Part III - Administrative, Procedural, and Miscellaneous

United States Income Tax Treaties That Meet the Requirements of Section 1(h)(11)(C)(i)(II)

Notice 2011-64

## 1. 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 that the Secretary determines is satisfactory for purposes of this provision and that includes an exchange of information provision. On October 20, 2003, the Service published Notice 2003-69, 2003-2 C.B. 851, which contains a list of the U.S. income tax treaties that met these requirements at that time. The list was updated by Notice 2006-101, 2006-2 C.B. 930, published on November 20, 2006. This notice updates the list to reflect two new income tax treaties that have entered into force since the publication of Notice 2006-101. In addition, this notice clarifies the requirements for treatment as a qualified foreign corporation.

## 2. ANALYSIS

Section 1(h)(1) of the Internal Revenue Code (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 that the Secretary determines is satisfactory for purposes of this provision and that includes an exchange of information program (the "treaty test"). Section 1(h)(11)(C)(i).

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). *See* Notice 2003-71, 2003-2 C.B. 922, for the definition, for taxable years beginning on or after January 1, 2003, of "readily tradable on an established securities market in the United States."

A qualified foreign corporation does not include any foreign corporation that for the taxable year of the corporation in which the dividend was paid, or the preceding taxable year, is a passive foreign investment company (as defined in section 1297).

Section 1(h)(11)(C)(iii). A dividend from a qualified foreign corporation is also 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).

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). The list has been updated to include two treaties that entered into force after the publication of Notice 2006-101: the treaty with Bulgaria (which entered into force on December 15, 2008) and the treaty with Malta (which entered into force on November 23, 2010).

Three U.S. income tax treaties do not meet the requirements of section 1(h)(11)(C)(i)(II). They are 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), and the tax treaties with Bermuda and the Netherlands Antilles.

Treasury and the IRS intend to continue 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 change 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.

## 3. OTHER REQUIREMENTS

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. For purposes of determining whether it satisfies these requirements, a foreign corporation is treated as though it were claiming treaty benefits, even if it does not derive income from sources within the United States. *See* H.R. Conf. Rep. No. 108-126, at 42 (2003) (stating that a company will be treated as eligible for treaty benefits if it "would qualify" for benefits under the treaty).

**4. EFFECTIVE DATE**

This notice is effective with respect to Bulgaria for dividends paid on or after December 15, 2008. This notice is effective with respect to Malta for dividends paid on or after November 23, 2010.

This notice is effective with respect to Bangladesh for dividends paid on or after August 7, 2006. This notice is effective with respect to Barbados for dividends paid on or after December 20, 2004. This notice is effective with respect to Sri Lanka for dividends paid on or after July 12, 2004. This notice is effective with respect to all other U.S. income tax treaties listed in the Appendix for taxable years beginning after December 31, 2002.

**5. EFFECT ON OTHER DOCUMENTS**

Notice 2006-101 is amplified and superseded.

**6. CONTACT INFORMATION**

The principal author of this notice is Rosy L. Lor of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Ms. Lor at (202) 622-3880 (not a toll-free call).

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

Australia
Austria
Bangladesh
Bulgaria
Barbados
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
Malta
Mexico
Morocco
Netherlands
New Zealand
Norway
Pakistan
Philippines
Poland
Portugal
Romania
Russian Federation
Slovak Republic
Slovenia
South Africa
Spain
Sri Lanka
Sweden
Switzerland
Thailand
Trinidad and Tobago
Tunisia
Turkey
Ukraine
United Kingdom
Venezuela