

### §516.3

### 26 CFR Ch. I (4-1-00 Edition)

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

nominee or representative through whom the dividend is received by a person other than one described in §516.2(b), such nominee or representative shall withhold an additional amount of United States tax equivalent to the United States tax which would have been withheld if the convention had not been in effect (30 percent as of the date of approval of §§516.1 to 516.12) minus the amount which has been withheld at the source.

(2) *Fiduciary or partnership.* If a fiduciary or a partnership with an address in Austria receives, otherwise than as a nominee or representative, a dividend from which United States tax has been withheld at a reduced rate pursuant to §516.2(d)(2), such fiduciary or partnership shall withhold an additional amount of United States tax from the portion of the dividend included in the gross income from sources within the United States of any beneficiary or partner, as the case may be, who is not entitled to the reduced rate of tax in accordance with §516.2(b). The amount of the additional tax is to be calculated in the same manner as under subparagraph (1) of this paragraph.

(3) *Released amounts of tax.* If any amount of United States tax is released pursuant to §516.9(a)(2) by the withholding agent in the United States with respect to a dividend paid to such a person (nominee, representative, fiduciary, or partnership) with an address in Austria, the latter shall withhold from such released amount any additional amount of United States tax, otherwise required to be withheld from the dividend by the provisions of subparagraphs (1) and (2) of this paragraph, in the same manner as if at the time of payment of the dividend United States tax at the reduced rate prescribed by §516.2(d)(2) had been withheld at source from such dividend.

(b) *Returns filed by Austrian withholding agents.* The amounts withheld pursuant to paragraph (a) of this section by any withholding agent in Austria shall be deposited, without converting the amounts into United States dollars, with the Austrian Federal Ministry of Finance on or before the 15th day after the close of the quarter of the calendar year in which the withholding in Austria occurs. The withholding

agent making the deposit shall render therewith such appropriate Austrian form as may be prescribed by the Federal Ministry of Finance. The amounts so deposited should be remitted by the Federal Ministry of Finance by draft in United States dollars, on or before the end of the calendar month in which the deposit is made, to the Director of International Operations, Internal Revenue Service, Washington, D.C., U.S.A. The remittance should be accompanied by such Austrian forms as may be required to be rendered by the withholding agent in Austria in connection with the deposit.

#### §516.4 Interest.

(a) *Paid by Austrian corporation.* Interest paid on or after January 1, 1957, by an Austrian corporation which is not a United States corporation is 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. Such exempt interest is not subject to the withholding of United States tax at source.

(b) *Other interest.* Interest on bonds, notes, debentures, securities, or on any other form of indebtedness, including interest on obligations of the United States and its instrumentalities but not including interest on debts secured by mortgages, which is 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, is exempt, in an amount not exceeding a fair and reasonable consideration on the indebtedness, from United States tax under the provisions of Article VII of the convention if such alien, corporation, or other entity at no time during the taxable year in which such interest is received has a permanent establishment in the United States. This paragraph does not apply to the interest which is exempt from United States tax in accordance with paragraph (a) of this section.

(c) *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