



## US International Tax Alert

Notice 2023-55 offers temporary relief from certain provisions in final FTC regs

On July 21, 2023, Treasury and the IRS issued Notice 2023-55 (the “Notice”) announcing temporary relief for taxpayers from certain provisions in the final foreign tax credit regulations (the “2022 final regulations”). The temporary relief applies to the definition of a foreign income tax and the net gain requirement in Treas. Reg. § 1.901-2(a) and (b), and to the jurisdiction to tax excluded income and source-based attribution requirement in Treas. Reg. § 1.903-1(c)(1)(iv) and (c)(2)(iii), respectively.

The Notice allows taxpayers, with a limited exception, to apply Treas. Reg. § 1.901-2(a) and (b) as in effect for taxable years beginning before December 28, 2021 (the “old section 901 regulations”) to determine whether a foreign tax is creditable in *taxable years ending on or before December 31, 2023*. The cost recovery requirement and attribution rules, which have raised questions as to the creditability of many foreign taxes, thus do not have to be applied in 2022 and 2023. However, the exception revises the net income requirement in the old section 901 regulations to ensure that digital services taxes cannot be treated as creditable foreign taxes in 2022 and 2023.

Taxpayers generally must continue to apply the 2022 final regulations under Treas. Reg. § 1.903-1 for 2022 and 2023, but the Notice provides relief from the jurisdiction-to tax and source-based attribution requirements, both of which are applications of the attribution rule in the 2022 final regulations.

A taxpayer may apply the temporary relief to foreign taxes paid for each taxable year during the “relief period.” The relief period means taxable years beginning on or after December 28, 2021 and ending on or before December 31, 2023 (“relief period”), with each taxable year within the relief period referred to as a “relief year.” For US taxpayers using a calendar year, the relief period generally includes calendar year 2022 *and* calendar year 2023. Calendar-year taxpayers do not have to apply the Notice to both 2022 and 2023, but they must apply it consistently within a year. For US taxpayers using a fiscal year, the relief period generally includes *only fiscal years ending in 2023*.

To qualify for the temporary relief, a taxpayer must apply the temporary relief to (i) all foreign taxes paid or accrued by the taxpayer in the relief year, and (ii) to all foreign income taxes that are paid by any other person (e.g., a CFC) in a taxable year that begins on or after December 28, 2021 and that ends with or within the taxpayer’s relief year, and that is eligible to be claimed as a foreign

tax credit by the taxpayer (determined as if the temporary relief applied to such foreign taxes). Section 3 of the Notice provides additional requirements to apply the temporary relief that should be considered.

## Contacts

[Caren Shein](#), Washington, DC

[Mallory Mendrala](#), Washington, DC



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30 Rockefeller Plaza  
New York, NY 10112-0015  
United States

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