IPB Submits Comments to IRS Regarding the Nexus Rule in Proposed Foreign Tax Credit Regulations

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IPB partners Pat Smith and Les Schneider submitted comments to the IRS this week, advocating that the nexus requirements should be eliminated from sections 901 and 903 in proposed foreign tax credit regulations.

As profiled in the *Tax Notes* article, Attorneys Take Aim at Nexus Rule in Proposed FTC Regs, "The jurisdictional nexus requirement would also be imposed on section 903 in connection with the substitution requirement to ensure that a foreign tax cannot be creditable under the rule "by being imposed on a taxable base other than income." Section 903, which defines taxes paid in lieu of an income tax for FTC purposes, contains a substitution requirement that is satisfied when a foreign tax "operates as a tax imposed in substitution for, and not in addition to, an income tax or a series of income taxes.""

"Citing the legislative reenactment doctrine, Schneider and Smith argued that Congress approved the current rules in 1983 without amending section 901 or 903 and that those sections should remain unaltered.

A set of 1979 proposed regs was rejected because of a "mirror image" deduction rule in section901 that would have allowed FTCs for foreign taxes that suitably resembled U.S. taxes. The government took a second swing with 1980 temporary and proposed regs that eased up on the"mirror image" rules, and those regs were finalized in 1983.

"The final regulations . . . have been retained in essentially the same form since their issuance," the letter says. However, the new proposed regulations "would deviate significantly from the provisions in the 1983 regulations that have now been in existence for almost 40 years," it adds."