No. C15-1701-1
November Term 2014

Supreme Court of the United States

ROYAL HARKONNEN OIL COMPANY,

Petitioner

V.

UNITED STATES,

Respondent

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT

BRIEF FOR RESPONDENT

Counsel for Respondent
November 24, 2014

QUESTIONS PRESENTED

I. Is Harkonnen Oil's payment of taxes to the Republic of Arrakis a creditable foreign tax credit under 26 U.S.C. § 901 or 26 U.S.C. § 903?

II. Did the IRS properly deny Harkonnen Oil's claimed foreign tax credit for all tax payments to Inter-Sietch Fremen Independence League?

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STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

OPINIONS BELOW

The decision and order of United States Central District of New Tejas is unreported and set out in record. R. 2-17. The opinion of The United States Court of Appeals for the Fourteenth Circuit is also unreported and set out in the record. R. 17-21.

STATUTORY PROVISIONS

Section 901 of the United States Annotated Code is relevant to the first and second issues and is reprinted in Appendix A. Additionally, Section 903 of the United States Annotated Code is relevant to the first issue and is reprinted in Appendix B.

STATEMENT OF THE CASE

I. Statement of the Facts

Royal Harkonnen Oil Company is an international oil company that is headquartered in the state of Delaware of the United States of America. R. 2. In early 2008, Harkonnen Oil entered negotiations and began extracting oil from the Caladan Oil field located the northeastern part of the Republic of Arrakis. R. 4. In the subsequent years Harkonnen Oil rendered tax payments to self-declared and recognized owners of the Caladan Oil fields including the Republic of Arrakis, the Seitch State, and the Inter-Sietch Freman Independence League ("IFIL"). R. 16.

Harkonnen Oil's tax payment to Arrakis. Arrakis has had a history of discrimination within its tax code. R. 5. Initially, the Arrakis tax code only applied to individuals or entities who historically were subjects under either the Arrakis or Sietch Thrones. R. 5. Those not subject to the tax were not provided any protections under the law. R. 5. Over time, the tax code developed and permitted Arrakis citizens to apply deductions against their income tax. R. 5. These deductions are comparable to deductions that might be found in the United States Tax Code, however, these deductions did not apply to any costs, fees, or royalties demanded of foreign individuals or entities. R. 5. Eventually, President Corrino, Emperor of the United Thrones of the Sietch Empire and the Eternal Arrakis Empire, drafted and implemented a new tax code entitled the "Republic of Arrakis Foreign Value Tax." R. 5. This tax applied to all entities that operated machinery on Arrakis territory. R. 5. It was determined by calculating the gross receipts of a corporation's operations in Arrakis territory and multiplying that amount by a set tax percentage. [1,2] R. 16.

Aware of these facts, Harkonnen Oil signed an oil and gas lease with Arrakis to develop the Caladan Oil Field. R. 8. This lease included a one-time bonus payment of fifty-five million dollars and a royalty of fifteen percent. R. 6. In addition to the royalty and one-time payment Harkonnen Oil agreed to pay the Republic of Arrakis Foreign Tax. R. 6.[3]

Three years later, in 2011, President Corrino issued a Proclamation stating that foreign companies should be allowed to take all tax deductions available to Arrakis citizens, still excluding costs, fees, or royalties demanded by foreign entities. R. 16. However, these deductions would be capped at ninety-five percent of the dollar value of an Arrakisian citizen. R. 15.

Harkonnen Oil Company and the Sietch State. In March 2010, a group of Arrakis people who self-identified as the Independent People of Sietch ("IPS") declared their independence from Arrakis and professed to have political control of the Sietch Dunes region of Arrakis. R. 8. Arrakeen military was dispatched to control the uprising, and thousands of casualties occurred among both IPS and Arrakeen military. R. 8. This prompted the U.S. State Department to declare

[1] This tax percentage was originally determined to be 45 percent but was later modified to a 33 percent. R. 16.
[2] The Republic of Arrakis Foreign Value Tax charged the Central Bank of Arrakis with calculating all applicable taxes and as a part of that required that all monies earned in Arrakis be deposited into the Central Bank before disbursed to a foreign entity. R. 19.
[3] The Republic of Arrakis Foreign Tax later became the Republic of Arrakis Foreign Value Tax. R. 7.

Arrakis a "Dangerous State" and withdraw the U.S. embassy from the capital city of Arrakis. R. 8. On April 9, 2010, President Corrino called a meeting with the U.S. ambassador to Arrakis, the new leader of the IPS, and Mr. Harkonnen, head of Harkonnen Oil. R. 8. The meeting was called the Arrakeen Peace Summit. R. 8. At this meeting, a ceasefire between Arrakis and IPS was declared and the parties proclaimed a truce, referred to as the "Sietch Dunes Peace Treaty." R. 8. On April 12, 2012, this treaty was ratified and the Sietch Dunes region of Arrakis became the independently recognized and governed Sietch State. R. 8. The Sietch Dunes Peace Treaty indicated that the Sietch State is an "Important Province of Arrakis." R. 8. In addition to designating the Sietch State as a province of Arrakis, the treaty also recognized IPS as an official political party of the Sietch State. R. 9.

As a result of the Sietch Dunes Peace Treaty, President Corrino drafted an amendment to the Arrakis Constitution that took effect on April 13, 2010. R. 9. This amendment created the post of the Arrakis Vice President. R. 9. The Sietch Dunes Peace Treaty specified that the Sietch people would elect a representative who would serve as Vice President of Arrakis in the cabinet of the President of Arrakis. R. 8-9. This constitutional amendment enumerated the powers of the Vice President. R. 9. Among other things, the Vice President was authorized to decree and levy a single tax upon the Sietch State. R. 9. On April 15, 2010, Paul Atreides was elected as Vice President of the Sietch State. R. 9. As his first official act of the Vice Presidency, Atreides implemented a ten percent tax on all income generated within the Sietch State. R. 10. Pursuant to this tax, Harkonnen Oil rendered applicable payments to the Sietch State. R. 10. On April 21, 2010, Harkonnen Oil executed an oil and gas lease with the Sietch State. R. 10. This lease specified a one-time bonus payment of five million dollars and an annual five percent royalty. R. 10. On July 6, 2010, the U.S. State Department undesignated Arrakis as a "Dangerous State." R. 10. The U.S. State Department also acknowledged the Sietch State as a "quasi-autonomous region." R. 10. Further, the U.S. State Department agreed to "establish diplomatic ties with the Sietch State," and the United States re-established its embassy in Arrakeen. R. 10. The U.S. Treasury department officially announced that it would "accept transactions from the Sietch State." R. 11.

Harkonnen Oil Company and IFIL. While the Sietch State had asserted its independence, its political climate was fraught with mounting political tension. R. 11. Terrorist groups, in particular IFIL, were gaining political power, traction, and mobility in the Sietch region. R. 12. The U.S. State Department has classified IFIL as an "independent splinter group" of the Bene Gesserit, a known terrorist organization. R. 11. In December 2010, IFIL rebelled against the Sietch State. R. 11. As a part of this rebellion, IFIL called for the resignation of Vice President Paul Atreides. R. 11. IFIL declared their leader and rightful heir to the historic Sietch Throne to be Jessica Mohiam. R. 11. From birth, Mohiam was associated with the Bene Gesserit terrorist organization. R. 11. However, in order to receive funding from surrounding countries, Mohiam agreed to oppose the Bene Gesserit and distance IFIL from its parent organization. R. 12.

While France and Russia recognized IFIL as a "state within the Sietch Dunes Region," the United States only agreed to "look at the matter for determination." R. 12-13. While the U.S. President once called IFIL "a sovereign friend" in Executive Order 14012, a final determination from the United States regarding the legitimacy of the IFIL was never made. R. 14.

In March 2011, IFIL forcefully took control of an area of the Sietch State known as the "Badlands." R. 13. This area contained a drilling station called "Unit #12" that was being operated by Harkonnen Oil. R. 13. Mohiam demanded that Harkonnen Oil rectify this "insolence" and pay IFIL for the use of Unit #12. R. 13. Though they already had an oil and gas lease with the Sietch State, Harkonnen Oil executed an additional lease with IFIL. R. 13. This lease specified that Harkonnen Oil would pay a bonus and annual royalty directly to IFIL. R. 13. In addition, Mohiam attempted to impose an income tax on Harkonnen Oil for income derived from Unit #12. R. 13. Harkonnen Oil protested the tax and petitioned the Arrakis Holy Royal Court for a "determination of the status of IFIL and its ability to levy a tax demand." R. 13. The Arrakis court determined that "Arrakis recognizes IFIL as a part of Sietch." However, the court was silent in respect to IFIL's ability to levy a tax. Still, Harkonnen Oil agreed to pay a two percent income tax to IFIL on income derived from of Unit #12. R.13.

II. Procedural History

In March 2012 Harkonnen Oil filed a Form 1118 claiming foreign tax credits for its payments to the Republic of Arrakis, the Sietch State and IFIL. R. 16. The

Internal Revenue Service flagged Harkonnen Oil's 2012 tax returns. R. 16. After concluding an audit, the IRS determined that Harkonnen Oil's payments to the Sietch State were creditable as a foreign income tax under 26 U.S.C § 901. R. 16. However, Harkonnen Oil's payments to the Arrakis government did not qualify as a creditable foreign tax under either 26 U.S.C § 901 or 26 U.S.C § 903. R. 16. In addition, the IRS found that tax payments to IFIL were not creditable because IFIL was not a proper taxing authority. R. 17.

After failing to reach an agreement with the IRS, Harkonnen Oil paid the full income tax to the United States and demanded a refund. R. 17. Harkonnen Oil filed suit in the Central District Court of New Tejas where the District Court Judge ruled in favor of the United States. R. 17. The 14th Circuit of the United States Court of Appeals affirmed. R. 17.

STANDARD OF REVIEW

This Court reviews *de novo* the propriety of the Fourteenth Circuit's application of law. *See SmithKline Beecham Corp. v. Abbott Labs.*, 740 F.3d 471, 476 (9th Cir. 2014).

SUMMARY OF THE ARGUMENT

This Court faces the decision of whether to allow a foreign tax that has little or no relation to income, to qualify as a creditable income tax under either 26 U.S.C § 901 or 26 U.S.C § 903. Section 901 was intended to avoid the evils of double taxation and thus encourage foreign trade. However, so that the United States is not overcompensating individuals or entities, this credit only applies to a foreign tax that can reasonably reach net gain. The Arrakis tax, through its denial of Harkonnen Oil's royalty deductions and its cap on the amount of deductions Harkonnen Oil could apply against its income tax, could not creditably reach net gain. In addition, section 903, providing that a foreign tax may be credited if it is in lieu of a general income tax, does not apply because the Arrakis tax was in addition to an already present tax on gross income, its royalty tax. Because the Arrakis tax was in addition to, and not in substitute of a general income tax, the substitution provision in § 903 excludes the Arrakis tax from being credited against Harkonnen Oil's income tax to the United States.

Further, Harkonnen Oil's payment to IFIL cannot be credited as a tax under § 901 because IFIL was not a valid taxing authority. For the United States to credit a foreign tax, the tax payment must be made to an entity that can qualify as a "foreign country" or "political subdivision." IFIL was neither of these. In addition, tax credits are denied for payments made to terrorist organizations. IFIL was designated as a group of a terrorist organization. Therefore, payments to IFIL must be denied credit. Moreover, the United States should not be saddled with costs that Harkonnen could have avoided by exhausting the available administrative remedies.

ARGUMENT

I. HARKONNEN OIL'S PAYMENT TO THE ARRAKIS GOVERNMENT CANNOT BE CREDITED AS AN INCOME TAX UNDER 26 U.S.C. §901 OR 26 U.S.C. §903.

Harkonnen Oil cannot be granted a tax credit for two reasons. First, under 26 U.S.C. § 901 a foreign tax must be intended to creditably reach net income. The Arrakis tax does not creditably reach net income because it does not take into account such factors as foreign royalties. In addition, the tax does not reach net income because there is a cap on the amount of deductions a foreign entity may be granted. Second, 26 U.S.C. § 903's substitution provision, allowing a tax to be credited if it was paid "in-lieu" of income tax, does not apply because the Arrakis tax was in addition to, and not in substitution for, additional royalties.

A. Payments Made To The Republic Of Arrakis Cannot Be Credited Against A United States Income Tax Because The Arrakis Tax Did Not Have A Predominant Character Of A United States Income Tax As Defined In 26 U.S.C §901.

The purpose of the foreign tax credit in § 901 is to "mitigate the evil of double taxation" of domestic corporations on income from foreign sources. *New York & Honduras Rosario Mining Co. v. Comm'r. Internal Revenue*, 168 F.2d 745, 747 (2d Cir. 1948). This has the effect of encouraging foreign trade *Id.* Section 901 provides that "in the case of... a domestic corporation, the amount of any income, war profits, and excess profits... paid to any foreign country" shall be creditable. 26 U.S.C. §901(a)(1).

However, not all payments made to a foreign country are considered income tax payments. The Code distinguishes between a "foreign levy" and a "foreign income tax." Treas. Reg. §901-2(a)(ii). A foreign levy is a "compulsory payment pursuant to the authority of another country to levy taxes." *Id.* In order to qualify in the narrower category of an income tax courts should consider the nature of the foreign tax. *PPL Corp. v. Comm'r Internal Revenue*, 133 U.S. 1897, 1902 (2013). In particular, foreign tax creditability will depend on if the tax meets the United States' standard as an "income, war profits, or excess profits tax." Treas. Reg. §901-2(a)(ii).

A tax will qualify as an "income, war profits, or excess profits" tax if the tax's "predominant character" is that of a United States Income tax. Treas. Reg. §901-2(a)(ii). A tax that is "likely to reach net gain in the normal circumstances in which it applies" will be considered to have the predominant characteristics of a U.S. income tax. Treas. Reg. §9012(a)(1)(ii). However, levies have not passed this predominate character test if they have been considered "privilege," or a tax paid in return of a specific economic benefit. Treas. Reg. section 1.901-2(a)(2)(i). A levy whose predominant character is not of a United States income tax will not be eligible for United States credit under § 901. *Bank of American Nat'l Trust & Sav. Ass'n v. U.S.*, 459 F.2d 513, 519. (Cl. Ct. 1972).

If the IRS finds that a taxpayer has failed to pay his taxes or does not have the right to a tax refund the strong presumption is on the correctness of the Commissioner of Internal Revenue. *Welch v. Helvering*, 290 U.S. 111, 115 (1933). In addition, since § 901's exemption from taxation is a "privilege extended by legislative grace," it should be strictly construed. *Texasgulf, Inc. and Subsidiaries v. Comm'r Internal Revenue.*, 172 F.3d 209, 214 (2d Cir. 1999). The taxpayer claiming the foreign credit must clearly show that the foreign tax is qualified for a credit under § 901. *Keasbey & Mattision Co. V. Rothensies*, 133 F.2d 894, 898 (3d Cir. 1943).

Here, the Arrakis tax was not predominantly in character of that of a United States income tax for two reasons. First, the Arrakis tax did not creditably reach net gain because it did not allow Harkonnen Oil to deduct royalty payments and, in addition, capped the amount of deductions Harkonnen Oil could take. Second, because the Arrakis tax payment was for a specific economic benefit, namely, the lease of Arrakis land, the Arrakis tax was a privilege tax and not an income tax.

1. The Arrakis Tax Did Not Creditably Reach Net Gain.

The Supreme Court has held that a foreign tax that reaches "net income or profits" is creditable. *PPL Corp.,* 133 U.S. at 1898. Income, as defined by the Supreme Court, is "gain derived from capital, from labor, or from both combined." *Eisner v. Macomber*, 252 U.S. 189, 207 (1919). Courts have held that the term "income tax" as applied to § 901 covers "all foreign income taxes designed to fall on some net gain and profit." *Id.*; *PPL Corp.,* 133 U.S. at 1898. The Court of Claims stated that "all are agreed that an income tax is a direct tax on gain or profits, and that gain is a necessary ingredient of income." *Bank of America*, 459 F.2d. at 271. Taxes that are based on gross income, instead of gain, are not likely to be considered creditable. *Id.* Only an income tax, not a tax "which is truly on gross receipts" will be considered creditable. *Id.* Gross income is creditable if, and only if, the impost is "almost sure, or very likely to reach some net gain because costs or expenses will not be so high as to offset the net profit." *Id.*

An Income tax that is derived from a means "independent to that of gain or profit" does not creditably reach net gain, and so is not creditable under § 901. *Deasbey and Mittison Co. v. Rothensias*, 133 F.2d 894 (3d Cir. 1943). Taxes that do not have some relation to gain, profit, or loss, of an employer will not reach the criteria of an income tax and so will not satisfy § 901. *Comm'r. Internal Revenue v. Am. Metal Co.*, 221 F.2d 134 (2d Cir. 1955); *Keasbey*, 133 F.2d at 894. A tax that will not allow a taxpayer to fully deduct any losses will not be considered an income tax under § 901. While there are some circumstances where a gross income tax is permitted, the Arrakis tax did not fall within these exceptions and so could not be creditable under § 901, *Keasbey*, 133 F.2d at 898.

a. Taxes That Do Not Permit Full Deductions Do Not Reach Net Gain.

Taxes that do not have a relation to gain or profit are those that do not permit a taxpayer to deduct losses from his income tax. *Keasbey*, 133 F.2d at 898. In *Keasbey*, for example, at issue was whether a Canadian foreign mining tax qualified as an income tax under § 901. *Id.* This tax restricted deductions to losses incurred during mining operations but refused to allow deductions for losses incurred in the production or sale of the material. *Id.* The Second Circuit held that, because of the deduction restrictions, the levy had a basis that was independent of either "realization of gain or deprivation of profit" and so could not be considered an income tax. *Id.* (See also *St. Paul Fire & Marine Ins. Co. v. Reynolds,* 44 F. Supp. 863 (D. Minn. 1952)(holding that a tax imposed on gross premiums could not be considered an income tax).

A foreign tax that does not allow a taxpayer to deduct royalties does not creditably reach net gain and so cannot be creditable under § 901. *Inland Steel Co v. U.S.*, 677 F.2d 72, 85 (Cl. Ct. 1982).[4] In *Inland Steel*, at issue was an Ontario Mining Tax that precluded deductions of "significant mining costs" such as land expenses, rent, private royalties, interest, and depletion. *Id.* Since these "significant mining costs" could not be accounted for in the income tax payment, the Court of Claims held that the Canadian tax was not creditable under § 901. *Id.* Three years later, in an Private ruling, the IRS expounded on Court of Claims ruling and applied *Inland Steel's* holding to a similar case where at issue was, once again, a Canadian tax that disallowed certain deductions such as capital cost, interest expenses, cost depletion, and crown royalties. Priv.Ltr.Rul. 85-25-122

[4] While Tax Court decisions are persuasive and not binding on the Supreme Court, *South Corp. v. U.S.*, 690 F.2d 1368, 1370-71 (Fed. Cir. 1982), Tax Court decisions "respected" and courts should place "significant weight upon its opinions." *Somerville v. U.S.*, 13 Cl. Ct. 287, 290 (Cl. Ct. 1987).

(March 28, 1985).[5] These expenses, like those in *Inland Steel*, were "significant expenses in the mining industry." *Id.* The fact that these significant costs were not deductible showed that the Canadian tax could not creditably reach net income and so could not be creditable under §901. *Id.*

b. Circumstances Where A Gross Tax That Does Not Allow Deductions Might Be Permitted.

There will be some instances where a gross tax is creditable under § 901. *Santa Eulalia Mining Co. v. Comm'r Internal Revenue,* 2 T.C. 241 (1943); *Seatrain Lines, Inc. v. Comm'r Internal Revenue,* 46 B.T.A. 1076, 1080-81 (1942). In *Santa Eulalia*, for example, at issue was whether a Mexican gross income tax on mining royalties was creditable under § 901. *Santa Eulalia*, 2 T.C. at 241. These mines were not operated by the taxpayer and there were no costs or expenses involved in operating the mine that could offset any gross gains. *Id.* Because there was no cost or expenses in operating the mines, there were no applicable deductions and a gross tax could credibly reach the net gain of the taxpayer. *Id.* Another example of when a gross tax reached net gain and so was creditable occurred in *Seatrain Lines* where Cuba levied a three percent gross tax on an American company's gross income. *Seatrain Lines,* 46 B.T.A. at 1076. There, the Board of Tax Appeals pointed out that originally Cuba had levied a six percent tax on gross profits and had lowered that

[5] While private letter rulings technically do not have precedential value in deciding claims, (*Lucky Stores, Inc. & Subsidiaries v. Comm'r. Internal Revenue*, 153 F.3d 964, 966 n. 5 (9th Cir. 1998)), the Courts have also held that private letter rulings reveal the agency's interpretation of statutes and regulations promulgated pursuant to those statues and a reviewing court should accord "substantial weight" to an agency's interpretations of its own statutes (and regulations). *Zenith Radio Corp. v. U.S.*, 437 U.S. 443, 450-451 (1978); *Am. Lamb Co. v. U.S.* 785 F.2d 994, 1001 (Fed. Cir. 1986).

amount to a three percent tax on gross profits in order to accommodate possible deductions. *Id.* Since Cuba had attempted to accommodate and acknowledge deductions in its tax, the Board of Tax Appeals held that the tax did, in fact, reasonably reach net income and so was creditable against a U.S. income tax.

c. The Arrakis Tax Did Not Creditably Reach Net Income.

While there are some narrow exceptions to when a gross tax might reach net gain, none of these possible exceptions apply to the Arrakis Tax. Instead, the Arrakis tax, while supposedly a tax on net income, could not credibly reach net income because it both capped the deductions and excluded royalties. R. 15; R. 4. Unlike *Santa Eulalia*, Harkonnen Oil was in full operation during 2011 and, unlike *Seatrain Lines*, Arrakis had not imposed some sufficient leverage or credit in order to account for any cost-operating deductions. Instead, the Arrakis tax aligns most clearly with the taxes in *Keasbey* and *Inland Steel* as a non-creditable tax because it excluded deductions that would have allowed the tax to creditably reach net gain under § 901.

These excludable deductions, like the deductions in *Inland Steel*, were significant. Data from comparable oil companies shows that in 2013 it cost roughly $66.98 (USD) to produce and transport a barrel of oil.[6] Harkonnen Oil was producing 858,000 barrels of oil per day. R. 7. This lead to a daily cost production of $6,004,280 (USD). Assuming Harkonnen only produced oil for a mere 300 days

[6]Derived from Alaska Department of Revenue, Revenue Sources Book, Fall 2013. Table E-1a. Page 104.

during 2011 that would still lead to a cost of production of $1,801,285,200 (USD) a year. This amount, capped at 95 percent would mean that $ 900,642,600 (USD) would have been non-deductible. The 95 percent cap seems deceptively insignificant, but when put in practical terms that is a 900 million dollar loss that would not be reflected in Harkonnen Oil's income and so would not be deducted from its tax liability.

The previous analysis only addresses the unaccounted for loss via the Arrakis cap on deductions, however, in addition to that percentage cap there was also the fact that the Arrakis tax did not allow its own fifteen percent royalty to be deducted from the Arrakis income tax. In 2012, oil was sold for an average of $94.05 (USD) per barrel.[7] Using the same numbers as before (858,000 barrels per day for 300 days of the year) that leads to a gross income of $24,208,470,000 (USD) of which the Arrakis government took $36,321,705 (USD). That is thirty six million dollars that Harkonnen Oil could not apply as deductions against their Arrakis income tax.

Taken in total, at a minimum, Harkonnen Oil could not deduct close to four billion dollars of their costs and royalties.[8] This is not, as the Dissent in the Court of Appeals Fourteenth Circuit decision stated, allowing Harkonnen Oil to recover costs and expenses "sufficiently identical to those costs and expenses referenced in the U.S. tax code." R. 19. Instead, these costs must be defined as "significant" mining costs under the standard in *Inland Steel.* Because these costs

[7] Spot Prices for Crude Oil and Petroleum Products." *Spot Prices for Crude Oil and Petroleum Products*. Web. 22 Nov. 2014.
<http://www.eia.gov/dnav/pet/pet_pri_spt_s1_d.htm>

[8] The actual calculated amount is $4,531,913,100

were significant, and because they were not deductible, the Arrakis income tax did not creditably reach net gain and so could not be credited as an income tax.

2. The Arrakis Tax Should Be Considered A Privilege Tax, Not An Income Tax.

A foreign levy will not be considered predominately in character to that of a United States income tax if the taxpayer "receives (or will receive), directly or indirectly, a specific economic benefit." Treas. Reg. §1.901-2(a)(2)(i). An example of a specific economic benefit would be the right to "extract resources, patents, or other property that a foreign country owns or controls." Treas. Reg. §1.901-2(a)(2)(ii)(B). Such taxes are considered "privilege taxes" because the country has granted the taxpayer the privilege or gift and so is not considered an income tax for the purposes of § 901. Treas. Reg. §1.901-2(a)(2)(ii)(B).

A tax on the production of materials extracted from a foreign country's land is a privilege tax. *Am. Metal.*, 221 F.2d at 134. In *American Metal* at issue was a tax that was levied on the "privilege of extracting from the sub-soil ore belonging to the nation" of Mexico. *Id.* The Mexican nation had claimed proprietary interests over the oil but had released these interests to American Metal. *Id.* At issue was whether Mexico's tax on American Metal deriving from American Metal's use of Mexican land should be considered a privilege tax and therefore excludable as creditable under § 901. *Id.* The Second Circuit sided with the Commissioner and stated that because the tax was imposed on the proceeds of a mining operating on land originally owned by Mexico, the tax was a privilege tax and not an income tax. *Id.*

However, the tax will only be considered a privilege tax if it is levied by the entity that has control over the property. *Texasgulf*, 172 F.3d at 214. In *Texasgulf* for example, at issue was an Ontario Mining tax that taxed the extraction of oil from private, non-Canadian lands. *Id.* The Second Circuit acknowledged the tax was not a privilege tax because Canada did not have "control of the property" and so the taxpayer was not receiving a specific economic benefit from the foreign government. *Id.*

Here, Harkonnen Oil, the taxpayer, received a specific economic benefit, namely, a lease and drilling privileges of the Caladan Oil Field, owned by the Arrakis, in exchange for, among other things, a tax on income derived from the benefits of this field. R. 7. The Arrakis government had sole ownership and control of this land. R. 7. Therefore, unlike the situation in *Texasgulf*, the Arrakis tax was a privilege tax under the standard in *American Metal*, because it was levied on the privilege of extracting oil from owned land by Arrakis. (R. 7).

B. The Arrakis Tax Cannot Be Credited Under § 903 Because It Was Not Substituted For Nor Comparable To An Income Tax.

If a taxpayer cannot show that his tax is predominantly similar to a United States Income tax he can avail to § 903 to receive credit. Section 903 provides that, for purposes of a foreign income tax, the terms "income, war profits, and excess taxes" shall include taxes paid in lieu of a foreign income tax. Treas. Reg. §903. This statute was enacted to address concerns that the United States' concept of income tax was more refined than that of other countries and that the difficulty of meeting the § 901 standard could result in the non-creditability of foreign income tax. *Revenue Revision of 1942: Hearings on H.R. 7378 Before the House Comm. On Ways and Means*, 77th Cong., 2d Sess 577 (1942) (statement of Mitchell Carroll, National Foreign Trade Council). However, under this standard three requirements must still be met. First, the levy must be a "tax" and second, it must meet the "substitution requirement" as articulated in Treas. Reg. § 1.903-1(a)(2); Treas. Reg. § 1.903-1(b). As a third test, the IRS has looked to whether the taxpayer, through the "in lieu of" tax is in "comparably" the same financial place he would be in were there a recognized United States Income Tax imposed. FSA 2000-47041 (2000).[9] The Arrakis tax, while considered a tax, does not meet the substitution requirement. In addition, it did not leave Harkonnen Oil in a similar or comparable position as if a true income tax had been imposed.

1. The Substitution Requirement.

A foreign tax may be substituted for a general income tax that could be otherwise imposed on the taxpayer. Treas. Reg. § 903-1(a). To do so, three requirements must be met: the country must have in force a general income tax; the taxpayer would, in absence of a particular provision, be subject to this general

[9] Legal conclusions, such as Field Service Advisories are not formally binding, however, they are "routinely used" and relied upon by field personnel. *The Freedom of Information Act and the Exemption for Intra-Agency Memoranda*, 86 Hav.L.Rev.. 1047, 1058-60 (1973) – as cited in *Tax Analysts v. I.R.S.* 117 F.3d 607, 616 (App. D.C. 1997). The structure and purpose of these FSAs are to attempt to develop a body of "coherent, consistent interpretation by the federal law offices nationwide." *Id.* The fact that FSAs are "nominally non-binding is not reason for treating them as something other than considered statements of the agency's legal position." *Id.*

income tax; and the taxpayer is exempt from the general income tax. Treas. Reg. §1903(b)(1). This substitution tax may be measured by "gross income, gross sales, or a number of units produced within the country. *Id.* This substitution tax must be in substitute for a general income tax and not in addition to a generally imposed income tax. Treas. Reg. §1.903 – 1(b)(1). For example, in *Metropolitan Life Ins. Co. v. U.S.*, the plaintiff was not subject to income taxes but was required to pay premium taxes. 375 F.2d 835, 840 (Cl. Ct. 1967). These premium taxes, the Court held, were in substitution for the generally imposed income tax and so met the requirements of § 903. *Id.* (See also *Missouri Pacific R. CO. v. U.S.*, 392 F.2d 592, 598 (Cl. Ct. 1968)(tax imposed on rental cars was in substitution for the Mexican Government's general income, not merely an additional or unrelated tax and so met the requirements in § 903 as a creditable income tax.)

However, if the tax is *in addition* to an income tax, and not in substitution for that tax then the substitution requirement in § 903 is not met. *Allstate Ins. Co. v. U.S.*, 419 F.2d 409, 412 (Cl. Ct. 1969). For example, a patrimony tax levied in addition to an income tax could be considered a tax "in lieu" of an income tax. *Lanman Kemp- Barclay Co. of Colombia*, 26 T.C. 582, 589 (1956)(as cited in *F.W. Wollworth Co v. Comm'r. Internal Revenue,* 54 T.C. 1233, 1262 (1970); *Abbot Lab. Int'l Co. v. U.S.*, 160 F. Supp. 321, 331 (N.D.III. 1958), affirmed per curium 267 F.2d 940 (C.A. 7, 1959) In *Lanman* the Tax Court held that the patrimony tax was considered a "supplement" to the already existing income tax and so could not be creditable under § 903. *Lanman*, at 589. The Court in *Abbot* dealt with an almost identical situation in which it stated that a tax which runs "parallel to a tax upon income generally imposed, is not a tax 'in lieu' of an income tax." *Abbot* 160 F. Supp. at 331; *Guantanamo & Western R. Co. v. Comm'r.,* 31 T.C. 842, 857 (1959).

a. Determining Whether The Substitution Requirement Has Been Met.

Deciding whether a tax meets this substitution requirement is difficult, as best exemplified in the United States Court of Federal Claims case *Int'l Bus. Mach. Corp. v. U.S.*, 38 Fed. Cl. 661 (Cl. Ct. 1997). In *IBM*, at issue was IBM's payment to Italy pursuant to Italy's corporate tax ("ILOR"). *Id.* IBM, plaintiff, argued that ILOR met the substitution requirement because it was an income tax imposed on foreign entities in substitution for the tax imposed on resident corporations. *Id.* at 681. The Court of Federal Claims acknowledged that this argument would normally have worked if not for the fact that Italy had already imposed an additional national corporate income tax on both resident and non-resident taxpayers. *Id.* The Court held that ILOR could not meet the substitution requirement because it was not in substitution for the residential tax, but in addition to the national corporate tax. *Id.*

b. The Arrakis Tax Did Not Meet The Substitution Requirement.

Under the standard upheld in *IBM* the fact that the Arrakis tax was not in substitution for a domestic tax but in addition to a separate royalty tax must render the Arrakis tax excludable under § 903. The Arrakis government has imposed a general income tax on its own residents. R. 4. However, in lieu of this tax the

Arrakis government imposed a tax upon foreign entities that did not account for royalties and, in addition, placed a cap on the deductions a corporation was allowed to apply. R. 15. In addition to the Arrakis tax on Harkonnen Oil, the Arrakis government imposed a fifteen percent royalty tax. R. 8. This royalty meant that Harkonnen Oil had to pay the Arrakis government fifteen percent of the gross profit it received from the sale of oil from the Caladan Oil Field. R. 8. This royalty payment, much like the patrimony tax discussed in *Lanman*, ends up acting effectively as a tax on Harkonnen oil's gross profits. Because the Arrakis tax was in addition to a royalty tax it cannot satisfy the substitution requirement in § 903.

Further, the Arrakis tax ran parallel to the royalty tax. As stated in *Abbot*, a tax that runs parallel to an already existing tax cannot satisfy the substitution requirement and so cannot be creditable. *Abbot* 160 F. Supp. at 331. Here, the fifteen percent royalty tax would increase or decrease depending on the profits that Harkonnen Oil received for its sale of oil. In the same manner, the Arrakis tax on Harkonnen Oil would be greater or lesser depending on Harkonnen Oil's gross profit. These taxes, essentially, measured and reflected the same gains and losses and so ran parallel to one another. As such, they do not satisfy the *Abbot* standard and so cannot qualify as a substitution tax under § 903.

2. The Comparability Requirement.

In a recent Field Service Advisory, when deciding whether a tax could be creditable under §903 the IRS has looked to whether the tax operates in a way such that the taxpayers might be liable to a greater amount than they would be under a

United States recognized income tax. FSA 2000-47041 (2000). In this Field Service Advisory, at issue was a tax that imposed upon non-natural resource companies a greater tax than that imposed upon natural resource companies through denial of applicable deductions.

Here, Harkonnen Oil is not close to the same position it would have been in under a normal tax. The fact that the Arrakis government denied royalty deduction while also capping the deductions it did allow, led to an enormous loss for Harkonnen Oil.

C. Conclusion.

Harkonnen Oil was not allowed to deduct around 36 billion dollars from its tax returns. This is money that went to the Arrakis government. Harkonnen Oil now wishes to be compensated for this amount in a way that is not supported or founded in United States law. The goal of § 901 was to avoid the evils of double taxation. However, were this court to permit the Arrakis tax to be compensated it would have the effect of giving money to the Republic of Arrakis. Allowing this tax to be received as a credit would have the effect of condoning the Arrakis government tax practices and would encourage relations with a country that discriminates against United States taxpayers.

In addition, the tax cannot be credited under § 903. While the purpose of § 901 was to avoid double taxation, the sanctioning the Arrakis tax under § 903 would have the effect of permitting the Arrakis government to apply a double tax on American companies. The Arrakis tax was not a substitution tax, but a supplemental tax to a regime that already refused to allow Harkonnen Oil to be taxed on purely its net income.

II. PAYMENTS TO IFIL CANNOT BE CREDITED AS A FOREIGN TAX CREDIT UNDER 26 U.S.C. §901.

In an effort to reduce the possibility of double taxation, Congress has allowed American corporations to claim tax credits for payments made to foreign countries. 26 U.S.C. § 901. However, this is a privilege that must be strictly construed. *Texasgulf,* 172 F.3d at 214. There are exceptions to this privilege. As applicable to this case, there are three exceptions.

First, credit will not be granted for payments made to improper taxing authorities. 26 U.S.C. § 901. Section 901 provides that credit for payments made to foreign entities will only be granted if they are payments made to a "foreign country" or "political subdivision." Treas. Reg. § 1.901-2. Here IFIL qualified as neither a "foreign country" nor "political subdivision."

Second, a foreign tax that violates its jurisdiction's law will not be credited. Here, the Arrakis Constitution specified that the Sietch State was only allowed to impose a single tax against foreign corporations. IFIL violated the single tax provision of the Arrakis Constitution by imposing a second tax on Harkonnen Oil in addition to the Sietch State's single tax.

Third, a tax will not be credited if the United States corporation does not exhaust all of its possible administrative remedies in the foreign jurisdiction. U.S. Treasury regulations require taxpayers to exhaust administrative remedies in order to mitigate tax burden. The failure to exhaust all administrative remedies, both foreign and domestic, has the effect of imposing double taxation on the United States.

A. Payments Made To IFIL Cannot Be Credited Because IFIL Is Not a Proper Taxing Authority.

Section 901(b)(1) allows tax credits to be granted for payments made to "any foreign country or to any possession of the United States." For the purposes of this statute, foreign country is defined as "any foreign state, any possession of the United States, and any political subdivision of any foreign state or of any possession of the United States." Treas. Reg. § 1.901-2. Despite the statute's purpose of preventing double taxation, the foreign tax credit is not always available when tax payments are made abroad. 26 U.S.C § 901(j). This is because the United States does not want to encourage business with entities that have goals that are contrary to those of the United States. Section 901(j) lays out the situations in which an application for foreign tax credit may be denied.

In order for the foreign tax credit to apply for payments made to IFIL, IFIL has to have the ability to levy a tax. In order for IFIL to have the ability to levy a tax, it has to fit within two parameters. First, IFIL has to be a "foreign state, any possession of the United States, [or] any political subdivision of any foreign state or of any possession of the United States." Treas. Reg. § 1.901–2. Second, IFIL has to fall outside of the parameters of § 901(j), which sets out the instances in which a foreign tax credit will be denied. IFIL has to pass both of these hurdles for any payments made to it can be credited as a foreign tax credit.

1. IFIL Is Not A Political Subdivision.

IFIL has to be a "foreign state," or any "political subdivision of any foreign state" in order to be a taxing authority that can impose a creditable foreign tax. 26 U.S.C § 901. It is clear that IFIL has not been recognized to be a foreign state, but it also does not qualify as a political subdivision of a foreign state. While this court has not defined what a "political subdivision" is for the purposes of the Foreign Tax Credit, Treasury Regulations state that a political subdivision is a territory which "denotes any division of any State or local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit." Treas. Reg. § 1.103-1. The United States Attorney General has also established that a political subdivision is created when a state delegates at least some of its powers to the entity in question. 30 Op.Atty.Gen. 252. An entity can also qualify as a "political subdivision" of a foreign state if it is considered to be an "integral part" of that foreign state. See *Segni v. Commercial Office of Spain*, 650 F. Supp. 1040, 1041-42 (N.D. Ill. 1986). IFIL has neither been delegated any power on behalf of Arrakis or Seitch, nor has been considered to be an integral part of Arrakis or Sietch. So, IFIL is not a "political subdivision."

a. No Sovereign Power Has Been Delegated To IFIL.

An entity cannot be a political subdivision if no power has been delegated to it by the local government. *Seagrave Corp. v. Comm'r. Internal Revenue*, 38 T.C. 247, 250 (1962). The actual act of creating or delegating some sort of authority is key in the establishment of a "political subdivision." *Id.* In *Seagrave*, a group of volunteer fire companies asserted that they were political subdivisions of the states in which they operated. *Id.* at 248. The tax court held that the volunteer fire companies were not political subdivisions because they "received no part of the delegation of any State's power." *Id.* at 250.[10] The court did grant an entity the status of political subdivision in *Comm'r Internal Revenue v. Shamberg's Estate*, 144 F.2d 998 (2d Cir. 1944). In *Shamberg*, the entity in question was the New York Port Authority. The Court here held that the Port Authority of New York was a political subdivision because it was created through a contract and delegated sovereign powers including eminent domain and police power. *Id.* at 1005.

IFIL differs from the entities in *Seagrave* and *Shamberg* in that it was not delegated any authority by the local governments of Sietch or Arrakis. Moreover, IFIL was not even created by Sietch or Arrakis. IFIL's history began with a rebellion against the Sietch State. R. 11. Further, IFIL "forcefully" attained control of a part of the physical territory of Sietch. R. 13. It subsequently "forcefully took control" of the area that contains the drilling station from which the tax in question is derived. R. 13. Since the IFIL rebellion, neither Arrakis nor Seitch have delegated any sort of power at all to IFIL. The tax that IFIL imposed on Harkonnen Oil was

[10] See also *Texas Learning Tech. Grp. v. Comm'r*. Internal Revenue, where an unincorporated association of Texas school districts contended that it was a political subdivision in order to be exempt from the tax requirements imposed upon private foundations. 958 F.2d 122, 124 (5th Cir. 1992). The court in *TLTG* held that the group was not a political subdivision because it did not possess any generally recognized sovereign powers. *Id.* at 127.

created solely by the leadership of IFIL. R. 13. This occurred after IFIL forcefully took control of the oil rig that was already a part of Harkonnen's operations. R. 13.

b. IFIL Is Not An "Integral Part" Of Arrakis Or Sietch.

An entity must be more than just a part of a state to qualify as a political subdivision. In *Segni*, the Court had to decide whether or not the Commercial Office of Spain was a political subdivision of Spain for the purposes of the Foreign Sovereign Immunities Act. *Segni*, 650 F. Supp. at 1040. The Court determined that the commercial office of Spain was a political subdivision of Spain because it was "an integral part of [Spain's] political structure." *Id.* The Court further explained that even parts of a state that have a structure and function in the state may not necessarily be considered an "integral part" of that state. See *Segni* 650 F. Supp. at 1041-1042.

A mere recognition by the Holy Royal Court of Arrakis does not amount to incorporation as an integral part because it does not designate IFIL as having a structure or function in either Sietch or Arrakis. Even though the Holy Court declared that "Arrakis recognizes IFIL as a part of Sietch," this recognition did not come with any sort of delegation of sovereign power. R. 14. Further, the Holy Royal Court of Arrakis did not define what type of "part" IFIL is in relation to Sietch. IFIL plays no role in the functioning of Sietch or Arrakis.

2. Section 901(j) Prohibits Acceptance Of Tax Credits For Payments Made To IFIL.

Section 901(j) lists the instances in which an application for a foreign tax credit will be denied. The four exclusion criteria are as follows: tax will not qualify as a United States credit if the United States does not recognize the "foreign country"; the U.S. government has severed relations with that government; the U.S. has not severed diplomatic relations with the government but does conduct relations with them; or which the secretary of state has determined to be supportive of terrorist activities. 26 U.S.C. § 901. IFIL meets all of these criteria because the United States has never recognized IFIL, the United States has not established diplomatic relations with IFIL, and the U.S. State Department has acknowledged that IFIL is associated with known terrorist groups. Because IFIL meets the criteria, payments to it are not creditable as foreign tax credits.

The United States has never recognized IFIL. An executive order does not equate to Untied States recognition of a territory. Although Executive Order 14012 did declare IFIL a "sovereign friend," this declaration does not rise to the level necessary to mean recognition. While France and Russia recognized the legitimacy of IFIL as a state, the United States has not elected to do the same. R. 13. The United States did however, recognize the Sietch State as a "quasi-autonomous region." R. 10. IFIL has never received such recognition.

The United States does not conduct diplomatic relations with IFIL. The U.S. State department has not established diplomatic ties with IFIL. In contrast, the U.S. State Department did establish ties with the Sietch State. R. 10. The U.S. Treasury Department solidified these ties by accepting transactions from the Sietch State. R. 11. No such establishment was made with IFIL.

The leadership of IFIL is affiliated with terrorist groups. Both the U.S. State Department and the U.S. Treasury have labeled Bene Gesserit a terrorist organization. R. 11. The U.S. State Department classified IFIL as an independent group of Bene Gesserit. R. 11. The U.S. State Department has not lifted this designation of IFIL.

B. The Tax Imposed By IFIL Is Not Creditable As A Foreign Tax Credit Because IFIL's Imposition Of A Tax Violates The Single Tax Provision Of The Arrakis Constitution.

Not every payment to a foreign entity is creditable as a foreign tax credit. 26 U.S.C. § 901(j). The United States has discretion to determine if a particular payment does not qualify as creditable. *Id.* In certain instances, the United States will have to examine the law of the tax-imposing foreign entity to determine if it is valid. See *Eshel v. Comm'r. Internal Revenue*, 142 T.C. No. 11 (2014). If the court finds that the tax violates foreign law, then the tax will not be credible as a foreign tax credit. See *id.*

If the law of the foreign jurisdiction prohibits the foreign tax, then the tax will not be creditable as a foreign tax credit. See *Riggs*, 163 F.3d at 1368 (1999). In *Riggs*, Riggs bank attempted to claim foreign tax credits for payments made to the Central Bank of Brazil. *Id* at 1363. In that action, the Court held that the Brazilian law requiring the payment had to be valid in order for the foreign tax credit to be granted. Id.

In evaluating a foreign law or treaty, this court is instructed to begin with the text and interpret that text in accordance with the ordinary meaning of its terms. *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 699, (1988). The text of the Arrakis Constitution establishes that the Arrakis Vice President of Sietch descent may only impose a single tax. R. 9. The President of the Sietch State is given the power to "decree and levy a single tax." R. 9. In 2010, During the First Annual Caladan Oil Field Conference, the Vice President imposed a tax on foreign companies operating on the Caladan Oil Field within the Sietch State. R. 14. Under the Arrakis Constitutional Amendment, any tax other than this already established tax payment to the Sietch State is in violation of the Arrakis constitution. R. 9. The tax imposed by IFIL constitutes a second tax from the Sietch region. R.14. Therefore, it is in violation of the Arrakis Constitution and not creditable as a foreign tax credit.

C. Harkonnen Oil failed to exhaust its available administrative remedies.

In order to receive a foreign tax credit, a corporation must exhaust its available administrative remedies to mitigate its tax burden. Treas. Reg. § 1.901-2. This includes any administrative remedies that may be available in a foreign jurisdiction. *Procter & Gamble Co. v. U.S.*, 2010 WL 2925099, 7 (S.D. Ohio July 6, 2010). A failure to exhaust these remedies results in the United States being on the hook for costs which could have otherwise been avoided.

A corporation must exhaust foreign administrative remedies that are available to try to mitigate its tax burden. *P & G,* 2010 WL 2925099 at 7. In P & G, P & G was attempting to claim foreign tax credits for payments made to Korea and Japan. *Id.* The tax payments that P & G made stemmed from the same stream of income. *Id.* The Court held that P & G failed to exhaust the remedies available in Japan and Korea because P &G failed to attempt to obtain any relief from either of the countries. *Id.* at 8. In its discussion about the foreign tax credit, the Court determined that granting the foreign tax credit in this situation essentially results in the double taxation of the United States. *Id.*

Harkonnen Oil failed to exhaust the administrative remedies that were available in Arrakis and Sietch. While Harkonnen did petition the Holy Royal Court regarding the status of the IFIL, it did not inquire regarding the constitutionality of the tax imposed by the IFIL. R. 14. Harkonnen did not even inquire as to the ability of IFIL to levy a tax. R. 14. Further, Harkonnen failed to petition the Sietch Council, which was created in the Arrakis Constitution for this type of inquiry. R. 9. Harkonnen left several potential remedies on the table, and now is trying to pin the costs on the United States.

CONCLUSION

For the foregoing reasons, the Fourteenth Circuit's decision that the IRS properly denied Harkonnen Oil's payments to Arrakis and IFIL should be AFFIRMED.

CERTIFICATE OF SERVICE

We certify that a copy of Respondent's brief was served upon Petitioner, Royal Harkonnen Oil Company, through the counsel of record by certified U.S. mail return receipt requested, on this, the 24th day of November, 2014.

/s/ ______________________

Attorneys for Respondent

APPENDIX A

26 USC § 901. Taxes of Foreign Countries and of Possessions of United States

(a) Allowance of credit.--If the taxpayer chooses to have the benefits of this subpart, the tax imposed by this chapter shall, subject to the limitation of section 904, be credited with the amounts provided in the applicable paragraph of subsection (b) plus, in the case of a corporation, the taxes deemed to have been paid under sections 902 and 960. Such choice for any taxable year may be made or changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for such taxable year. The credit shall not be allowed against any tax treated as a tax not imposed by this chapter under section 26(b).

(b) Amount allowed.--Subject to the limitation of section 904, the following amounts shall be allowed as the credit under subsection (a):

(1) Citizens and domestic corporations.--In the case of a citizen of the United States and of a domestic corporation, the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; and

(j) Denial of foreign tax credit, etc., with respect to certain foreign countries.--

(1) In general.--Notwithstanding any other provision of this part--

(A) no credit shall be allowed under subsection (a) for any income, war profits, or excess profits taxes paid or accrued (or deemed paid under section 902 or 960) to any country if such taxes are with respect to income attributable to a period during which this subsection applies to such country, and

(B) subsections (a), (b), and (c) of section 904 and sections 902 and 960 shall be applied separately with respect to income attributable to such a period from sources within such country.

(2) Countries to which subsection applies.--

(A) In general.--This subsection shall apply to any foreign country--

(i) the government of which the United States does not recognize, unless such government is otherwise eligible to purchase defense articles or services under the Arms Export Control Act,

(ii) with respect to which the United States has severed diplomatic relations,

(iii) with respect to which the United States has not severed diplomatic relations but does not conduct such relations, or

(iv) which the Secretary of State has, pursuant to section 6(j) of the Export Administration Act of 1979, as amended, designated as a foreign country which repeatedly provides support for acts of international terrorisms.

APPENDIX B

26 USC § 903. Credit for taxes in lieu of income, etc., taxes

(a) Allowance of credit.--If the taxpayer chooses to have the benefits of this subpart, the tax imposed by this chapter shall, subject to the limitation of section 904, be credited with the amounts provided in the applicable paragraph of subsection (b) plus, in the case of a corporation, the taxes deemed to have been paid under sections 902 and 960. Such choice for any taxable year may be made or changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for such taxable year. The credit shall not be allowed against any tax treated as a tax not imposed by this chapter under section 26(b).