

Part I

Section 901.—Taxes of Foreign Countries and of Possessions of United States

26 CFR 1.901-2: Income, war profits or excess profits tax paid or accrued.
(Also section 903; 1.903-1.)

Rev. Rul. 2003-8

ISSUE

Are the withholding taxes specified in Article 61 of the Costa Rican Income Tax Law creditable taxes under sections 901 and 903 of the Internal Revenue Code of 1986?

FACTS

Costa Rica's income tax law imposes a withholding tax on various types of income paid to persons operating or residing outside of Costa Rica at rates specified in Costa Rican Income Tax Law Article 59. The Costa Rican Tax Administration has authority to grant a total or partial exemption from liability for withholding taxes on profits, dividends, social participation, interest, commissions, financial expenses, patents, royalties, reinsurance, consolidation and insurance premiums of all types referred to in Article 59. Costa Rican Income Tax Law art. 61. The exemption can be given if the persons who act as withholding or receiving agents, or the interested parties, prove, to the satisfaction of the Costa Rican Tax Administration, that the recipient of such income is not granted in the country in which it operates or resides any credit against its tax liability for the withholding tax that was paid to Costa Rica. *Id.* In order to claim an exemption under Article 61, the Costa Rican Tax Administration requires the foreign recipient or its withholding agent to provide certification from the tax authorities of the country in which the recipient operates or resides verifying that the tax is not creditable in that country. Costa Rican Income Tax Regulation art. 65.

LAW AND ANALYSIS

Section 901 of the Code allows a credit against United States income tax for the amount of any income, war profits, and excess profits taxes paid or accrued to any foreign country. Section 1.901-2(a)(1) of the Income Tax Regulations provides that a foreign levy is an income tax only if it is a tax, and if the predominant character of that tax is an income tax in the United States sense. Section 1.901-2(a)(3)(ii) provides that the predominant character of a foreign tax is that of an income tax in the United States sense only to the extent that liability for the tax is not dependent, by its terms or otherwise, on the availability of a credit for the tax against income tax liability to another country. Section 1.901-2(c)(1) provides that liability for foreign tax is dependent on the availability of a credit for the foreign tax against income tax liability to another country only if and to the extent that the foreign tax would not be imposed on the taxpayer but for the availability of such a credit.

Section 903 of the Code allows a credit against United States income tax for an amount of tax paid or accrued "in lieu of" an income, war profits or excess profits tax otherwise generally imposed by any foreign country. Section 1.903-1(a) of the regulations provides that a foreign levy is a tax in lieu of an income tax only if it is a tax, and it meets the "substitution requirement" of section 1.903-1(b). Section 1.903-1(b)(2) provides that a foreign tax meets the substitution requirement only to the extent that the liability for the foreign tax is not dependent (by its terms or otherwise) on the availability of a credit for the foreign tax against the income tax liability to another country.

Therefore, if a foreign country imposes a withholding tax only in the event that a credit for the tax is available from the recipient's country of domicile, the tax is not creditable under section 901 or 903.

HOLDING

The withholding taxes referred to in Article 61 of the Costa Rican Income Tax Law are not creditable taxes under section 901 or 903 of the Code since they are imposed only in the event that a credit for the tax is available from the country in which the recipient operates or resides. This ruling is an official confirmation by the Internal Revenue Service that the withholding taxes referred to in Article 61 are not creditable in the United States.

DRAFTING INFORMATION

The principal author of this revenue ruling is Margaret A. Hogan of the Office of Associate Chief Counsel (International). For further information regarding this revenue ruling contact Ms. Hogan on 202-622-3850 (not a toll-free call).