

Proposed FTC Regulations Would Upend Creditability Standards

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In this article, Tax Member Kevin Kenworthy and Senior Associate Caroline Reaves argue that recently proposed regulations concerning the foreign tax credit (FTC) would fundamentally alter the test for determining creditable foreign taxes adopted in 1983, and they examine the planned changes to that test and their possible effect. The authors conclude that the "1983 regulations avoid the need to address the intricacies and vagaries of the current code by adopting the essential principles of a tax that falls on net income and testing foreign taxes against these principles based on their operation and effect. This flexible framework has proven to be durable and in keeping with the remedial purposes of the FTC. Requiring a foreign tax to adhere more closely to the specifics of the current U.S. tax code will introduce uncertainty and dilute the effectiveness of the FTC in reducing double taxation."