

Internal Revenue Service, Treasury

§ 509.2

collection of the taxes which are the subject of the present Convention. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.

(2) Each of the contracting States may collect such taxes imposed by the other contracting State as though such taxes were the taxes of the former State as will ensure that the exemption or reduced rate of tax granted under Articles VI, VII, VIII and XI(2) of the present Convention by such other State shall not be enjoyed by persons not entitled to such benefits.

(3) In no case shall the provisions of this Article be construed so as to impose upon either of the contracting States the obligation 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.

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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 be ratified and the instruments of ratification shall be exchanged at Berne 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: Provided, however, that if such exchange takes place on or after October 1 of such year, Article VI (except paragraph (2) thereof) and Article VII of the Convention shall have effect only for taxable years beginning on or after the first day of January of the year immediately following 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 fol-

lowing the expiration of the six-month period.

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As used in this Treasury decision, unless the context otherwise requires, the terms defined in the above articles of the convention shall have the meanings so assigned them.

§ 509.2 Dividends.

(a) *General.* Under Article VI of the convention, the rate of tax imposed with respect to dividends by section 211(a) of the Internal Revenue Code (relating to nonresident alien individuals not engaged in trade or business within the United States) and by section 231(a) of the Internal Revenue Code (relating to foreign corporations not engaged in trade or business within the United States) is reduced to 15 percent in the case of dividends received in taxable years beginning on or after January 1, 1951, from sources within the United States by a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of Switzerland or by a Swiss corporation if such alien or corporation at no time during the taxable year had a permanent establishment within the United States. As to what is a Swiss corporation (see Article II(1)(f) of the convention. Thus, if a nonresident alien who is a resident of Switzerland performs personal services within the United States during the calendar year 1952, but has at no time during such year a permanent establishment within the United States, he is entitled to the reduced rate of tax with respect to dividends derived in that year from United States sources, as provided in Article VI of the convention, even though, by reason of his having rendered personal services within the United States, he is engaged in trade or business therein in that year within the meaning of section 211(b) of the Internal Revenue Code. As to what constitutes a permanent establishment, see Article II(1)(c) of the convention.

In the case of dividends paid on or after January 1, 1951, by any foreign corporation to a nonresident alien who is a resident of Switzerland or to a

Swiss corporation, not having a permanent establishment in the United States, no withholding of United States tax is required. See Article XIV of the convention.

(b) *Dividends paid by a United States subsidiary corporation.* Under the provisions of Article VI(2) of the convention, dividends from sources within the United States paid by a domestic corporation to a Swiss corporation controlling, directly or indirectly, at the time the dividend is paid, 95 percent or more of the entire voting power in such domestic corporation are, when received in taxable years beginning on or after January 1, 1951, subject to tax at the rate of only 5 percent, if (1) not more than 25 percent of the gross income of such paying corporation for the three-year period immediately preceding the taxable year in which the dividend is paid consists of dividends and interest (other than dividends and interest paid to such domestic corporation by its own subsidiary corporations, if any), (2) the relationship between such domestic corporation and such Swiss corporation has not been arranged or maintained primarily with the intention of securing such reduced rate of 5 percent, and (3) such Swiss corporation at no time during the taxable year had a permanent establishment within the United States.

Any domestic corporation which claims or contemplates claiming that dividends paid or to be paid by it on or after January 1, 1951, are subject only to the 5 percent rate shall file, as soon as practicable, with the Commissioner of Internal Revenue, the following information: (1) The date and place of its organization; (2) the number of outstanding shares of stock of the domestic corporation having voting power and the voting power thereof; (3) the person or persons beneficially owning such stock of the domestic corporation and their relationship to the Swiss corporation; (4) the amount of gross income, by years, of the paying corporation for the three-year period immediately preceding the taxable year in which the dividend is paid; (5) the amount of interest and dividends, by years, included in the gross income of such domestic corporation and the amount of interest and dividends, by

years, received by such corporation from its subsidiary corporations, if any; and (6) the relationship between the domestic corporation and the Swiss corporation to which it pays the dividends.

As soon as practicable after such information is filed, the Commissioner of Internal Revenue will determine whether the dividends concerned fall within the provisions of Article VI(2) of the convention and may authorize the release of excess tax withheld with respect to dividends which come within such provisions. In any case in which the Commissioner of Internal Revenue has notified such domestic corporation that the dividends come within such provisions, the reduced withholding rate of 5 percent will apply to any dividends subsequently paid by such corporation to the Swiss corporation unless the stock ownership of the domestic corporation, or the character of its income, materially changes, or unless the Commissioner of Internal Revenue determines that the relationship between the two corporations is being maintained primarily with the intention of securing such reduced rate; and, if such change in stock ownership or character of income occurs, such corporation shall promptly notify the Commissioner of Internal Revenue of the then existing facts with respect to such stock ownership or income.

(c) *Effect of address in Switzerland on withholding in case of dividends.* For the purpose of withholding of the tax in the case of dividends, every nonresident alien (including a nonresident alien individual, fiduciary, and partnership) whose address is in Switzerland shall be deemed by United States withholding agents to be a resident of Switzerland not having a permanent establishment in the United States; and every corporation whose address is in Switzerland shall be deemed by such withholding agents to be a Swiss corporation not having a permanent establishment in the United States.

(d) *Rate of withholding.* On and after January 1, 1951, withholding in the case of dividends paid to nonresident aliens (including a nonresident alien individual, fiduciary, and partnership) and to foreign corporations, whose addresses are in Switzerland, shall be at the

rate of 15 percent in every case except (1) that in which, prior to the date of payment of such dividends, the Commissioner of Internal Revenue has notified the paying corporation that such dividends fall within the provisions of Article VI (2) of the convention and (2) that in which the Commissioner of Internal Revenue has, prior to the date of payment of such dividends, notified the withholding agent that the reduced rate of tax shall not apply.

The preceding provisions relative to residents of Switzerland and to Swiss corporations are based upon the assumption that the payee of the dividend is the actual owner of the capital stock from which the dividend is derived and consequently is the person liable to the tax upon such dividend. As to action by the recipient who is not the owner of the dividend, see § 509.8.

§ 509.3 Interest.

(a) *General.* Interest on bonds, securities, notes, debentures, or any other form of indebtedness (including interest on obligations of the United States, obligations of instrumentalities of the United States, and mortgages and bonds secured by real property) received in taxable years beginning on or after January 1, 1951, from sources within the United States by a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of Switzerland, or by a Swiss corporation, is subject to United States tax at the reduced rate of 5 percent under the provisions of Article VII of the convention if such alien or corporation at no time during the taxable year had a permanent establishment in the United States.

(b) *Application of reduced rate at source.* To secure the reduced rate of tax at the source in the case of coupon bond interest, the nonresident alien resident in Switzerland or the Swiss corporation shall submit Form 1001-S, in duplicate, to the paying agent with each presentation of interest coupons. Such form shall be signed by the owner of the interest, trustee, or agent and shall show the name and address of the obligor, the name and address of the owner of such interest, and the amount of such interest. Such form shall con-

tain a statement that the owner is a resident of Switzerland or a Swiss corporation and that such owner has no permanent establishment in the United States.

The reduction in the rate of United States tax contemplated by Article VII of the convention, insofar as it concerns coupon bond interest, is applicable only to the owner of such interest. The person presenting such coupon or on whose behalf it is presented shall, for the purpose of the reduction, be deemed to be the owner of the interest only if he is, at the time the coupon is presented for payment, the owner of the bond from which the coupon has been detached. If the person presenting the coupon is not the owner of the bond, Form 1001, and not Form 1001-S, shall be executed.

The original and duplicate ownership certificates, Form 1001-S, must be forwarded to the Commissioner of Internal Revenue by the withholding agent with the quarterly return, Form 1012, as provided in existing regulations with respect to Form 1001. See § 29.143-7 of Regulations 111 (26 CFR 1949 ed. Supps. 29.143-7) [and § 39.143-7 of Regulations 118 (26 CFR, Rev. 1953, Parts 1-79, and Supps.)]. Form 1001-S need not be listed on Form 1012.

In the case of interest coupons presented in Switzerland by a nonresident alien who is not a resident of Switzerland, or by a foreign corporation other than a Swiss corporation, ownership certificates, Form 1001, shall be filed as provided in existing regulations without reference to the provisions of the convention. See § 29.143-4 of Regulations 111 (26 CFR 1949 ed. Supps. 29.143-4) [and § 39.143-4 of Regulations 118 (26 CFR, Rev. 1953, Parts 1-79, and Supps.)].

To secure the reduced rate of tax at the source in the case of interest, other than interest payable by means of coupons, the nonresident alien who is a resident of Switzerland or the Swiss corporation shall file Form 1001A-S, in duplicate, with the withholding agent in the United States. Such form shall be signed by the owner of the interest, trustee, or agent and shall show the name and address of the obligor and the name and address of the owner of such interest. Such form shall contain