Ian W. Maclean, Petitioner v. Commissioner of Internal Revenue, Respondent, 73 T. C. 1045 (1980); 1980 U. S. Tax Ct. LEXIS 169

A nonresident alien must maintain adequate books and records to elect a fiscal year and must meet specific criteria to claim a tax treaty exemption.

Summary

Ian Maclean, a British citizen working in the U. S. , attempted to use a fiscal tax year ending February 28, 1974, and claimed an exemption for his U. S. income under the U. S. -U. K. tax treaty. The U. S. Tax Court ruled that Maclean could not use a fiscal year due to insufficient records and was not eligible for the treaty exemption. The court found Maclean was a U. S. resident for tax purposes and his income was earned for a U. S. corporation, not a U. K. entity, thus rejecting his claims.

Facts

Ian Maclean, a British citizen, was employed by Plessey Co. , Ltd. in the U. K. before being seconded to Rohr-Plessey Corp. , a U. S. corporation, from August 1973 to August 1975. He entered the U. S. on an L-1 visa and was paid by Rohr-Plessey. Maclean attempted to file his 1973 income tax return using a fiscal year ending February 28, 1974, and claimed an exemption under the U. S. -U. K. tax treaty for income earned in the U. S. The IRS determined a deficiency, asserting Maclean was subject to U. S. tax on his income.

Procedural History

The Commissioner of Internal Revenue issued a statutory notice of deficiency to Maclean for the 1973 calendar year. Maclean petitioned the U. S. Tax Court, which found in favor of the Commissioner, ruling that Maclean did not meet the requirements for using a fiscal year nor for the treaty exemption.

Issue(s)

1. Whether Maclean was entitled to use a fiscal year ending February 28, 1974, for his U. S. income tax return.
2. Whether Maclean’s income earned in the U. S. during 1973 was exempt from U. S. tax under the U. S. -U. K. tax treaty.

Holding

1. No, because Maclean did not keep adequate books and records to establish a fiscal year as his annual accounting period.
2. No, because Maclean was a U. S. resident for tax purposes and his services were performed for a U. S. corporation, not a U. K. resident.

Court’s Reasoning

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The court applied Section 441 of the Internal Revenue Code, which requires a taxpayer to use a calendar year if no adequate books and records are maintained for a fiscal year. Maclean failed to provide evidence of such records, thus defaulting to the calendar year. For the treaty exemption, the court applied Article XI of the U. S. -U. K. tax treaty, which requires the individual to be a U. K. resident and perform services for a U. K. resident. Maclean was found to be a U. S. resident due to his extended stay and intent to reside in the U. S. , and his services were primarily for Rohr-Plessey, a U. S. corporation. The court also considered the presumption of nonresidency under the regulations but found Maclean's actions indicated an intent to reside in the U. S. The court rejected Maclean's argument that his services indirectly benefited Plessey, Ltd. , as insufficient for treaty exemption.

Practical Implications

This decision clarifies that nonresident aliens must maintain thorough records to elect a fiscal year for U. S. tax purposes. It also emphasizes the stringent criteria for claiming tax treaty exemptions, particularly the need to prove U. K. residency and that services are performed for a U. K. entity. Practitioners advising nonresident aliens should ensure clients understand the importance of maintaining records and meeting treaty requirements. The ruling impacts how similar cases are analyzed, focusing on the actual employer and residency for tax purposes. Subsequent cases have followed this precedent in determining residency and treaty eligibility.

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