



RE: REG-105600-18, Guidance Related to the Foreign Tax Credit, Including  
Guidance Implementing Changes Made by the Tax Cuts and Jobs Act

February 8, 2019

The Honorable Steven Mnuchin  
Secretary  
U.S. Treasury Department  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

The Honorable Charles P. Rettig  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

Dear Secretary Mnuchin:

I write regarding REG-105600-18, guidance related to the foreign tax credit (FTC), including guidance implementing changes made by the Tax Cuts and Jobs Act (TCJA) as published in the Federal Register on December 7, 2018.

**The transition rule for FTC carryforwards in Prop. Regs. 1.904-2(j)(1)(ii) creates an efficient transition and follows the precedent set following by the Tax Reform Act of 1986 (TRA) and other laws. As the rulemaking process continues, this provision should be maintained in a final rule.**

This rule automatically allocates pre-2018 general income FTC carryforwards into the post 2017 general category basket and allows unused carryforwards to be reallocated into the foreign branch basket. This rule promotes investment and economic growth and allows a streamlined transition to the new tax code.

As you know, TCJA included a comprehensive overhaul of the U.S. international tax system, including modification of foreign tax credits.

Prior to TCJA, FTCs were divided into two baskets – a general category income basket and passive category income basket. While the passive income basket was unchanged, the general category income basket was split into three baskets.

Under the new system, credits that would have previously been allocable to the general branch are now allocable to either general income, foreign branch, or GILTI baskets. The TCJA did not address the treatment of pre-2018 general limitation FTC carryforwards; this issue was left to be determined through rulemaking.

FTC transition rules following the passage of tax legislation have historically utilized a default mechanism to allocate FTCs to carryforward into the same basket (or applicable basket). When reallocation of FTCs is necessary, this process is elective and on a case-by-case, rather than mandatory basis.

For instance, the transition rule following TRA defaulted pre-1986 FTC carryforwards into the general income basket and reallocation was permitted to new baskets only if the taxpayer could meet conditions as outlined by Treasury.

The foreign tax credit transition rule under Prop. Regs. 1.904-2(j)(1)(ii) continues this precedent and allows an efficient transition from the old tax code to the new code. The administration should be applauded for this proposal and should maintain the transition rule provision in the final FTC rule.

Onward,

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