

Internal Revenue Service, Treasury

§ 503.2

to carry out administrative measures at variance with the regulations and practice of either contracting State or which would be contrary to its sovereignty, security or public policy or to supply particulars which are not procurable under its own legislation or that of the State making application.

ARTICLE XVII

* * * * *

(2) For the settlement of difficulties or doubts in the interpretation or application of the present Convention or in respect of its relation to Conventions of the contracting States with third States the competent authorities of the contracting States shall reach a mutual agreement as quickly as possible.

ARTICLE XVIII

(1) The provisions of this Convention shall not be construed to deny or affect in any manner the right of diplomatic and consular officers to other or additional exemptions now enjoyed or which may hereafter be granted to such officers.

(2) The provisions of the present Convention shall not be construed to restrict in any manner any exemption, deduction, credit or other allowance now or hereafter accorded, by the laws of one of the contracting States in the determination of the tax imposed by such State, or by any other agreement between the contracting States.

* * * * *

ARTICLE XIX

(1) The competent authorities of the two contracting States may prescribe regulations necessary to carry into effect the present Convention within the respective States.

(2) The competent authorities of the two contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Convention.

ARTICLE XX

(1) The present Convention shall also apply from the date specified in paragraph (1) of Article XXI to Land Berlin which for the purposes of this Convention comprises those areas over which the Berlin Senate exercises jurisdiction.

(2) It is a condition to the application of this Convention to Berlin in accordance with the preceding paragraph that the Government of the Federal Republic shall previously have furnished to the Government of the United States of America a notification that all legal procedures in Berlin necessary for the application of this Convention therein have been complied with.

(3) After application of this Convention to Land Berlin in accordance with paragraphs (1) and (2) of this Article, references in this Convention to the Federal Republic shall also be considered references to Land Berlin.

ARTICLE XXI

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Bonn as soon as possible. It shall have effect for the taxable years beginning on or after the first day of January of the year in which such exchange takes place.

(2) The present Convention shall continue effective for a period of five years beginning with the calendar year in which the exchange of the instruments of ratification takes place and indefinitely after that period, but may be terminated by either of the contracting States at the end of the five-year period or at any time thereafter, provided that at least six months' prior notice of termination has been given and, in such event, the present Convention shall cease to be effective for the taxable years beginning on or after the first day of January next following the expiration of the six-month period.

* * * * *

(b) As used in this part, any term defined in the convention shall have the meaning so assigned to it; any term not so defined shall, unless the context otherwise requires, have the meaning which such term has under the internal revenue laws.

§ 503.2 Dividends.

(a) *General.* (1) Dividends paid by a German company (other than a United States corporation) and received in taxable years beginning on or after January 1, 1954, by a nonresident alien or a foreign corporation are exempt from United States tax under the provisions of Article XIV of the convention. Such dividends are, therefore, not subject to the withholding of United States tax at source.

(2) The rate of United States tax imposed by the Internal Revenue Code upon dividends (other than dividends falling within the scope of subparagraph (1) of this paragraph) derived from sources within the United States in taxable years beginning on or after January 1, 1954, by a German company (other than a United States corporation) shall not exceed 15 percent under

the provisions of Article VI of the convention if (i) such company at no time during the taxable year in which such dividends are derived has a permanent establishment in the United States and (ii) such company owns, at the time the dividends are paid, 10 percent or more of the voting stock of the paying corporation.

(b) *Application of reduced rate of withholding.* (1) To secure withholding of United States tax at the rate of 15 percent at source in the case of dividends to which paragraph (a)(2) of this section is applicable, the German company shall notify the withholding agent by letter in duplicate that such income is subject to the reduced rate of United States tax under the provisions of Article VI of the convention. The letter of notification shall be signed by an officer of the company and shall show the name and address of the corporation paying the dividend, the name and address of the German company receiving the dividend, and the official title of the officer signing the letter. It shall contain a statement (i) that the owner of the dividend is a German company (other than a United States corporation), (ii) that the owner at no time during the current taxable year had a permanent establishment in the United States, and (iii) that the German company owns 10 percent or more of the voting stock of the corporation paying such dividend.

(2) This letter of notification, which shall constitute authorization for application of the reduced rate of withholding of United States tax at source, shall be filed with the withholding agent for each successive 3-calendar-year period during which such income is paid. For this purpose, the first such period shall commence with the beginning of the calendar year in which such income is first paid on or after January 1, 1954. Each such letter filed with any withholding agent shall be filed not later than 20 days preceding the date of the first payment within each successive period, or, if that is not possible because of special circumstances, as soon as possible after such first payment.

(3) If such letter is also to be used as authorization for the release, pursuant to § 503.6(a)(3), of excess tax withheld

from dividends, it shall also contain a statement (i) that, at the time when the dividends were derived from which the excess tax was withheld, the owner was a German company (other than a United States corporation), (ii) that the owner at no time during the taxable year in which such dividends were derived had a permanent establishment in the United States and (iii) that the German company owned, at the time when such dividends were paid, 10 percent or more of the voting stock of the corporation paying such dividends.

(4) Once a letter has been filed in respect of any 3-calendar-year period, no additional letter need be filed in respect thereto unless the Commissioner of Internal Revenue notifies the withholding agent that an additional letter shall be filed by the taxpayer. If, after filing a letter of notification, the taxpayer ceases to be eligible for the reduction in rate of United States tax granted by the convention in respect to such dividends, such taxpayer shall promptly notify the withholding agent by letter in duplicate. When any change occurs in the ownership of the stock as recorded on the books of the payer the reduction in the rate of withholding of United States tax shall no longer apply unless the new owner of record is entitled to and does properly file a letter of notification with the withholding agent.

(5) Each letter of notification, or the duplicate thereof, shall be immediately forwarded by the withholding agent to the District Director of Internal Revenue, Audit Division, Alien Returns Section, Baltimore 2, Maryland.

(c) *Dividends paid to German company where degree of stock ownership uncertain.* (1) In any case in which a German company (other than a United States corporation) anticipates the receipt of dividends described in paragraph (a)(2) of this section and the relationship existing between the German company and the paying corporation is such as to render uncertain whether, by reason of the requirement as to stock ownership, the reduction in rate of United States tax granted by Article VI of the convention will apply to such dividends, the German company shall not undertake to file the letter of notification prescribed by paragraph (b)(1) of

this section unless it has, prior to such filing, applied for and received from the Commissioner of Internal Revenue, Washington 25, D.C., a determination that such German company owns 10 percent or more of the voting stock of the paying corporation. The application to the Commissioner shall contain a full statement of all the facts pertinent to a determination of the question.

(2) As soon as practicable after the application has been filed, the Commissioner of Internal Revenue will determine whether the German company owns sufficient voting stock of the paying corporation to permit it to claim the benefit of Article VI of the convention in the case of such dividends and shall notify the German company of his determination. The German company shall forthwith file with the paying corporation a copy of the Commissioner's letter of notification.

(3) If the Commissioner's determination is that the German company does own 10 percent or more of the voting stock of the paying corporation, the German company may thereafter, if otherwise qualified, secure the reduced rate of withholding at the source with respect to subsequent payments of such dividends, by filing the letter of notification in accordance with paragraph (b) of this section.

(4) A determination by the Commissioner that the German company does own sufficient voting stock of the paying corporation to permit it to claim the benefit of Article VI of the convention will apply until such time as the stock ownership of the paying corporation has changed to the extent that, because of such change, dividends to be received from the paying corporation by the German company no longer qualify for the reduced rate of United States tax under Article VI of the convention. If such change in stock ownership occurs, the German company shall promptly notify both the Commissioner of Internal Revenue and the paying corporation of the then existing facts with respect to such stock ownership.

(5) In any case in which a German company (other than a United States corporation) has received on or after January 1, 1954, dividends described in

paragraph (a)(2) of this section and the relationship existing between the German company and the paying corporation was, at the time the dividends were paid, such as to render uncertain whether, by reason of the requirement contained in Article VI of the convention as to stock ownership, such dividends qualified for the reduced rate of United States tax, the German company shall apply to the Commissioner of Internal Revenue for a similar determination as to the degree of stock ownership at the time the dividends were paid. If the Commissioner's determination is that at such time the degree of stock ownership was such as to permit the application of the reduced rate of United States tax granted by Article VI of the convention, his letter of notification may, subject to the provisions of § 503.6(b), authorize the release of excess tax withheld with respect to such dividends.

§ 503.3 Interest.

(a) *General.* (1) Interest paid by a German company (other than a United States corporation) and received in taxable years beginning on or after January 1, 1954, by a nonresident alien or a foreign corporation is exempt from United States tax under the provisions of Article XIV of the convention. Such interest is, therefore, not subject to the withholding of United States tax at source.

(2) Interest (other than interest falling within the scope of subparagraph (1) of this paragraph) on bonds, notes, debentures, securities, or on any other form of indebtedness, including interest on obligations of the United States and of instrumentalities of the United States, which is derived, bona fide as interest, in taxable years beginning on or after January 1, 1954, by a natural person (other than a citizen or resident of the United States) resident in the Federal Republic of Germany, or by a German company (other than a United States corporation), is exempt from United States tax under the provisions of Article VII of the convention if such person or company at no time during the taxable year in which such interest is derived has a permanent establishment in the United States. Such interest is, therefore, not subject to the