Ory Eshel and Linda Coryell Eshel v. Commissioner of Internal Revenue, 142 T. C. No. 11 (2014)

In a significant ruling on foreign tax credits, the U. S. Tax Court in Eshel v. Commissioner clarified that certain French taxes, CSG and CRDS, paid under the U. S. -France Totalization Agreement, are not creditable for U. S. federal income tax purposes. This decision upholds the principle that taxes paid to a foreign country under a totalization agreement cannot be claimed as credits, impacting dual citizens and international tax planning strategies significantly.

Parties

Ory Eshel and Linda Coryell Eshel, dual U. S. and French citizens residing in France, were the petitioners at both the trial and appeal levels. The respondent was the Commissioner of Internal Revenue, representing the U. S. Government.

Facts

Ory and Linda Coryell Eshel, U. S. citizens living in France, worked for a non-American employer during 2008 and 2009. They paid French taxes, including the *contribution sociale généralisée* (CSG) and *contribution pour le remboursement de la dette sociale* (CRDS), which are earmarked for the French social security system. These taxes were assessed on their employment income, and the Eshels claimed foreign tax credits for these payments under I. R. C. section 901. The Commissioner disallowed these credits, asserting that the taxes were paid in accordance with the U. S. -France Totalization Agreement, which precludes such credits under section 317(b)(4) of the Social Security Amendments of 1977.

Procedural History

The Eshels timely filed their U. S. federal income tax returns for 2008 and 2009, claiming foreign tax credits for CSG and CRDS. The Commissioner issued a notice of deficiency, disallowing the credits. The Eshels petitioned the U. S. Tax Court for redetermination of the deficiencies. The Commissioner conceded all other claimed foreign tax credits except those for CSG and CRDS. Both parties moved for summary judgment on the issue of whether CSG and CRDS were creditable under U. S. law.

Issue(s)

Whether the CSG and CRDS taxes paid by the Eshels to France are creditable under U. S. federal income tax law, given that these taxes were paid in accordance with the terms of the U. S. -France Totalization Agreement?

Rule(s) of Law

Section 317(b)(4) of the Social Security Amendments of 1977 provides that "notwithstanding any other provision of law, taxes paid by any individual to any

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foreign country with respect to any period of employment or self-employment which is covered under the social security system of such foreign country in accordance with the terms of an agreement entered into pursuant to section 233 of the Social Security Act shall not, under the income tax laws of the United States, be deductible by, or creditable against the income tax of, any such individual. “

Holding

The U. S. Tax Court held that the CSG and CRDS taxes paid by the Eshels to France were not creditable under U. S. federal income tax law because these taxes were paid in accordance with the U. S. -France Totalization Agreement, as they “amend or supplement” the French social security laws enumerated in the Agreement.

Reasoning

The court’s reasoning centered on the interpretation of the phrase “in accordance with” in section 317(b)(4). It determined that taxes are paid in accordance with a totalization agreement if they are covered by, or within the scope of, that agreement. The court analyzed the U. S. -France Totalization Agreement, finding that CSG and CRDS “amend or supplement” the French social security laws listed in the Agreement. These taxes, while not specifically mentioned in the Agreement, were enacted to fund the French social security system and were collected similarly to other social security taxes. The court rejected the Eshels’ arguments that the tax base, the absence of a “period of coverage” or benefit, and France’s postratification understanding of the Agreement should alter the conclusion that these taxes are covered by the Agreement. The court also considered the European Court of Justice’s rulings that classified CSG and CRDS as social charges, supporting its conclusion. The court noted that the U. S. Government’s consistent position that these taxes were covered by the Totalization Agreement was persuasive, while France’s position was less clear and did not control the court’s decision.

Disposition

The Tax Court granted the Commissioner’s motion for summary judgment and denied the Eshels’ motion, holding that the Eshels could not claim foreign tax credits for the CSG and CRDS paid to France in 2008 and 2009.

Significance/Impact

The Eshel decision significantly impacts dual citizens and others subject to foreign social security taxes under totalization agreements. It clarifies that taxes paid under such agreements, even if they meet the general criteria for creditability under section 901, are not creditable under U. S. law. This ruling may affect international tax planning, particularly for those working in countries with totalization agreements with the U. S. The decision also underscores the importance of the specific language and scope of totalization agreements in determining the

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availability of foreign tax credits.

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