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1. [2018 TNT 138-20 AMCHAM FRANCE REQUESTS FOREIGN TAX CREDITS FOR FRENCH TAXES \(Section 901 -- Taxes of foreign countries and of possessions of United States\) \(Release Date: JUNE 18, 2018\) \(Doc 2018-29491\)](#)

**Client/Matter:** -None-

**2018 TNT 138-20 AMCHAM FRANCE REQUESTS FOREIGN TAX CREDITS FOR FRENCH TAXES (Section 901 -- Taxes of foreign countries and of possessions of United States) (Release Date: JUNE 18, 2018) (Doc 2018-29491)**

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**Abstract:**

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Stephanie Barreau of the American Chamber of Commerce in France has urged the IRS to acknowledge that Americans living in France should be allowed foreign tax credits for two French taxes that have clearly and consistently been characterized as income taxes by the French government and courts.

**Body**

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Paris, Jun. 18,18

Dear Sir,

We are concerned with the continued refusal of the Internal Revenue Service ("IRS") to allow a Foreign Tax Credit ("FTC") for US federal income tax purposes for certain French taxes that have clearly and consistently been characterized as "income taxes" by the French Government and Courts. As a result of the IRS's position, our members who are US citizens based in France are suffering double taxation on the part of their income subjected to

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the French taxes in question. On their behalf, we call your attention to this question and request your assistance in prompting the IRS to acknowledge and adopt the interpretation of the French Government and Courts.

This situation has persisted for over 10 years, and is the subject of a litigation currently before the Tax Court (*Eshel v. Commissioner*, Tax Court Docket No. 8055-12). The initial 2014 decision of the Tax Court in *Eshel* was in favor of the IRS. The IRS argued that the CSG/CRDS constituted social charges covered by the US-France Totalization Agreement and therefore were not income taxes that could give rise to an FTC. However, this decision was remanded by the Court of Appeals for the District of Columbia in 2016. The Appellate Court found that the Tax Court had failed to properly determine the nature of the CSG/CRDS. It was not to rely on its unilateral interpretation of the instruments in question. Rather, the determination of the nature of the CSG/CRDS requires a common understanding by the US and French governments. The case is on hold pending such a joint determination.

The French taxes in question are the following mandatory payments to the French government:

1. The Contribution Sociale Généralisée (General Social Contribution, or "CSG"); and
2. The Contribution pour le Remboursement de la Dette Sociale (Contribution for Social Debt Repayment, or the "CRDS").

The CSG/CRDS were originally enacted in the 1990s to help fund certain social security funds as well as to finance certain payments made to the general budget. The payments are in addition to the French personal income tax, although they are computed on the same tax base as the income tax.<sup>1</sup>

Unlike the situation with social charges, taxpayers receive no additional social security coverage as a result of the payment of the CSG/CRDS. Neither the CSG nor the CRDS create any new category of beneficiary under the French social security system.

From a US perspective, the FTC is governed by Internal Revenue Code [Section 901](#), which allows US taxpayers a dollar-for-dollar tax credit for "income taxes" paid or accrued during a tax year in a foreign country, subject to an overall FTC limitation depending on the amount of a particular taxpayer's foreign income compared to the taxpayer's worldwide income.

To qualify for an FTC in the US, the foreign payment must be a "tax," and its "predominant character must be that of an 'income tax' in the US sense." Further, there cannot be any economic benefit to the taxpayer arising from the payment of the tax in question. Notably, the foreign payment must not be a social charge covered by any international bilateral social security agreement (a "Totalization Agreement").

As memorialized in the 2014 Tax Court decision in *Eshel*, both the IRS and the taxpayers agree that the CSG/CRDS satisfy the usual standards of creditability under [IRC Section 901](#) - they are "taxes" and have the predominant character of an "income tax" in the US sense.

But, the parties' positions diverge as to whether the CSG/CRDS are covered by the US-France Totalization Agreement.

The IRS insists that, while the CSG and CRDS are not specifically included among the French social security laws enumerated in the Totalization Agreement, they are still covered since they "amend or supplement" the enumerated laws. As such, they cannot be "income taxes" that would be creditable by US taxpayers.

On the other hand, the taxpayers argue that the CSG/CRDS are not covered by the Totalization Agreement as they are "income taxes" under French law and not "social charges." Their counsel has obtained official letters from the French Social Security Administration (2017) and France's Prime Minister (2018) clearly stating that the CSG/CRDS are income taxes that are covered by the US-France income tax treaty, and are not social charges

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<sup>1</sup> As originally enacted, the payments were withheld by employers from their employee's earned income, the same tax base as for French social charges. But, in 2012, the reach of the CSG/CRDS expanded to be applicable to gains realized by nonresidents of France on gains realized on the sale of real property located in France.

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covered by the US-France Totalization Agreement. In fact, the French authorities have consistently taken this position since 1990. (Additional letters and cases are cited in the decisions and pleadings filed in *Eshel*.) Moreover, this is the common view of France's income tax treaty partners, with the exception of the US.

Again, we note that there is no issue as to whether the CSG/CRDS are potentially creditable taxes - in *Eshel*, counsel for the IRS states its agreement that the CSG/CRDS meet the requirements of [IRC Section 901](#) of a creditable "income tax." The only outstanding issue in the case is whether the US and French authorities will agree whether or not that they are social charges covered by the Totalization Agreement.

We are relatively confident that the conclusion will be that the CSG/CRDS are creditable taxes for purposes of the FTC. When the French government unequivocally states they are not social charges, how long can the US government persist in ignoring this? Who better to determine the nature of the CSG/CRDS and whether they are to be covered by the Totalization Agreement than the French authorities that created and today implement the taxes?

Eventually, the US will need to set a common position with France. But how long will this take? In the meanwhile, hundreds of US taxpayers are unfairly being denied an FTC. The burden of filing amended returns upon a reversal of the IRS's position, both on taxpayers and the IRS, will be heavy indeed.

We request your assistance in accelerating the process and in resolving this injustice.

Sincerely yours,

Stéphanie Barreau  
President, AmCham France  
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CC:

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## References

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Foreign Tax Credit;  
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