United States Court of Appeals for the Federal Circuit

ESTATE OF PAUL BRUYEA,
Plaintiff-Appellee

v.

UNITED STATES,
Defendant-Appellant

2025-1563

Appeal from the United States Court of Federal Claims in No. 1:23-cv-00766-MHS, Chief Judge Matthew H. Solomson.

Decided: August 31, 2026

STUART E. HORWICH, Horwich Law LLP, London, United Kingdom, argued for plaintiff-appellee. Also represented by MAX REED, Polaris Tax Counsel, Vancouver, Canada.

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

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

STARK, *Circuit Judge*.

In 1980, the United States and Canada entered into the "Convention Between the United States of America and Canada with respect to Taxes on Income and on Capital" (the "Treaty" or "Convention"). J.A. 536-86. Article XXIV of the Convention is entitled "Elimination of Double Taxation." J.A. 564. Its general purpose is to protect U.S. and Canadian taxpayers from having to pay taxes to both nations on the same income.

In 2015, Paul Bruyea, a U.S. citizen living in Canada, sold real estate he owned in Canada. Bruyea paid taxes to Canada on the proceeds earned from this transaction. He also had to pay the U.S. a "net investment income tax," or "NIIT," on this same income. Based on Article XXIV of the Convention, Bruyea attempted to reduce his NIIT liability by claiming a foreign tax credit for the taxes he had already paid to Canada. His efforts were rejected by the U.S. Internal Revenue Service ("IRS").

Bruyea then sued the United States in the Court of Federal Claims for a refund of the NIIT, arguing that he was subjected to double taxation in violation of the Convention. The court agreed with his interpretation of the Convention and entered judgment in his favor.

The government now appeals. It contends that the Court of Federal Claims erred when it determined that the Convention created a foreign tax credit that can be applied against a taxpayer's NIIT. We agree with the government that the U.S. Internal Revenue Code ("Code") precludes such a credit, and the Convention does not independently provide for a credit that can be taken notwithstanding the Code. Accordingly, we reverse.

I

A

The starting point for understanding the issues presented in this appeal is that "[a]ll American citizens are subject to U.S. taxes, regardless of where they live or earn their income." *Kappus v. Comm'r*, 337 F.3d 1053, 1055 (D.C. Cir. 2003). That is, "[i]n general, all citizens of the United States, wherever resident, . . . are liable [for] the income taxes imposed by the Code whether the income is received from sources within or without the United States." 26 C.F.R. § 1.1-1(b). "[O]ther countries," by contrast, typically "only tax income earned within their borders." *DWA Holdings LLC v. United States*, 889 F.3d 1361, 1363 (Fed. Cir. 2018). This creates "the possibility of 'double taxation' of foreign income," which "is a concern both in the United States and abroad." *Id.*

To address double taxation, the Code often allows taxes a U.S. citizen owes on her non-U.S. earnings to be "offset under U.S. law by credits for taxes paid to foreign governments." *Kappus*, 337 F.3d at 1055. Such credits, however, may be impacted by other provisions of the Code and "limitations imposed by bilateral tax conventions, such as the U.S.-Canada Tax Treaty." *Id.* As a general matter, whether and to what extent double taxation can be eliminated or reduced by foreign tax credits is determined by the provisions of any tax treaty between the U.S. and the treaty partner and how those provisions interact with the Code. *See, e.g.*, 26 U.S.C. § 894(a) (stating Code "shall be applied to any taxpayer with due regard to any treaty obligation of the United States which applies to such taxpayer"); *see also id.* § 7852(d) (addressing relationship between treaties and Code).

B

The Code imposes multiple types of taxes, which are located in different parts of title 26. As the U.S. Tax Court

has explained, "[t]he Code is divided into subtitles, and subtitles are divided into chapters, which impose separate and distinct taxes." *Toulouse v. Comm'r*, 157 T.C. 49, 55 (Tax Ct. Aug. 16, 2021). Two chapters are key here: chapter 1 and chapter 2A.

1

Chapter 1 of subtitle A of the Code is entitled "Normal Taxes and Surtaxes" and is the locus of several provisions relevant to this appeal. 26 U.S.C. § 1 *et seq.*

The first is § 27, "Taxes of Foreign Countries and of Possessions of the United States," which creates a system of foreign tax credits. It provides, in pertinent part:

> 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 [S]ection 901.

Id. § 27 (emphasis added).

In turn, § 901, in a subsection entitled "Allowance of credit," states:

> [T]he *tax imposed by this chapter [1]* shall . . . be credited with the amounts provided in the applicable paragraph . . . . The credit shall not be allowed against any tax treated as a tax not imposed by this chapter [1] under section 26(b).

Id. § 901(a) (emphasis added).

Section 26(b) is a "[l]imitation based on tax liability" that sets out more than two dozen types of taxes that "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)(2)(A)-(Z); *see also Toulouse*, 157 T.C. at 55-56 ("[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.

2

The second chapter implicated here, chapter 2A, is called "Unearned Income Medicare Contribution." It was created by Congress in 2010 as part of the Health Care and Education Reconciliation Act, a bill passed alongside the Affordable Care Act. *See* Pub. L. No. 111-152, § 1402(a)(1), 124 Stat. 1029, 1060-61. Chapter 2A included a new tax, known as the NIIT.

The NIIT is 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." 26 U.S.C. § 1411(a), (c). When Congress created the NIIT in 2010, it did so by adding § 1411 to chapter 2A of the Code – not chapter 1. Thus, the NIIT is not a "tax imposed by . . . chapter [1]." *Id.* § 27; *see Toulouse*, 157 T.C. at 56 ("[T]he foreign tax credit under Section 27 – which applies to 'the tax imposed by this chapter [1]' – does not by its terms apply to offset [the] net investment income tax.").

C

We now turn to the pertinent provisions of the Convention between the U.S. and Canada.

The Convention was agreed to by both countries in 1980 and ratified by Congress in 1984. *See Kappus*, 337 F.3d at 1057.[1] Bilateral tax treaties typically aim to

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[1] The Convention has been modified twice, by amendments known as the 1983 and 2007 Protocols. We

"mitigate double taxation of income earned by residents of one country from sources within the other country, in addition to preventing tax evasion by facilitating information sharing between the tax authorities of the treaty countries." *Starr Int'l Co., Inc. v. United States*, 910 F.3d 527, 530 (D.C. Cir. 2018). These goals are reflected in the Convention, which begins with the recital:

> The United States of America and Canada,
>
> Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,
>
> Have agreed as follows . . . .

J.A. 536.

At the core of this appeal is Article XXIV of the Convention, which is entitled "Elimination of Double Taxation." J.A. 564-67. We reproduce below the provisions pertinent to the parties' dispute:

> 1. In the case of the United States, [1] *subject to the provisions of paragraphs 4, 5 and 6 [below], double taxation shall be avoided as follows*: [2] *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* [3] *without changing the general principle hereof)*, [4] *the United States shall allow to a citizen or resident of the United States . . . as a credit against the United States tax*

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use the term "Convention" to refer to the version as amended by the Protocols, which was operative at the time Bruyea paid his 2015 NIIT. As the Court of Federal Claims noted, "[t]he parties agree that none of the [Protocol] amendments impact the original Treaty provisions that are at issue in this case." J.A. 3 n.1.

on income the appropriate amount of income tax paid or accrued to Canada . . . .

. . .

3. For purposes of this Article:

(a) Profits, income or gains . . . of a resident of a Contracting State which may be taxed in the other Contracting State . . . shall be deemed to arise in that other State; and

(b) Profits, income or gains of a resident of a Contracting State which may not be taxed in the other Contracting State . . . shall be deemed to arise in the first-mentioned State.

4. Where a United States citizen is a resident of Canada, the following rules shall apply:

. . .

(b) For the purposes of computing the United States tax, [5] *the United States shall allow as a credit against United States tax the income tax paid or accrued to Canada after the deduction referred to in subparagraph (a).* The credit so allowed shall not reduce that portion of the United States tax that is deductible from Canadian tax in accordance with subparagraph (a).

5. Notwithstanding the provisions of paragraph 4, where a United States citizen is a resident of Canada, the following rules shall apply in respect of the items of income . . . that arise (within the meaning of paragraph 3) in the United States and that would be subject to United States tax if the resident of Canada were not a citizen of the

> United States, as long as the law in force in Canada allows a deduction . . . :
>
> > . . .
> >
> > (c) for the purposes of computing the United States tax on such items, the United States shall allow as a credit against the United States tax the income tax paid or accrued to Canada after the deduction referred to in subparagraph (b) . . . .
>
> 6. Where a United States citizen is a resident of Canada, items of income referred to in paragraph 4 or 5 shall, notwithstanding the provisions of paragraph 3, be deemed to arise in Canada to the extent necessary to avoid the double taxation of such income under paragraph 4(b) or paragraph 5(c).

J.A. 565-66 (emphasis and bracketed numerals added).

As helpfully identified by the Court of Federal Claims, and as we have indicated with bracketed numerals above, Article XXIV has five clauses of particular significance here:

> [1] the "Avoidance Clause" ("subject to the provisions of paragraphs 4, 5, and 6, double taxation shall be avoided");
>
> [2] the "U.S. Law Limitation" ("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]

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[2] Although not directly at issue here, the Convention also contains Article XXIV(2)(a), which makes available certain deductions against Canadian tax liability for taxes paid to the U.S., "[s]ubject to the provisions of the law of

> [3] the "General Principle Clause," which modifies the U.S. Law Limitation by providing that any post-Convention amendments to U.S. tax laws will not "chang[e] the general principle hereof;"
>
> [4] the "paragraph 1 Credit Clause" ("the United States shall allow to a citizen . . . of the United States . . . as a credit against the United States tax on income the appropriate amount of income tax paid or accrued to Canada"); and
>
> [5] a similar "paragraph 4(b) Credit Clause," specifically available to "a United States citizen [who] is a resident of Canada" ("the United States shall allow as a credit against United States tax the income tax paid or accrued to Canada").

J.A. 565.

As explained below, the resolution of this appeal turns on how these five clauses interact, both amongst themselves and with the Code.

D

With that background, we return to the taxpayer in this appeal. Bruyea was a U.S. citizen who lived in British Columbia, Canada, during the 2015 tax year.[3] That year, he sold a property in Canada that generated gains on which he owed tax to both countries, including $263,523 in U.S. NIIT. When Bruyea filed his U.S. tax return for 2015, he claimed a foreign tax credit equal to the $263,523 he had paid to Canada on the income generated by the sale and

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Canada regarding the deduction . . . of tax paid in a territory outside Canada." J.A. 565.

[3] On June 22, 2026, counsel notified the court that Bruyea passed away earlier that month. On August 11, 2026, Bruyea's estate was substituted as plaintiff-appellee.

sought to apply it against the NIIT he owed. The IRS disallowed the credit, so Bruyea paid the NIIT in full.

Thereafter, in 2023, Bruyea filed a tax refund lawsuit in the Court of Federal Claims, alleging that his NIIT payment constituted improper double taxation in violation of the Convention. He sought the return of the $263,523, plus interest and costs. In 2024, the Court of Federal Claims granted Bruyea's motion for summary judgment, agreeing that Article XXIV of the Convention creates a foreign tax credit against the NIIT that Bruyea was entitled to claim.

The government timely appealed. The Court of Federal Claims had jurisdiction pursuant to 28 U.S.C. § 1491(a) and 26 U.S.C. § 7422. 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

The parties agree on four principal points that cabin the dispute before us. First, they acknowledge that the Convention's U.S. Law Limitation – providing that double

taxation will be avoided "[i]n accordance with the provisions and subject to the limitations of the law of the United States" – refers to "provisions" and "limitations" of the Code (although, as we shall see, they disagree about which ones). Second, they agree that the "general principle" of the General Principle Clause is the avoidance or elimination of double taxation. Third, it is undisputed that the "United States tax on income" referenced in both the paragraph 1 and paragraph 4(b) Credit Clauses includes the NIIT.

Finally, and perhaps most significantly, the parties agree that the Code does *not* itself provide for a foreign tax credit that can be applied against the NIIT. J.A. 12 ("Mr. Bruyea agrees with the foundational axiom that the Code does not provide the foreign tax credit he seeks to apply against the NIIT."). This is because, as we observed above, the NIIT is located in chapter 2A of the Code, which is outside of chapter 1 and, therefore, not within the scope of the provisions of §§ 27 and 901(a) that relate only to a "tax imposed by *this chapter [1]*." 26 U.S.C. §§ 27, 901(a) (emphasis added); *see also Kim v. United States*, 664 F. Supp. 3d 1062, 1081 (C.D. Cal. 2023) ("[B]y its terms, foreign tax credits may only be used to offset taxes imposed by chapter 1 of the Code, such as the section 1 regular tax.").

Notwithstanding these points of agreement, the parties' positions, of course, do diverge. Bruyea argues that the Convention's two Credit Clauses create a broad foreign tax credit *beyond those provided in the Code* – a credit he insists is not subject to the Code's chapter 1 restriction on foreign tax credits. As such, he continues, this Convention-created credit is applicable against the NIIT, consistent with the General Principle of avoiding or eliminating double taxation. The government counters that the U.S. Law Limitation restricts the scope of the Credit Clauses, in such a manner as to not allow the Convention's foreign tax credit to be applied against the NIIT.

We are persuaded that the government has the better solution to what the Court of Federal Claims aptly described as the "interpretive puzzle" presented by this case. J.A. 2. In the next section, we set out the principal support for our conclusion. After that, we address Bruyea's contrary view and explain why we disagree with it.

IV

Our conclusion rests on two independent propositions, each grounded in unambiguous text. First, as the parties agree and we likewise determine, the Code itself does not authorize a foreign tax credit against the NIIT. Second, any credit created by Article XXIV of the Convention is, by its own terms, subject to the very Code provisions that foreclose the credit in the first place.

A

1

As the trial court concluded, the parties agree, and we have already observed, the plain language of the Code does *not* allow for a taxpayer's NIIT liability to be reduced by foreign tax credits. J.A. 12 ("[T]he [Code], by its terms, certainly does *not* provide for the Treaty-based tax credit Mr. Bruyea claims.").

This is because the Code authorizes the use of foreign tax credits only against taxes set out in chapter 1, pursuant to §§ 27 and 901(a). The NIIT is *not* contained in chapter 1, but, instead, in chapter 2A. *Id.* § 1411 (codified in chapter 2A of subtitle A). It follows that §§ 27 and 901(a) do not authorize the taxes paid by a U.S. taxpayer to Canada to be credited against the NIIT, even where the NIIT is based on income that was already taxed by Canada.

It is not clear precisely why Congress chose to place the NIIT by itself in a newly created chapter 2A, rather than

alongside the "Normal Taxes" in chapter 1.[4] Whatever the reason, we must presume that "Congress acts intentionally and purposely when it includes particular language in one section of a statute but omits it in another." *BFP v. Resol. Tr. Corp.*, 511 U.S. 531, 537 (1994) (internal quotation marks, citation, and alterations omitted). We further "presume that Congress is familiar with existing Federal law when it enacts a new statute." *Wells Fargo & Co. v. United States*, 827 F.3d 1026, 1037 (Fed. Cir. 2016). Hence, here, we conclude that the placement of the NIIT in chapter 2A, in view of Congress' presumed knowledge that the Code only authorizes foreign tax credits to apply against chapter 1 taxes, constitutes an intentional decision to *exclude* the NIIT from the offset regime.

It is true, as the Court of Federal Claims emphasized, that the Code does not outright preclude the application of a foreign tax credit to NIITs. *See* J.A. 35 ("[T]he NIIT contains no text specifically and expressly inconsistent with the Treaty-based foreign tax credit language upon which Mr. Bruyea relies."). To the extent the trial court was suggesting that the Code *implicitly* authorizes such a credit (at least where such a credit is created outside the Code, by a treaty), we do not agree. The Supreme Court has repeatedly rejected such suggestions in the context of the tax laws. *See, e.g.*, *Chickasaw Nation v. United States*, 534 U.S. 84, 95 (2001) ("[Our interpretive tools] warn[] us

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[4] The Court of Federal Claims identified a law review article, J.A. 17 n.15, that provides one possible explanation: "the NIIT arose as a last-minute revenue replacement to offset the revenue loss from Congress' delayed implementation of the 40% excise tax on high-cost . . . health insurance plans." Ausher M.B. Kofsky & Bryan P. Schmutz, *What a Long Strange Trip It's Been for the 3.8% Net Investment Income Tax*, 78 Md. L. Rev. Online 14, 31 (2019).

against interpreting federal statutes as providing tax exemptions unless those exemptions are clearly expressed."); *United States v. Wells Fargo Bank*, 485 U.S. 351, 354 (1988) ("[T]he settled principle [is] that exemptions from taxation are not to be implied."); *New Colonial Ice Co. v. Helvering*, 292 U.S. 435, 440 (1934) ("Whether and to what extent deductions shall be allowed depends upon legislative grace; and only as there is clear provision therefor can any particular deduction be allowed.").

Thus, the Code's authorization of foreign tax credits "against the tax imposed by this chapter [1]," 26 U.S.C. § 27, is best read as a disallowance of foreign tax credits against taxes *not* imposed by chapter 1, such as chapter 2A's NIIT.

2

Our conclusion is reinforced by § 26(b), which demonstrates that Congress legislates deliberately when delineating whether a particular type of tax is eligible for offset by foreign tax credits. Recall that § 901(a) provides: "The credit shall *not* be allowed against any tax treated as a tax *not imposed by this chapter under section 26(b).*" 26 U.S.C. § 901(a) (emphasis added). Section 26(b), in turn, states:

> (b) Regular tax liability. . . .
>
> > (1) In general. The term "regular tax liability" means the tax imposed by this chapter for the taxable year.
> >
> > (2) Exception for certain taxes. For purposes of paragraph (1), any tax imposed by any of the following provisions *shall not be treated as tax imposed by this chapter [1]*:
> > . . . .

Id. § 26(b) (emphasis added). This is followed by a list of 26 types of chapter 1 taxes, each of which, by operation of

§§ 26(b) and 901(a), is *not* treated as "tax imposed by this chapter [1]." *Id.*

That these two statutory sections are in direct conversation with one another – both contain the identical language "tax imposed by this chapter [1]" language – on the specific topic of eligibility for tax credits, shows that Congress knows how to place taxes within and outside of chapter 1, and also knows how to exempt even chapter 1 taxes from eligibility for credits. All of this supports our determination that Congress' placement of the NIIT in chapter 2A means the NIIT is not subject to the credits authorized by § 27.

B

Having concluded that the Code itself forecloses a credit against the NIIT, we turn to Bruyea's argument that the Convention creates a credit independent of, and not subject to, the Code. We disagree, for several reasons.

1

Convention Article II, "Taxes Covered," begins: "This Convention shall apply to taxes on income and on capital imposed on behalf of each Contracting State, irrespective of the manner in which they are levied." J.A. 536 (Article II(1)). It then adds that:

> [T]he taxes . . . to which the Convention shall apply are: . . .
>
> (b) In the case of the United States, the Federal income taxes imposed by the Internal Revenue Code of 1986. However, the Convention shall apply to:
>
> > (i) The United States *accumulated earnings tax* and *personal holding company tax*, to the extent, and only to the extent, necessary to implement the provisions of paragraphs 5 and 8 of Article X (Dividends) . . . .

J.A. 536-37 (Article II(2)(b)(i)) (emphasis added).

We highlight "accumulated earnings tax" and "personal holding company tax" because both are listed in § 26(b) as types of taxes *not to be treated as chapter 1 taxes*, yet Article II expressly carves out special treatment for them under the Convention. *See* 26 U.S.C. § 26(b)(2)(F), (G). This shows that when the treaty drafters intended for the Convention to alter the Code's default treatment of a category of credit-excepted taxes (like the NIIT), they said so explicitly. By contrast, the Convention provides no rules specific to the treatment of the NIIT.

We acknowledge, of course, that the NIIT did not exist until 2010, well after the original 1980 signing of the Convention and its 1983 and 2007 amendments. Still, the fact that even today no NIIT-specific provision has been added to the Convention means the eligibility of the NIIT for offset by a foreign tax credit (including one created by the Convention) is governed by the Code provisions we addressed above, which limit eligibility for foreign tax credits to chapter 1 taxes. Simply put, we cannot read an amendment into the Convention.

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 such instance of this is the "re-sourcing" provisions of Article XXIV(3) and (6), *see supra* Part I.C, which alters the Code's source-based limitation in § 904(a).

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.

However, Article XXIV's re-sourcing provisions, contained in paragraphs 3 and 6, alter this arrangement by prescribing that certain U.S.-source income "shall be deemed to arise," instead, in Canada. J.A. 566 ("Where a United States citizen is a resident of Canada," profits shall "be deemed to arise in Canada" – and not in the U.S. – "to the extent necessary to avoid the double taxation of such income."). This "re-sourcing" overcomes the § 904(a) limit against applying a foreign tax credit to income from U.S. sources. As the government explains, the Convention "include[s] the re-sourcing provisions in paragraphs 3 and 6 to treat U.S.-source income as foreign-source income so that the credit authorized in Article XXIV [will] not be restricted by Code § 904(a)'s source-based limitation with respect to certain items of income addressed by the Treaty." Open. Br. at 27.

These re-sourcing provisions would have been unnecessary had the Convention's drafters shared Bruyea's view that the treaty-created foreign tax credit operates independently of the Code. Rather, these provisions underscore that the Code, via the U.S. Law Limitation, limits the paragraph 1 Credit Clause. Because a reading of a treaty that "renders [a provision] superfluous" is unlikely to be correct, and Bruyea's interpretation would essentially render the re-sourcing provisions superfluous, his view is incorrect

and we cannot accept it. *Water Splash, Inc. v. Menon*, 581 U.S. 271, 278 (2017).[5]

3

Aside from running contrary to the plain text and structure of Article XXIV, adopting the interpretation advanced by Bruyea 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) (affirming arbitral tribunal's rejection of "absurd and unreasonable" reading "[a]s a matter of treaty interpretation") (internal quotation marks omitted).

One anomalous outcome arising from Bruyea's reading of the paragraph 4(b) Credit Clause is that a U.S. citizen residing in Toronto could claim a NIIT credit against her U.S. tax liability for income taxes paid to Canada on income generated in Canada, while a similarly-situated U.S.

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[5] We disagree with Bruyea's and the trial court's characterization of the government's position, which we have here adopted, as lacking "any logical theory to distinguish when the U.S. Law Limitation applies and when it does not," Resp. Br. at 16, and as being merely an "ad-hoc approach to the U.S. Law Limitation," J.A. 25-26. In our view, the government correctly reads the U.S. Law Limitation, and therefore the Code, as governing in all instances *except* when the Convention expressly states that it does not, such as in paragraphs 3 and 6 of Article XXIV. *See* Open Br. at 29 ("[T]he mere fact that the treaty parties agreed to some adjustments that differ from specific Code provisions in no way negates the general rule in paragraph 1 that the allowance of a credit is otherwise governed by the Code.").

citizen living in nearby Buffalo, New York may not. This is because the U.S. citizen residing in Toronto is subject to the paragraph 4(b) Credit Clause, which Bruyea contends 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 1 Credit Clause, which (as we have held today) is subject to the Code via the U.S. Law Limitation.

Equally problematic is that, under Bruyea's interpretation, the U.S. citizen residing in Toronto would not only be able to claim a NIIT credit against her U.S. tax liability for taxes paid to Canada on income generated in Canada; 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 Canadian resident a "double benefit": a credit under the paragraph 4(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)].").

We have no basis to conclude that the parties to the Convention intended these anomalous results of treating U.S. citizens living in Canada better than their similarly-situated counterparts living in the U.S.

4

Additionally, our conclusion today is consistent with those of three other courts to have considered the same dispute (arising either in the context of the U.S.-Canada Convention or in connection with other bilateral tax treaties

containing materially similar provisions). *See Christensen v. United States*, 168 Fed. Cl. 263, 329 (2023) ("[T]he court holds that paragraph 2(a) of Article 24 of the 1994 Treaty [with France] does not provide a foreign tax credit against the net investment income tax imposed by [Code] § 1411."); *Kim*, 664 F. Supp. 3d at 1085 ("[T]he NIIT does not qualify for Foreign Tax Credit [under analogous U.S.-South Korea tax treaty]."); *Toulouse*, 157 T.C. at 62 ("There is no Code provision for a foreign tax credit against the net investment income tax. Article 24(2)(a) of the U.S.-France Treaty and article 23(2)(a) of the U.S.-Italy Treaty do not provide an independent basis for a foreign tax credit against the net investment income tax."). To our knowledge, the only court to take a different view is the Court of Federal Claims in this case.

* * *

Accordingly, for the foregoing reasons, we conclude that the text of the Code and Convention unambiguously preclude offsetting the NIIT by a foreign tax credit for income taxes paid in Canada.

V

Bruyea offers numerous counterarguments against our conclusion, many of which we have already addressed. Below we discuss several more.

A

Bruyea emphasizes the Convention's breadth. Article III(1)(d), for example, defines "United States tax" as any tax "imposed on income by the United States." J.A. 538 (internal quotation marks omitted). Article II adds that the treaty "appl[ies] to taxes on income . . . imposed on behalf of [Canada and the United States], irrespective of the manner in which they are levied," including to "the Federal income taxes imposed by the Internal Revenue Code" and "[a]ny taxes identical or substantially similar to those taxes" that are added to the Code in the future. J.A. 536-

37. To Bruyea, "this point is essential" because "the definition of 'United States tax' in the Canada Treaty is indisputably wider than U.S. income taxes offsetable by the Code-based foreign tax credit." Resp. Br. at 7-8.

We do not quarrel with this general point. Given the Convention's applicability to all U.S. income taxes, the paragraph 1 and paragraph 4(b) Credit Clauses also broadly apply to all "United States tax on income," including the NIIT. Even the government agrees. *See, e.g.*, Reply Br. at 3 ("The parties agree that the term 'United States tax' in this provision [Article XXIV(1)] includes the § 1411 tax on net investment income.").

But that is the start of the analysis, not its conclusion. Whether a U.S. taxpayer can use the Article XXIV-created foreign tax credit against the NIIT is a question whose answer also depends on the U.S. Law Limitation – which, as we have explained at length, makes that credit unavailable as an offset to the NIIT. Hence, we agree with the government: "just because the § 1411 [NIIT] is a 'covered' tax under Article II(3) of the Treaty does not mean that Article XXIV(1) authorizes a credit to offset that tax." Open. Br. at 43.

B

Bruyea next relies on the General Principle Clause, focusing on what he characterizes as the U.S.'s acknowledgment that amendments to the Code will only apply to the Convention so long as they do not "chang[e] the general principle" of Article XXIV. J.A. 565. The parties agree that the "general principle" being referred to is the avoidance of double taxation.

Bruyea fails to persuade us that the adoption of the NIIT, subsequent to execution of the Convention, combined with the NIIT's ineligibility under the Code for offset by a foreign tax credit, runs afoul of this general principle. The Convention does not entirely "eliminate" double taxation;

as the Avoidance Clause states, its ambition is only that "double taxation shall be *avoided*." J.A. 565 (emphasis added); *see also* J.A. 570 (Article XXVI(3) providing that U.S. and Canada "may also consult together for the elimination of double taxation in cases not provided for in the Convention"); *see also Toulouse*, 157 T.C. at 60 ("[The U.S.-France bilateral tax] Treat[y] provide[s] for general protection against double taxation, [it does] not provide absolute protection."). There is no indication, in the Convention or elsewhere, that the creation of a single new type of income tax, and Congress' determination not to make that tax eligible for a foreign tax credit, violates the General Principle Clause and its broad goal of reducing double taxation. *See Toulouse*, 157 T.C. at 60 ("Imposition of the net investment income tax is not a change to the general principles of U.S. tax laws.").[6]

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[6] Even if Congress' 2010 adoption of the NIIT and its placement outside of chapter 1 were a violation of the Convention, it is not clear that the remedy would be U.S. taxpayers becoming entitled to a foreign tax credit, as opposed to some type of sovereign-to-sovereign relief. *See generally* J.A. 569-72 (setting out, in Article XXVI, "Mutual Agreement Procedure," including how taxpayer should proceed when he "considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention"). Moreover, the government has argued that if the NIIT conflicts with the Convention, Bruyea's requested tax credit should be disallowed based on the "last-in-time" rule, which holds that a later-enacted statute prevails over a conflicting, earlier-adopted treaty provision. *See Kappus*, 337 F.3d at 1060. The government has not pressed this alternative ground for reversal, so we do not reach it.

C

Bruyea also asserts that the U.S. Law Limitation's invocation of "provisions" and "limitations" reaches only those portions of the Code that relate to the *computation of the amount* of foreign tax credit to which a taxpayer is entitled. *See* Resp. Br. at 8-9 ("The only textually plausible interpretation is that the U.S. Law Limitation incorporates statutory computational rules for determining the proper quantum of the treaty-based credit."). If correct, §§ 27 and 901(a) would not apply to the foreign tax credit created by the Convention, because these two Code sections do not relate to computation of the amount of credit. The Court of Federal Claims agreed with Bruyea. *See* J.A. 36 ("The U.S. Law Limitation clause is focused on how a Treaty-based credit is computed but not its existence."). We do not.

Crucially, neither Bruyea nor the trial court point to any textual basis in the Convention to support their narrow reading of the U.S. Law Limitation. Nothing in the Convention's express language – "*In accordance with the provisions and subject to the limitations of the law of the United States*" – suggests a meaning restricted to computation-related "provisions" and "limitations" of the Code. J.A. 565.

Bruyea's position appears to be grounded not on treaty text but, rather, on certain statements in the Treasury Department's "Technical Explanation," which served as "an official guide" at the time of the Convention's ratification and "reflects the policies behind particular Convention provisions." J.A. 218-325 (Treasury Department Technical Explanation of the Convention Between the Government of the United States of America and Canada with Respect to Taxes on Income and on Capital Signed at Washington, D.C. on September 26, 1980, as Amended by the Protocol Signed at Ottawa on June 14, 1983 and the Protocol Signed at Washington on March 28, 1984 ("Technical Explanation")). The Technical Explanation, however, does not

state that the U.S. Law Limitation is limited to computation-related provisions of the Code. At best, it cites credit computation as one exemplary purpose of the U.S. Law Limitation. *See* J.A. 254 ("Thus, as is generally the case under U.S. income tax conventions, provisions *such as* Code sections 901(c), 904, 905, 907, 908, and 911 apply for purposes of computing the allowable credit under paragraph 1.") (emphasis added).

Furthermore, the Technical Explanation is extrinsic evidence, which we need not consider, as we next explain. *See Nat'l Westminster Bank, PLC v. United States*, 512 F.3d 1347, 1358 (Fed. Cir. 2008) ("[T]his court, when considering different provisions of [a] Treaty, has declined to defer to Treasury's contemporaneous interpretation."); *see also Xerox*, 41 F.3d at 655-56 (rejecting Treasury's Technical Explanation of U.S.-U.K. tax treaty).

D

Bruyea directs us to three pieces of extrinsic evidence he believes support his position: (i) the Technical Explanation, as just discussed, J.A. 218; (ii) the U.S. State Department's Letter of Submittal, which transmitted the Convention to the U.S. Senate in October 1980, stating: "In addition to the normal rules for the avoidance of double taxation, the Convention contains a rule . . . for eliminating double taxation of United States citizens who are residents in Canada," J.A. 591; and (iii) a 2023 letter from the Canada Revenue Agency, seemingly siding with Bruyea in this dispute, J.A. 378 ("Canada, as the country of source, has the right to tax the [taxpayer's NIIT] gain, while the U.S., as the country which has residual taxation rights, must provide relief in accordance with Article [24] of the Convention."). Whatever the strength of this evidence – which, to be sure, the government disputes and counters with other extrinsic evidence – it cannot alter our interpretation of the unambiguous provisions of the Convention. *See Xerox*, 41 F.3d at 652 ("Unless the treaty terms are unclear on

their face, or unclear as applied to the situation that has arisen, it should rarely be necessary to rely on extrinsic evidence in order to construe a treaty.").

E

Nor are we swayed by Bruyea's suggestion that our interpretation of the Convention is inconsistent with the principles that "statutes should not be interpreted to conflict with international obligations," *Fed.-Mogul Corp. v. United States*, 63 F.3d 1572, 1581 (Fed. Cir. 1995), and that we must give the Convention a "more liberal interpretation" in favor of "enlarging rights which may be claimed under it," *United States v. Stuart*, 489 U.S. 353, 368 (1989) (internal quotation marks omitted). Our reading is, as it must be, true to the plain meaning of the unambiguous language of the Convention's text. And it does not result in any "conflict" between the Convention and the Code: the Credit Clauses create a foreign tax credit that must, pursuant to the U.S. Law Limitation, be applied "[i]n accordance with the provisions and subject to the limitations of the law of the United States." J.A. 565. The Convention and the Code are aligned.

F

Finally, Bruyea offers as "[a]n alternative rationale" that the Court of Federal Claims should be affirmed on the basis that the paragraph 4(b) Credit Clause "does not contain the U.S. Law Limitation that appears in Article XXIV(1)," i.e., the paragraph 1 Credit Clause. Resp. Br. at 20-24. This argument rests on the fact that the U.S. Law Limitation is expressly stated in paragraph 1 but not repeated in other parts of Article XXIV, including paragraph 4(b).

The Court of Federal Claims in this case rightly rejected this argument, concluding that "the U.S. Law Limitation applies to both paragraphs." J.A. 23 n.19. In "the

companion case to this appeal," Resp. Br. at 23 n.12, a different judge of the Court of Federal Claims accepted this same argument in the context of the materially identical provisions of a bilateral tax treaty between the U.S. and France. *See Christensen,* 168 Fed. Cl. at 330; *see also* Open. Br. at 17-18 n.8 ("[The] U.S.-France treaty [contains] article 24(2)(a), which is analogous to paragraph (1) of the [Canada] Treaty at issue here, and article 24(2)(b), which is similar in application to paragraph (4)."). Today, in that related appeal, we issue an opinion holding that the U.S. Law Limitation applies throughout the pertinent portions of the treaty, thereby reversing the Court of Federal Claims' judgment for the taxpayer. *See Christensen v. United States*, __ F.4th __, No. 24-1284, ECF No. 71 (Fed. Cir. Aug. 31, 2026).

For the same reasons given in *Christensen*, we agree with the Court of Federal Claims here that the U.S. Law Limitation applies to the paragraph 4(b) Credit Clause. As a result, we decline Bruyea's invitation to affirm his judgment on this alternative ground.

VI

We have considered Bruyea's remaining arguments and find they lack merit.[7] In sum, we agree with the government: the Code does not allow Bruyea to apply a foreign tax credit for the taxes he paid to Canada (on the income he realized for his sale of property in Canada) as an offset to the net investment income tax he owes the U.S. under Code § 1411. Accordingly, for the foregoing reasons, the judgment of the Court of Federal Claims is reversed.

REVERSED

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

COSTS

Each party to bear its own costs.