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

Notice 2024-11

SECTION 1. SUMMARY

Under section 1(h)(11), a dividend paid to an individual shareholder from either a domestic corporation or a "qualified foreign corporation" generally 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 program. This notice updates the list of treaties that meet the requirements of section 1(h)(11)(C)(i)(II). It adds the treaty with Chile, which entered into force on December 19, 2023. The list no longer includes the treaties with Russia and Hungary because both have ceased to meet the requirements of section 1(h)(11) after the publication of Notice 2011-64.

SECTION 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 20 percent (or 15 percent in the case of certain taxpayers). See also section 1411 (imposing a 3.8 percent tax on certain taxpayers' net investment income).

Section 1(h)(11) 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 provides 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 the treaty with Chile, which entered into force on December 19, 2023, and to remove two treaties that have ceased to meet the requirements of section 1(h)(11)(C)(i)(II) since the publication of Notice 2011-64: the treaty with Hungary and the treaty with Russia.

The treaty between Hungary and the United States (the Hungary treaty) terminated on January 8, 2023. Consequently, the Hungary treaty has ceased to meet the requirements of section 1(h)(11)(C)(i)(II).

On April 5, 2022, a Department of the Treasury (Treasury) spokesperson announced that the IRS paused assistance to Russian tax authorities through exchange of information under the treaty between Russia and the United States (the Russia treaty). Therefore, the Russia treaty does not have an exchange of information program as required by section 1(h)(11)(C)(i)(II).

Three other U.S. income tax treaties still in effect 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 U.S. income tax treaty, 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.

SECTION 3. EFFECTIVE DATE

This notice is effective with respect to Chile for dividends paid on or after December 19, 2023. This notice is effective with respect to Hungary for dividends paid on or after January 8, 2023. This notice is effective with respect to Russia for dividends paid on or after January 1, 2023.

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.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Notice 2011-64 is amplified and superseded.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Sarah Stein of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Sarah Stein at (202) 317-4917 (not a toll-free call).

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

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