Part III - Administrative, Procedural, and Miscellaneous

United States income tax treaties that meet the requirements of section 1(h)(11)(C)(i)(II).

Notice 2003-69

Summary

The Jobs and Growth Tax Relief Reconciliation Act of 2003 (P.L. 108-27, 117 Stat. 752) (the "2003 Act"), was enacted on May 28, 2003. Subject to certain limitations, the 2003 Act generally provides that a dividend paid to an individual shareholder from either a domestic corporation or a "qualified foreign corporation" is subject to tax at the reduced rates applicable to certain capital gains. A qualified foreign corporation includes certain foreign corporations that are eligible for benefits of a comprehensive income tax treaty with the United States which the Secretary determines is satisfactory for purposes of this provision and which includes an exchange of information program. This Notice contains the current list of the U.S. tax treaties that meet these requirements. Treasury and the IRS are working on additional guidance concerning other aspects of this provision.

Analysis

Section 1(h)(1) of the Code generally provides that a taxpayer's "net capital gain" for any taxable year will be subject to a maximum tax rate of 15 percent (or 5 percent in the case of certain taxpayers). The 2003 Act added section 1(h)(11), which provides that net capital gain for purposes of section (1)(h) means net capital gain (determined without regard to section 1(h)(11)) increased by "qualified dividend income." Qualified dividend income means dividends received during the taxable year from domestic corporations and "qualified foreign corporations." Section 1(h)(11)(B)(i). Subject to certain exceptions, a qualified foreign corporation is any foreign corporation that is either (i) incorporated in a possession of the United States, or (ii) eligible for benefits of a comprehensive income tax treaty with the United States which the Secretary determines is satisfactory for purposes of this provision and which includes an exchange of information program (the "treaty test"). Section 1(h)(11)(C)(i).[1] A qualified foreign corporation does not include any foreign corporation which for the taxable year of the corporation in which the dividend was paid, or the preceding taxable year, is a foreign personal holding company (as defined in section 552), a foreign investment company (as defined in

[1] A foreign corporation that does not satisfy either of these two tests is treated as a qualified foreign corporation with respect to any dividend paid by such corporation if the stock with respect to which such dividend is paid is readily tradable on an established securities market in the United States. Section 1(h)(11)(C)(ii). Treasury and the IRS are working on guidance concerning the definition of "readily tradable on an established securities market in the United States."

section 1246(b)), or a passive foreign investment company (as defined in section 1297).[2] Section 1(h)(11)(C)(iii).

The appendix to this Notice sets forth the current list of U.S. income tax treaties that meet the requirements of section 1(h)(11)(C)(i)(II). Four U.S. income tax treaties do not meet the requirements of section 1(h)(11)(C)(i)(II). The tax treaties with Bermuda and The Netherlands Antilles are not comprehensive income tax treaties within the meaning of section 1(h)(11). The U.S.-U.S.S.R. income tax treaty, which was signed on June 20, 1973 and currently applies to certain former Soviet Republics, does not include an information exchange program. The current income tax treaty with Barbados was determined not to be satisfactory for purposes of section 1(h)(11) because of concern that the treaty may operate to provide benefits which are intended to mitigate or eliminate double taxation in cases where there is no risk of double taxation.[3]

Treasury and the IRS intend to update this list, as appropriate. Situations that may result in changes to the list include the entry into force of new income tax treaties and the amendment or renegotiation of existing tax treaties. Further, Treasury and the IRS continue to study the operation of each of our income tax treaties, including the implications of any changes in the domestic laws of the treaty partner, to ensure that the treaty accomplishes its intended objectives and continues to be satisfactory for purposes of this provision. It is anticipated that any changes to the list of income tax treaties that meet the requirements of section (1)(h)(11)(C)(i)(II) will apply only to dividends paid after the date of publication of the revised list.

Finally, in order to be treated as a qualified foreign corporation under the treaty test, a foreign corporation must be eligible for benefits of one of the U.S. income tax treaties listed in the Appendix. Accordingly, the foreign corporation must be a resident within the meaning of such term under the relevant treaty and must satisfy any other requirements of that treaty, including the requirements under any applicable limitation on benefits provision. Treasury and the IRS are working on guidance concerning whether foreign corporations are qualified foreign corporations under the treaty test.

The Notice is effective for taxable years beginning after December 31, 2002.

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[2] A dividend from a qualified foreign corporation also is subject to the other limitations in section 1(h)(11). For example, a shareholder receiving a dividend from a qualified foreign corporation must satisfy the holding period requirements of section 1(h)(11)(B)(iii).

[3] The conference report provides that, for the period prior to this determination, foreign corporations will not be considered qualified foreign corporations by reason of eligibility for benefits of the U.S.-Barbados income tax treaty. H.R. Rep. 108-126, 108th Cong., 1st Sess. at 42 (2003).

APPENDIX

U.S. INCOME TAX TREATIES SATISFYING THE REQUIREMENTS OF SECTION 1(h)(11)(C)(i)(II)

Australia
Austria
Belgium
Canada
China
Cyprus
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Hungary
Iceland
India
Indonesia
Ireland
Israel
Italy
Jamaica
Japan
Kazakhstan
Korea
Latvia
Lithuania
Luxembourg
Mexico
Morocco
Netherlands
New Zealand
Norway
Pakistan
Philippines
Poland
Portugal
Romania
Russian Federation
Slovak Republic
Slovenia
South Africa
Spain
Sweden
Switzerland
Thailand
Trinidad and Tobago
Tunisia
Turkey
Ukraine
United Kingdom
Venezuela