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IRS Will Not Challenge Foreign Tax Credit Claims Regarding French Taxes

The IRS, in a Joint Directive memorandum (https://www.irs.gov/businesses/corporations/lbi-and-sbse-joint-directive-on-credibility-of-french-social-taxes?_sm_au=iHVTHp7PZCMSNDZQ) to all Large Business and International division and Small Business/Self-Employed division employees, and in an Internal Revenue Manual (IRM) update, has instructed IRS examiners not to challenge foreign tax credit claims, including claims for refund, for payments of two French social taxes – the “contribution sociale généralisée” (CSG) and the “contribution pour le remboursement de la dette sociale” (CRDS).

District Court Rules Accounting Documents Protected by Tax Practitioner Privilege and Kovel Doctrine

The U.S. District Court for the Northern District of California held in *Burga* (https://scholar.google.com/scholar_case?case=8509467411296390014&q=united+states+v.+burga&hl=en&as_sdt=6,33&as_vis=1&_sm_au=iHVTHp7PZCMSNDZQ) (DC CA 8/16/2019) 124 AFTR 2d 2019-5153, that some documents created by an accountant were protected under the tax practitioner privilege and under the holding in *Kovel* (https://scholar.google.com/scholar_case?case=15838561048131805591&q=united+states+v.+kovel&hl=en&as_sdt=6,33&as_vis=1&_sm_au=iHVTHp7PZCMSNDZQ) (CA2 1961) 9 AFTR 2d 366, because the documents were produced to help an attorney give legal advice, not merely to produce a tax return.

The Internal Revenue Code’s tax practitioner privilege (Section 7525(a)(1)) provides that, with respect to tax advice, the same common law protections of confidentiality that apply to a communication between a taxpayer and an attorney also apply to a communication between a taxpayer and any federally authorized tax practitioner, to the extent the communication would be considered a privileged communication if it were between a taxpayer and an attorney. (Section references are to the Internal Revenue Code of 1986, as amended.) Generally, the tax practitioner privilege does not apply to communications regarding the preparation of tax returns. (*McEligot* (DC CA 2015) 115 AFTR 2d 2015-1433.)

In *Kovel*, the Court of Appeals for the Second Circuit held that attorney-client privilege also applies to communications made in the presence of an accountant who is indispensable to the consultation between lawyer and client. The court held that the privilege attaches to a communication made to the attorney, in the presence of an accountant employed by the attorney, if the communication was made in confidence for the purpose of getting legal advice from the lawyer. Similar to the tax practitioner privilege, *Kovel* does not protect communications made in the presence of an accountant if the accountant is there merely to provide accounting services. (*Gonzales* (CA 9 2012) 110 AFTR 2d 2012-6083.)

IRS Updates Lists of Countries With Nonresident Alien Interest Reporting Requirements

The IRS issued Revenue Procedure 2019-23 (https://www.irs.gov/pub/irs-drop/rp-19-23.pdf?_sm_au=iHVTHp7PZCMSNDZQ) in which it has updated two lists of countries with which the U.S. has in effect an agreement that requires payers to report certain

deposit interest paid to nonresident alien individuals who are residents of the other country under Treasury Regulation Sections 1.6049-8(a) and 1.6049-4(b)(5). One list is of countries with which the U.S. has in effect an income tax or other treaty or a bilateral agreement; the other is of countries with which the IRS has determined that an automatic exchange of information is appropriate.

New Jersey Issues Guidance on GILTI and FDII

The New Jersey Division of Taxation has issued new guidance (https://www.state.nj.us/treasury/taxation/pdf/pubs/tb/tb92.pdf?_sm_byp=iVVR5nLZ58ksT4NR) on reporting Global Intangible Low-Taxed Income (GILTI) under Section 951A and Foreign Derived Intangible Income (FDII) under Section 250(b), and the deductions permitted for both GILTI and FDII under IRC Section 250(a).



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