

§516.1

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until Jan. 1, 2000. By T.D. 8856, 64 FR 73408, Dec. 30, 1999, the effective date was delayed until Jan. 1, 2001.

Subpart—Withholding of Tax

§516.1 Introductory.

(a) *Pertinent provisions.* The income tax convention between the United States and the Republic of Austria, signed on October 25, 1956, referred to in this part as the convention, provides in part as follows, effective on and after January 1, 1957:

ARTICLE I

(1) The taxes referred to in this Convention are:

(a) In the case of the United States of America: The federal income taxes, including surtaxes.

(b) In the case of the Republic of Austria: The Einkommensteuer (income tax), the Koerperschaftsteuer (corporation tax) and the Beitrag vom Einkommen zur Foerderung des Wohnbaues und fuer Zwecke des Familienlastenausgleiches (housing reconstruction and family allowance contribution).

(2) The present Convention shall also apply to any other income or profits tax of a substantially similar character which may be imposed by one of the contracting States after the date of signature of the present Convention.

ARTICLE II

(1) As used in this Convention:

(a) The term “United States” means the United States of America, and when used in a geographical sense means the States, the Territories of Alaska and Hawaii, and the District of Columbia;

(b) The term “Austria” means the Republic of Austria;

(c) The term “enterprise of one of the contracting States” means, as the case may be, a United States enterprise or an Austrian enterprise;

(d) The term “United States enterprise” means an industrial or commercial enterprise or undertaking carried on in the United States by a natural person (including an individual in his individual capacity or as a member of a partnership) resident in the United States or by a United States corporation or other entity; the term “United States corporation or other entity” means a corporation or other entity created or organized under the law of the United States or of any State or Territory of the United States;

(e) The term “Austrian enterprise” means an industrial or commercial enterprise or undertaking carried on in Austria by a nat-

ural person (including an individual in his individual capacity or as a member of a partnership) resident in Austria or by an Austrian corporation; the term “Austrian corporation” means a corporation or other entity created or organized under the law of Austria;

(f) The term “permanent establishment” means a branch, office, factory, workshop, a warehouse, a merchandising establishment, a mine, oil well or other place of exploitation of the ground or soil, a construction or assembly project or the like, the duration of which exceeds or will likely exceed twelve months, or other fixed place of business; but does neither include the casual and temporary use of mere storage facilities, nor an agent or employee unless the agent or employee has full power for the negotiation and concluding of contracts on behalf of an enterprise and also habitually exercises this power in that other State or has a stock of merchandise belonging to the enterprise of the other State from which he regularly fills orders on behalf of the enterprise. An enterprise of one of the contracting States shall not be deemed to have a permanent establishment in the other State merely because it carries on business dealings in such other State through a commission agent, broker, custodian or other independent agent, acting in the ordinary course of his business as such. The fact that an enterprise of one of the contracting States maintains in the other State a fixed place of business exclusively for the purchase of goods and merchandise shall not of itself constitute such fixed place of business a permanent establishment of the enterprise. The maintenance within the territory of one of the contracting States by an enterprise of the other contracting State of a warehouse for convenience of delivery and not for purposes of display shall not of itself constitute a permanent establishment within that territory. The fact that a corporation of one contracting State has a subsidiary corporation which is a corporation of the other State or which is engaged in trade or business in the other State shall not of itself constitute that subsidiary corporation a permanent establishment of its parent corporation;

(g) The term “competent authorities” means, in the case of the United States, the Commissioner of Internal Revenue as authorized by the Secretary of the Treasury; and in the case of Austria, the Federal Ministry of Finance.

(2) For the purpose of the present Convention:

(a) Dividends paid by a corporation of one of the contracting States shall be treated as income from sources within such State.

(b) Interest paid by one of the contracting States, including any local government

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thereof, or by an enterprise of one of the contracting States not having a permanent establishment in the other contracting State shall be treated as income from sources within the former State.

(c) Income from real property (including gains derived from the sale or exchange of such property, but not including interest from mortgages or bonds secured by real property) and royalties in respect of the operation of mines, oil wells, or other natural resources shall be treated as income derived from the contracting State in which such real property, mines, oil wells or other natural resources are situated.

(d) Compensation for labor or personal services (including the practice of liberal professions) shall be treated as income from sources within the contracting State where are rendered the services for which such compensation is paid.

(e) Royalties for using, or for the right to use, in one of the contracting States, patents, copyrights, designs, trademarks and like property shall be treated as income from sources within such State.

(3) In the application of the provisions of this Convention by one of the contracting States any term not otherwise defined shall, unless the context otherwise requires, have the meaning which the term has under its own tax laws. For the purposes of this Convention the term "residence" in Austria shall include the customary place of abode therein.

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ARTICLE VI

The rate of tax imposed by one of the contracting States upon dividends received from sources within such State by a resident or corporation or other entity of the other contracting State not having a permanent establishment in the former State shall not exceed 50 percent of the statutory rate of tax imposed on such dividends by such former State but such rate of tax shall not exceed 5 percent if the shareholder is a corporation controlling, directly or indirectly, at least 95 percent of the entire voting power in the corporation paying the dividend, and if not more than 25 percent of the gross income of such paying corporation is derived from interest and dividends, other than interest and dividends received from its own subsidiary corporations. Such reduction of the rate to five percent shall not apply if the relationship of the two corporations has been arranged or is maintained primarily with the intention of securing such reduced rate.

ARTICLE VII

Interest received from sources within one of the contracting States, on bonds, notes, debentures, securities or on any other form

of indebtedness (exclusive of interest on debts secured by mortgages) by a resident or corporation or other entity of the other contracting State shall, in an amount not exceeding fair and reasonable consideration on indebtedness, be exempt from tax by the former State if such resident, corporation or other entity has no permanent establishment in such former State.

ARTICLE VIII

(1) Royalties and other amounts received as consideration for the right to use literary, musical or other copyrights, artistic and scientific works, patents, designs, plans, secret processes and formulae, trademarks, and other like property and rights (including rentals and like payments for the use of industrial, commercial or scientific equipment but not including motion picture film rentals) by a resident or a corporation or other entity of one of the contracting States from sources within the other contracting State shall, in an amount not exceeding fair and reasonable consideration for such right to use, be exempt from taxation by such other State if the recipient has no permanent establishment situated in such other State.

(2) The rate of tax imposed by one of the contracting States upon motion picture film rentals received from sources within such contracting State by a resident or corporation or other entity of the other contracting State not having a permanent establishment in the former State shall not exceed 50 percent of the statutory rate of tax imposed on such rentals but in any case shall not exceed 10 percent of the amount of such rentals.

ARTICLE IX

(1) Income from real property (including gains derived from the sale or exchange of such property and interest on mortgages secured by such property) and royalties in respect of the operation of mines, oil wells or other natural resources shall be taxable in the contracting State in which such property, mines, oil wells or other natural resources are situated.

(2) Where a resident or corporation or other entity of one of the contracting States derives any income coming within the scope of paragraph (1) from property within the other contracting State, the recipient may, for any taxable year, elect to be subject to the tax of such other contracting State on a net basis as if such resident, corporation or other entity were engaged in trade or business within such other State through a permanent establishment therein.

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ARTICLE XI

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(2) Private pensions and private life annuities which are from sources within one of the contracting States and are paid to individuals residing in the other contracting State shall be exempt from taxation by the former State.

(3) The term “pensions”, as used in this Article, means periodic payments made in consideration for services rendered or by way of compensation for injuries received.

(4) The term “life annuities”, as used in this Article, means a stated sum payable periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration in money or money’s worth.

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ARTICLE XIV

(1) Dividends and interest paid by an Austrian corporation (other than a United States corporation) shall be exempt from United States tax where the recipient is a nonresident alien or a foreign corporation.

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ARTICLE XVI

(1) The competent authorities of the contracting States shall exchange such information (being information available under the respective taxation laws of the contracting States) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or the like in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and 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) 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.

ARTICLE XVII

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(2) Should any difficulty or doubt arise as to the interpretation or application of the present Convention or its relationship to Conventions of the contracting States with third States the competent authorities of the contracting States may settle the question by mutual agreement.

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 granted by the laws of one of the contracting States in the determination of the tax imposed by such State.

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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 Vienna as soon as possible. The Convention shall have effect on and after the first day of January of the calendar year in which such exchange takes place.

(2) The present Convention shall remain in force indefinitely, but may be terminated by either of the contracting States, provided that at least six months’ prior notice of termination has been given through diplomatic channels. 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) *Meaning of terms.* As used in §§516.1 to 516.12, 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 of the United States.