

US Foreign Tax Credit - Final Regulations

Require foreign tax law to meet a net gain requirement

- Objective standard
- Realization, gross receipts and net income (“cost recovery”) requirements - include cost recovery of certain per se expenses - capital expenditures, interest, rents, royalties, wages and other payments for services, and R&E

Attribution requirement

- Added in response to **novel extraterritorial taxes** (e.g., digital services tax)
- Foreign tax not creditable unless the foreign law requires a **sufficient nexus** between the foreign country and the taxpayer’s activities or investments
- For any foreign taxes imposed on non-residents (e.g., withholding taxes) nexus required under US tax principles for activities, sourcing, property situs
- For foreign tax imposed on residents of the foreign country, foreign law must permit the worldwide gross receipts of a resident to be included in the foreign tax base and require profit allocation to be **arm’s length** under transfer pricing rules
- **Impact for Brazil withholding taxes and underlying Brazil federal taxes?**

Income tax treaties may provide for taxes to be creditable

Applicability dates - For foreign income taxes paid or accrued in tax years beginning on or after December 28, 2021

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