§ 516.2 Dividends; general rules.

(a) *Paid by an Austrian corporation.* Dividends paid on or after January 1, 1957, by an Austrian corporation which is not a United States corporation are exempt from United States tax under the provisions of Article XIV (1) of the convention if the recipient is a nonresident alien or a foreign corporation.

(b) *50 percent of statutory rate*—(1) *In general.* Article VI of the convention provides that the rate of United States tax imposed upon dividends received from sources within the United States on or after January 1, 1957, by a nonresident alien individual who is a resident of Austria, or by an Austrian corporation or other entity, shall not exceed 50 percent of the statutory rate of tax imposed on such dividends by the United States if such alien, corporation, or other entity has not had a permanent establishment in the United States at any time during the taxable year in which such dividends are received. This subparagraph does not apply to dividends falling within the scope of paragraph (a) or (c) of this section.

(2) *Personal services.* If a nonresident alien individual who is a resident of Austria performs personal services within the United States during the taxable year, but has at no time during such year a permanent establishment within the United States, he is entitled to the reduced rate of tax on dividends prescribed by subparagraph (1) of this paragraph, even though under the provisions of section 871(c) of the Internal Revenue Code of 1954 he has engaged in trade or business within the United States during such year by reason of his having performed personal services therein.

(c) *Dividends paid by a related corporation*—(1) *Rate of 5 percent.* Under the provisions of Article VI of the convention, dividends received from sources within the United States on or after January 1, 1957, by an Austrian corporation which controls, directly or indirectly, at the time the dividend is paid, 95 percent or more of the entire voting power in the corporation paying the dividend are subject to United States tax at a rate not in excess of 5 percent if (i) not more than 25 percent of the gross income of the paying corporation for the 3-year period immediately preceding the taxable year in which the dividend is paid consists of dividends and interest (other than dividends and interest received by such paying corporation from its own subsidiary corporations, if any), (ii) the relationship between the paying corporation and the Austrian corporation has not been arranged or maintained primarily with the intention of securing the reduced rate of 5 percent, and (iii) the Austrian corporation at no time during the taxable year in which such dividends are received has had a permanent establishment within the United States. This subparagraph does not apply to dividends falling within the scope of paragraph (a) of this section.

(2) *Information to be filed with Commissioner.* Any corporation (hereinafter referred to as the claimant) which claims or contemplates claiming that dividends paid or to be paid by it are subject to a rate of United States tax not in excess of 5 percent shall file the following information with the Commissioner of Internal Revenue as soon as practicable: (i) the date and place of its organization; (ii) the number of outstanding shares of stock of the claimant having voting power and the voting power thereof; (iii) the person or persons beneficially owning such stock of the claimant and their relationship to the Austrian corporation; (iv) the amounts by years (for the 3-year period immediately preceding the taxable year in which the dividend is paid) of the gross income of the claimant, of the interest and dividends included in such gross income, and of the interest and dividends received by the claimant from its own subsidiary corporations, if any; and (v) the relationship between the claimant and the Austrian corporation receiving the dividend.

(3) *Notification by Commissioner.* As soon as practicable after such information is filed, the Commissioner will determine whether the dividends concerned qualify under Article VI of the convention for a rate of tax not in excess of 5 percent and will notify the claimant of his determination. If the dividends do qualify for such reduced rate, this notification may also authorize the release, pursuant to § 516.9(a)(3),

of excess tax withheld from the dividends concerned.

(d) *Withholding of United States tax from dividends*—(1) *Exempt from withholding.* No withholding of United States tax is required in the case of dividends paid by an Austrian corporation which, in accordance with paragraph (a) of this section, are exempt from United States tax.

(2) *50 percent of statutory rate*—(i) *In general.* Withholding of tax at source on or after January 1, 1958, in the case of dividends (other than dividends falling within the scope of subparagraph (1) or (3) of this paragraph) received from sources within the United States by a nonresident alien or by a foreign corporation or other entity, whose address is in Austria, shall, to the extent withholding of United States tax is required, be at the rate of 50 percent of the statutory rate in every case except that in which, prior to the date of payment of such dividends, the Commissioner of Internal Revenue has notified the withholding agent that the reduced rate of withholding shall not apply.

(ii) *Effect of address in Austria.* For the purposes of this subparagraph, every nonresident alien whose address is in Austria shall be deemed by United States withholding agents to be a nonresident alien individual who is a resident of Austria not having a permanent establishment within the United States; and every foreign corporation or other entity whose address is in Austria shall be deemed by such withholding agents to be an Austrian corporation or other entity not having a permanent establishment within the United States.

(iii) *Reduced rate applicable to owner only.* This subparagraph is based on the assumption that the payee of the dividend is the actual owner of the capital stock from which the dividend is derived. As to action by a recipient who is not the owner, see § 516.3.

(iv) *Statutory rate.* As used in this subparagraph, the term ''statutory rate'' means the rate (30 percent as of the date of approval of this Treasury decision) prescribed with respect to dividends by chapter 3 of the Internal Revenue Code of 1954 as though the convention had not come into effect.

(v) *Nonresident alien.* The term ''nonresident alien'', as used in this subparagraph, includes nonresident alien individuals, fiduciaries, and partnerships.

(3) *Rate of 5 percent.* If, in accordance with paragraph (c)(3) of this section, the Commissioner of Internal Revenue has notified the claimant corporation that the dividends qualify under Article VI of the convention for a rate of tax not in excess of 5 percent, the reduced withholding rate of 5 percent, to the extent withholding of United States tax is required, shall apply on or after January 1, 1958, to any dividends subsequently paid by such corporation and received by the Austrian corporation, unless (i) the stock ownership of the claimant corporation materially changes, (ii) the character of the income of the claimant corporation materially changes, or (iii) the Commissioner determines that the relationship between the two corporations concerned is being maintained primarily with the intention of securing the reduced rate of United States tax. In such instance, if such change in stock ownership or character of income occurs, the claimant corporation shall promptly notify the Commissioner of the then existing facts with respect thereto. The continued application of the rate not in excess of 5 percent is also dependent upon the continued fulfillment of paragraph (c)(1)(iii) of this section.

(4) *Evidence of tax withheld.* The rate at which United States tax has been withheld from any dividend paid at any time after the expiration of the thirtieth day after the date on which §§ 516.1 to 516.12 are published in the FEDERAL REGISTER to any person whose address is in Austria at the time the dividend is paid shall be shown either in writing or by appropriate stamp on the check, draft, or other evidence of payment, or on an accompanying statement.

§ 516.3 Dividends received by addressee not actual owner.

(a) *Additional tax to be withheld*—(1) *Nominee or representative.* If the recipient in Austria of any dividend from which tax has been withheld at a reduced rate pursuant to § 516.2(d)(2) is a