

Is There a New Opportunity for Foreign Tax Credits to Offset Net Investment Income Tax?

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For high-net-worth individuals (HNWIs) with international investments, navigating cross-border tax laws is essential to minimizing tax liability. Recent court decisions may open new opportunities to offset the Net Investment Income Tax (NIIT) using foreign tax credits (FTCs)—a development that could lead to significant tax savings.

On December 5, 2024, one of the most recent cases, *Brueya v. United States*, argued whether a US double tax treaty allows for a FTC to offset the NIIT. In this case, the Court of Federal Claims held that the US-Canada tax treaty allows for such use of a FTC. This ruling follows the court's previous decision from 2023 in *Christensen v. United States*, which held that US citizens living abroad were allowed to claim a FTC against their NIIT under the US-France tax treaty.

What is the NIIT?

The NIIT is a 3.8% tax on investment income such as capital gains, interest, dividends, rents, and royalties. The tax is imposed by Section 1411 on high-income taxpayers such as individuals, trusts, and estates with an adjusted gross income that exceeds \$200,000 (for single filers). Since Section 1411 is found in Chapter 2A of the

Internal Revenue Code (IRC), and not Chapter 1 of the IRC, FTCs cannot offset the NIIT strictly through the Code. Taxpayers can credit foreign income taxes paid or accrued during the year against their US income tax pursuant to IRC Sections 27 and 901, which applies to income tax in Chapter 1 of the IRC.

***Bruyea v. United States* Case Summary**

As mentioned earlier, in *Bruyea v. United States*, the Court of Federal Claims ruled in the favor of Bruyea and concluded that a US Citizen residing in Canada was entitled to claim a treaty-based FTC against his NIIT under Article XXIV of the US-Canada income tax treaty. In 2015, Paul Bruyea paid nearly \$2 million in taxes to Canada from the gain on the sale of real property. On his US tax return, he claimed a FTC of approximately \$1.4 million against his US income tax, not including the NIIT. He later amended his US tax return to request a refund of \$263,523 based on the position that Article XXIV of the Treaty allows for the FTC to offset the NIIT. Initially, the IRS rejected the refund claim, stating that the treaty did not provide an independent basis for this position and that such treatment is not allowed under US tax law. Bruyea subsequently filed a complaint with the Court of Federal Claims and asserted that he was entitled to a FTC against the NIIT.

Ultimately, because the treaty did not specifically exclude NIIT from FTC eligibility, the court ruled in Bruyea's favor, reinforcing the idea that tax treaties should be interpreted to minimize double taxation.

This ruling is similar to *Christensen v. United States*, when the court held that U.S. citizens in France could use a treaty-based FTC against NIIT for income sourced in France. The key factor was the treaty's wording, which did not explicitly restrict such a credit. If these rulings hold, they could establish a significant precedent for international taxpayers.

Why This Matters for HNWIs

For HNWIs with international investments, these rulings may create opportunities for tax planning and refund claims if the decisions of both court cases hold. If upheld, they may enable taxpayers to claim FTCs against NIIT, potentially leading to

significant tax refunds or lower future tax obligations. However, the IRS has already appealed the *Christensen* decision and may do the same for *Brueya*, making it essential to monitor developments closely.

How Anchin Can Help

At Anchin, we specialize in optimizing tax strategies for HNWIs, ensuring they take full advantage of evolving tax laws while maintaining compliance. To explore how recent rulings may impact your tax and financial planning, contact [Gwayne Lai](#) or [Kevin Brown](#) from Anchin's International Tax Group, or your Anchin Relationship Partner. Our dedicated team is here to help you navigate complex tax laws to reduce your overall tax liability and preserve your wealth.