United States Court of Appeals for the Federal Circuit

MATTHEW CHRISTENSEN, KATHERINE KAESS CHRISTENSEN,
Plaintiffs-Appellees

v.

UNITED STATES,
Defendant-Appellant

2024-1284

Appeal from the United States Court of Federal Claims in No. 1:20-cv-00935-MBH, Senior Judge Marian Blank Horn.

Decided: August 31, 2026

STUART E. HORWICH, Horwich Law LLP, London, United Kingdom, argued for plaintiffs-appellees.

KATHLEEN E. LYON, Tax Division, United States Department of Justice, Washington, DC, argued for defendant-appellant. Also represented by JACOB EARL CHRISTENSEN, DAVID A. HUBBERT.

Before CHEN, HUGHES, and STARK, *Circuit Judges*.

STARK, *Circuit Judge.*

In 1994, the United States and France entered into a bilateral tax treaty called the "Convention between the Government of the French Republic and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital" (the "Convention"). The Convention governs the taxes owed by U.S. and French citizens when they reside in or draw income from sources in the other treaty partner's jurisdiction. One of the goals of the Convention is, as its name indicates, to protect taxpayers from paying tax on the same income to both countries, which is known as double taxation.

The question presented in this appeal is whether Article 24 of the Convention relieves U.S. taxpayers from double taxation with respect to a specific type of income tax: the net investment income tax ("NIIT"). The Court of Federal Claims held that it does. We determine otherwise and, therefore, reverse.

I

Matthew and Katherine Christensen (the "Christensens") are U.S. citizens who lived in Paris, France, during the 2015 tax year. That year, the Christensens sold shares of stock they held in a French company and realized a profit on the sale. As required under U.S. and French law, the Christensens paid income tax to both countries for the gain on their investment, including a NIIT payment of $3,851 to the U.S. Internal Revenue Service ("IRS").

In 2020, the Christensens filed a tax refund lawsuit in the Court of Federal Claims seeking the return of the $3,851 they paid as NIIT, plus interest and costs. They argued that two provisions of the Convention – Article 24(2)(a) and Article 24(2)(b) – created a tax credit for the amounts they paid in French income tax that should have offset their NIIT liability. In 2023, the Court of Federal Claims granted summary judgment to the Christensens, holding that they were entitled to an offset under the Convention. In an extensive opinion, the court explained why it rejected their first argument, based on Article 24(2)(a), but agreed with their second, based on Article 24(2)(b).

The government timely appealed. We have jurisdiction under 28 U.S.C. § 1295(a)(3).

II

Treaty and statutory interpretation are matters of law we review de novo. *See Barseback Kraft AB v. United States*, 121 F.3d 1475, 1479 (Fed. Cir. 1997); *Fathauer v. United States*, 566 F.3d 1352, 1353 (Fed. Cir. 2009). "The interpretation of a treaty, like the interpretation of a statute, begins with its text." *Golan v. Saada*, 596 U.S. 666, 676 (2022) (internal quotation marks omitted). "In construing a treaty, the terms thereof are given their ordinary meaning in the context of the treaty and are interpreted, in accordance with that meaning, in the way that best fulfills the purposes of the treaty." *Xerox Corp. v. United States*, 41 F.3d 647, 652 (Fed. Cir. 1994).

We also review the Court of Federal Claims' grant of summary judgment de novo. *See GSS Holdings (Liberty) Inc. v. United States*, 81 F.4th 1378, 1381 (Fed. Cir. 2023).

III

A

Congress created the NIIT in 2010. It did so by adding § 1411 to the Internal Revenue Code ("Code"). *See* 26 U.S.C. § 1411. Section 1411 imposes a tax of 3.8% on "net investment income," which is defined as "the excess (if any) of the sum of (i) gross income from interest, dividends, annuities, royalties, and rents;" "(ii) other gross [passive] income derived from a trade or business;" and "(iii) net gain

. . . attributable to the disposition of property." *Id.* § 1411(a), (c).

Chapter 1 of Subtitle A of the Code is entitled "Normal Taxes and Surtaxes." *Id.* § 1 *et seq.* While the bulk of the U.S. income tax regime is located in chapter 1, Congress placed § 1411 by itself in a new chapter of Subtitle A, chapter 2A, which is called "Unearned Income Medicare Contribution." Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, § 1402(a)(1), 124 Stat. 1029, 1060-61.

Three chapter 1 provisions are central to this litigation. First, § 27 creates a system of foreign tax credits: "The amount of taxes imposed by foreign countries . . . shall be allowed as a credit against the tax imposed by this chapter [1] to the extent provided in section 901." 26 U.S.C. § 27.

Next, § 901, in a subsection entitled "Allowance of credit," provides that "the tax imposed by this chapter [1] shall . . . be credited." *Id.* § 901(a). But it adds the proviso that "[t]he credit shall *not* be allowed against any tax treated as a tax not imposed by this chapter under section 26(b)." *Id.* (emphasis added).

In turn, § 26(b) sets out more than two dozen types of taxes that, for at least our purposes here, "shall *not* be treated as tax imposed by this chapter [1]," and which, by operation of § 901(a), are ineligible to be offset by a foreign tax credit. *Id.* § 26(b)(A)-(Z); *see also Toulouse v. Comm'r of Internal Revenue*, 157 T.C. 49, 56 (2021) ("[T]he foreign tax credit allowable under the Code reduces only tax imposed under chapter 1 . . . .").

Thus, together, §§ 26(b), 27, and 901(a) establish a closed universe of taxes within chapter 1 to which a taxpayer may apply a foreign tax credit, based on taxes paid to a foreign country, subject to certain exceptions.

B

The Convention was executed by the U.S. and France in 1994 and ratified by Congress in 1995.[1] Article 24 of the Convention is entitled "Relief From Double Taxation." J.A. 4. Key here is Article 24(2) ("paragraph 2"), which we reproduce below:

> 2. (a) [1] *In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time* [2] *without changing the general principle hereof)*, [3] *the United States shall allow to a citizen or a resident of the United States as a credit against the United States income tax*:
>
> (i) the French income tax paid by or on behalf of such citizen or resident; . . .
>
> (ii) . . .
>
> (b) In the case of an individual who is both a resident of France and a citizen of the United States:

[1] The Convention was subsequently modified twice, by amendments known as the 2004 and 2009 Protocols, which were ratified by Congress in 2006 and 2009, respectively. We use the term "Convention" to refer to the post-2009 version of the agreement, which was operative at the time the Christensens paid their 2015 taxes. This version of the Convention was not included in the parties' joint appendix, apparently because "[n]o updated current version of the Treaty, as amended, appears to be included in any official reporting service." Open. Br. at 10 n.4. Accordingly, we cite to the trial court's opinion, which comprehensively describes the Convention's version history and reproduces the applicable version.

> (i) [4] *the United States shall allow as a credit against the United States income tax the French income tax paid*. . . .
>
> (ii) income referred to in paragraph 2 and income that, but for the citizenship of the taxpayer, would be exempt from United States income tax under the Convention, shall be considered income from sources within France to the extent necessary to give effect to the provisions of subparagraph (b)(i). . . .

J.A. 50-51 (emphasis and bracketed numerals added).

As indicated by the bracketed numbering, paragraph 2 contains four provisions pertinent to the parties' dispute.

First, paragraph 2(a) is introduced by the statement "[i]n accordance with the provisions and subject to the limitations of the law of the United States." We will refer to this as the "U.S. Law Limitation." The parties agree that the "provisions" and "limitations" referred to in the U.S. Law Limitation are found in the Code. They differ, however, as to *which* "provisions" and "limitations" of the Code they believe are involved.

Next, the "law of the United States" referred to in the U.S. Law Limitation is the Code in effect at the time of ratification of the Convention, "as it may be amended from time to time without changing the general principle hereof" (the "General Principle Clause"). The parties agree that the "general principle" of Article 24(2) is the allowance of a foreign tax credit and the avoidance of double taxation.

Third, paragraph 2(a) provides that "the United States shall allow to a citizen or a resident of the United States as a credit against the United States income tax the French income tax paid by or on behalf of such citizen" (the "paragraph 2(a) Credit Clause"). *Id.* (internal numbering omitted). It is undisputed that the term "United States income tax" is defined in the Convention broadly and includes the NIIT.

Fourth, paragraph 2(b) contains a second credit clause, specific to U.S. citizens who are residents of France (the "paragraph 2(b) Credit Clause."). *Id.* While the paragraph 2(a) Credit Clause is part of the same sentence as, and therefore indisputably subject to, the U.S. Law Limitation, paragraph 2(b) does not expressly include the U.S. Law Limitation. The principal issue in this appeal is whether the U.S. Law Limitation nevertheless applies to the paragraph 2(b) Credit Clause. We hold that it does, as we explain below.

IV

A

We begin with Article 24(2)(a), which the Court of Federal Claims concluded "provides foreign tax credits against taxes imposed by *Chapter 1* of the [Code], but does *not* provide a foreign tax credit against the net investment income tax imposed by [§] 1411, in *Chapter 2A* of the [Code]." J.A. 85 (emphasis added). We agree.

Our reasoning for this holding is set out in detail in an opinion we issue today in the companion case to this appeal, *United States v. Bruyea*, __ F.4th __, No. 25-1563, ECF No. 58 (Fed. Cir. Aug. 31, 2026). In *Bruyea*, the government appealed a judgment that a taxpayer was entitled to a foreign tax credit against the NIIT by operation of a tax treaty between the U.S. and Canada ("Canada Treaty"). *Id.* at 2. The Canada Treaty, like the U.S.-France Convention, contains a U.S. Law Limitation, a General Principle Clause, and two Credit Clauses. *Id.* at 8-9. Thus, the treaty provisions relevant to the dispute in *Bruyea* are materially identical to those at issue here.[2]

In *Bruyea*, we held that "the Code and Convention unambiguously preclude offsetting the NIIT by a foreign tax credit." *Id.* at 20. We see no daylight to decide differently here. Accordingly, for the reasons we have explained at length in *Bruyea* – and which we hereby incorporate here – we agree with the Court of Federal Claims and reject the Christensens' contention that the paragraph 2(a) Credit Clause of the Convention entitles them to a foreign tax credit that may be used to offset the NIIT owed to the IRS.

B

The Christensens make a second argument, one we did not address in full in *Bruyea*.[3] It is that they are entitled to a foreign tax credit against the NIIT because the paragraph 2(b) Credit Clause is not constrained by the U.S. Law Limitation. The Court of Federal Claims agreed with the Christensens, reasoning that "while paragraph 2(a) expressly conditions the availability of a foreign tax credit on the 'provisions' and 'limitations' of the United States tax

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[2] As the Christensens themselves state, "[t]he applicable foreign tax credit article in the Canadian Treaty is substantially identical to that in the French Treaty." Resp. Br. at 10 n.4. They refer to Article 24 in both cases. *Id.*; *see also Bruyea*, at 26 ("[The] U.S.-France treaty [contains] article 24(2)(a), which is analogous to paragraph (1) of the [Canada] Treaty at issue [in *Bruyea*], and article 24(2)(b), which is similar in application to paragraph (4).").

[3] In *Bruyea*, we rejected the materially identical argument, which was offered by the taxpayer as "[a]n alternative rationale." *Bruyea*, at 25. We did so "[f]or the same reasons given in *Christensen*," *id.* at 26, which are those provided in this section.

laws, paragraph 2(b) does not contain such 'provisions' and 'limitations' language." J.A. 87. In the trial court's view, this means that the paragraph 2(b) Credit Clause "allow[s] for foreign tax credits independent of the restrictions of [§§] 27 and 901(a)." J.A. 90.[4]

We are not persuaded. To the contrary, the best reading of the Convention is that the U.S. Law Limitation applies equally to paragraphs 2(a) and 2(b).

1

In construing statutes and treaties, "we are not guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy." *Dole v. United Steelworkers of Am.*, 494 U.S. 26, 35 (1990) (internal quotation marks omitted); *see also United Techs. Corp. v. United States*, 315 F.3d 1320, 1322 (Fed. Cir. 2003) ("The terms of a treaty are to be given their ordinary meaning in the context of the treaty, and are to be interpreted to best fulfill the purpose of the treaty.") (citing *Xerox*, 41 F.3d at 652). This "whole-text canon" "'calls on the judicial interpreter to consider the entire text, in view of its structure and of the physical and logical relation of its many parts.'" *Transpacific Steel LLC v. United States*, 4 F.4th 1306, 1322 (Fed. Cir. 2021) (quoting Antonin Scalia

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[4] In *Bruyea*, a different Court of Federal Claims judge rejected this same argument, in connection with the Canada Treaty. *See Bruyea v. United States*, 174 Fed. Cl. 238, 252 n.19 (2024) ("[There is] no reason to distinguish between the operative Treaty-based tax credit language in Paragraph 1 and that of Paragraph 4(b). Accordingly, the undersigned disagrees with *Christensen* that the U.S. Law Limitation applies in the former but not the latter. Instead, this Court concludes that the U.S. Law Limitation applies to both paragraphs, but they must be read together and are not expressly inconsistent with the [Code].").

& Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 24, at 164 (2012)); *see also Terry v. Principi*, 340 F.3d 1378, 1385 (Fed. Cir. 2003) ("When we construe a statute, we do so in the setting of the statutory scheme of which it is a part.").

The U.S. Law Limitation, which appears in the *very first part* of paragraph 2, serves as an overarching qualifier to both subparagraphs (a) and (b). Accordingly, it applies equally to paragraph 2(a), which addresses tax credits available to any U.S. citizen who is "a resident of the United States," and to paragraph 2(b), which covers "an individual who is both a resident of France and a citizen of the United States." J.A. 50. Reading paragraph 2 as a whole, including the policy objectives underlying it, confirms this interpretation, because it preserves symmetry between two categories of taxpayers based on their place of residence – (1) U.S. citizens who pay French income tax based on residency in France, and (2) those U.S. citizens who owe French income tax notwithstanding their place of residence (i.e., those who reside in the U.S. or a third country).

And the logic of this structural presentation is plain. Rather than repeat the U.S. Law Limitation at the beginning of each subparagraph – each of which denominates a unique category of taxpayer eligible for a French-based credit against U.S. taxes – paragraph 2 presents the U.S. Law Limitation once, up front, as an overarching qualifier. It is commonplace to speak – and, more to the point, for Congress to draft – in economies that eliminate such redundancy. *See generally Encino Motorcars, LLC v. Navarro*, 584 U.S. 79, 87 (2018) ("The distributive canon, for example, recognizes that sometimes where a sentence contains several antecedents and several consequents, courts should read them distributively and apply the words to the subjects which, by context, they seem most properly to relate.") (internal quotation marks and alterations omitted); *Lockhart v. United States*, 577 U.S. 347, 355 (2016)

("[Sometimes] no reason appears why a modifying clause is not applicable as much to the first and other words as to the last.") (internal quotation marks and alterations omitted).

The Court of Federal Claims incorrectly treated paragraphs 2(a) and 2(b) as divorced from one another. That is, it erred by "interpret[ing] subsections [](A) and (B) as standalone provisions, a position that makes no sense when both are *subsections* of the same overall provision." *DWA Holdings LLC v. United States*, 889 F.3d 1361, 1369 (Fed. Cir. 2018) (construing tax statute). Instead, "subsections . . . must be read together." *Ireland v. United States*, 101 F.4th 1338, 1345-46 (Fed. Cir. 2024) ("When subsections (b) and (f) are read together, it is difficult to ignore [the section's] clear instruction."); *see also O'Connor v. United States*, 479 U.S. 27, 30 (1986) ("The first section of Article XV [i.e., Article XV(1)], which confers . . . an exemption . . . establishes the context for the discussion of tax exemptions in the entire Article [including Article XV(2) and (3)]."). Here, when subsections 2(a) and 2(b) are read together, it is clear the introductory U.S. Law Limitation carries over to paragraph 2(b) as an overarching qualifier.

2

The drafters of the Convention understood they were drafting its provisions against the backdrop of the Code, including how the Code may limit the treaty-created credits. One instance of this is the "re-sourcing" provision of subparagraph 2(b)(ii), *see supra* Part III.B, which alters the Code's source-based limitation in § 904(a).

Subparagraph 2(b)(ii)'s re-sourcing provision provides that "income that, but for the citizenship of the taxpayer, would be exempt from United States income tax under the [Treaty], shall be considered income from sources within France to the extent necessary to give effect to the provisions of subparagraph (b)(i)." J.A. 51. In other words, for U.S. citizens residing in France, certain U.S.-source income is to be treated instead (i.e., “re-sourced”) as foreign-source income for purposes of Article 24.

We explained the reason for and impact of re-sourcing in *Bruyea*:

> Section 904(a) caps a taxpayer’s foreign tax credit at the amount of U.S. tax owed on foreign-source income. 26 U.S.C. § 904(a) (“The total amount of the credit taken under section 901(a) shall not exceed the same proportion of the tax against which such credit is taken which the taxpayer’s taxable income from sources without the U.S. (but not in excess of the taxpayer’s entire taxable income) bears to his entire taxable income for the same taxable year.”). In other words, the credit for foreign taxes paid can only cancel out U.S. tax on the portion of income that is treated as foreign-sourced; it cannot be used to cancel out U.S. tax on income that is treated as U.S.-sourced. Thus, generally, a U.S. citizen cannot take a foreign tax credit on U.S.-source income. . . .
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> ‘[R]e-sourcing’ overcomes the § 904(a) limit against applying a foreign tax credit to income from U.S. sources . . . [by] treat[ing] U.S.-source income as foreign-source income so that the credit authorized in Article [24] will not be restricted by Code § 904(a)’s source-based limitation with respect to certain items of income addressed by the Treaty.

Bruyea, at 16-17 (some internal quotation marks and alterations omitted).

The Convention’s re-sourcing provision would have been unnecessary had the Convention’s drafters shared the Christensens’ view that the treaty-created foreign tax credit operates independently of the Code. J.A. 51. Rather, this provision underscores that the Code, via the U.S. Law Limitation, limits the paragraph 2(a) Credit Clause.

Because a reading of a treaty that "renders [a provision] superfluous" is unlikely to be correct, and the Christensens' interpretation would essentially render the re-sourcing provision superfluous, their view is not correct and we cannot accept it. *Water Splash, Inc. v. Menon*, 581 U.S. 271, 278 (2017).

3

Aside from running contrary to the plain text and structure of Article 24, adopting the interpretation advanced by the Christensens would yield "anomalous results." *Frazier v. McDonough*, 66 F.4th 1353, 1358 (Fed. Cir. 2023). "Constructions of statutes," as well as treaties, "that lead to anomalous results are to be avoided if at all possible." *Id.* (internal quotation marks omitted); *see also BG Grp., PLC v. Republic of Argentina*, 572 U.S. 25, 45 (2014) (concluding arbitral tribunal's determination lawful in rejecting an "absurd and unreasonable" reading "[a]s a matter of treaty interpretation" (internal quotation marks omitted)).

One anomalous outcome arising from the Christensens' reading of the paragraph 2(b) Credit Clause is that a U.S. citizen residing in Paris could claim a NIIT credit against her U.S. tax liability for income taxes paid to France on income generated in France, while a similarly-situated U.S. citizen living in New York may not. This is because the U.S. citizen residing in Paris is subject to the paragraph 2(b) Credit Clause, which the Christensens contend is not limited by the U.S. Law Limitation and the Code, while the U.S. citizen in New York is subject to the paragraph 2(a) Credit Clause, which (as we have held today) is subject to the Code via the U.S. Law Limitation.

Equally problematic is that, under the Christensens' interpretation, the U.S. citizen residing in France would not only be able to claim a NIIT credit against her U.S. tax liability for taxes paid to France on income generated in

France; that same taxpayer could *also* have that same "foreign earned income" be "excluded from [her] gross income [and therefore] exempt from taxation" under the Code. 26 U.S.C. § 911(a)(1). Doing so would grant the French resident a "double benefit": a credit under the paragraph 2(b) Credit Clause *plus* an exemption from income tax under the Code. *Id.* § 911(d)(6). Such a windfall is not available to otherwise similarly-situated U.S. citizens residing in the U.S. because it is expressly prohibited by the Code. *Id.* ("Denial of double benefits. – No . . . credit against the tax imposed by this chapter (including any credit or deduction for the amount of taxes paid or accrued to a foreign country or possession of the United States) shall be allowed to the extent such . . . credit is properly allocable to or chargeable against amounts excluded from gross income under [§ 911(a)]"). As we said in *Bruyea*, "[w]e have no basis to conclude that the parties to the Convention intended these anomalous results of treating U.S. citizens living [abroad] better than their similarly-situated counterparts living in the U.S." *Bruyea*, at 19.

For this, as well as the other reasons we have given, we hold that the U.S. Law Limitation applies to the paragraph 2(b) Credit Clause.

4

Having determined that the paragraph 2(b) Credit Clause, when properly read in concert with paragraph 2(a), is subject to the U.S. Law Limitation, little analysis remains.[5] As already discussed, *see supra* Parts III.A & IV.A,

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[5] Since we agree with the government that Article 24(2)(b) is subject to the U.S. Law Limitation, the "three-bite rule" (to which the parties devote significant briefing) has no impact on the outcome here, and we do not address it.

the U.S. Law Limitation makes the Convention's foreign tax credits subject to §§ 27 and 901(a) of the Code, which prohibit offsetting the NIIT with any foreign credits. Thus, we reverse the judgment of the Court of Federal Claims.

V

We have considered the Christensens' remaining arguments and find them unpersuasive.[6] Accordingly, for the foregoing reasons, the judgment of the Court of Federal Claims is reversed.

REVERSED

COSTS

Each party to bear its own costs.

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[6] We have also considered the amicus brief submitted by Professors H. David Rosenbloom and Fadi Shaheen in support of the Christensens.