>Riggs National Corp & Subsidiaries v. Commissioner</i> - 90 AFTR 2d 2002-5197 (D.C. ca. 2002)

Index of Referenced Resources

Substantiation Requirements

IRC 905

Treas. Reg. 1.861-8(f)(5)

Treas. Reg. 1.905-2

Continental Illinois Corp. v. Commissioner - 72 AFTR 2d 93-5308 (ca7 1993)

Riggs National Corp & Subsidiaries v. Commissioner - 90 AFTR 2d 2002-5197 (D.C. ca. 2002)

Form 1116 - *Foreign Tax Credit (Individual, Estate, or Trust)*

Training and Additional Resources

Substantiation Requirements	
Type of Resource	Description(s)
Databases / Research Tools	<ul style="list-style-type: none">▪ <i>Mertens law of Fed. Income Tax'n</i> - Substantiation Requirements Para 45D:15▪ <i>BNA Tax Management Portfolios Foreign Income Series</i> 6020-1st Sec. IV

Glossary of Terms and Acronyms

Term/Acronym	Definition
FTC	Foreign Tax Credit

Index of Related Practice Units

Associated UIL(s)	Related Practice Unit
9432.01	<i>FTC General Principles</i>
9432.01	<i>Creditable Foreign Taxes</i>