

Internal Revenue Service, Treasury

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tax) from sources within the United States for the taxable year in which such overpayment resulted has not been disclosed in an income tax return filed with the Internal Revenue Service prior to the time the claim for refund is made, the taxpayer shall disclose such total gross income with his claim. In the event that securities are held in the name of a person other than the actual or beneficial owner, the name and address of such person shall be furnished with the claim. In addition to such other information as may be required to establish the overpayment, there shall also be included in such claim for refund:

(1) A statement that, at the time when the item or items of income were received (or "paid", in the case of private pensions and private life annuities) from which the excess tax was withheld, (i) the taxpayer was neither a citizen nor a resident of the United States but was a resident of Austria, or, in the case of a corporation or other entity, (ii) the taxpayer was an Austrian corporation or other entity; and

(2) A statement that the taxpayer at no time during the taxable year in which the income was received had a permanent establishment within the United States.

(d) *Exceptions*—(1) *Private pensions and private life annuities*. If the taxpayer is an individual who during the taxable year of overpayment received income from United States sources consisting exclusively of private pensions or private life annuities entitled to the benefit of Article XI (2) of the convention, the statement specified in paragraph (c)(2) of this section shall not be required.

(2) *Dividends paid by a related corporation*. As to additional information required in the case of an Austrian corporation claiming the benefit of the 5 percent rate on dividends paid by a related corporation, see § 516.2(c).

§ 516.11 Information to be furnished in ordinary course.

For provisions relating to the exchange of information under Article XVI of the convention, see § 1.1461-2(d) of this chapter.

§ 516.12 Taxable years beginning in 1956 and ending in 1957.

If, in the case of a taxable year beginning in 1956 and ending in 1957, a taxpayer has no permanent establishment in the United States at any time during that part of the taxable year which follows December 31, 1956, then he shall, for purposes of §§ 516.1 to 516.12 be deemed not to have had a permanent establishment in the United States at any time during the taxable year.

PART 517—PAKISTAN

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AUTHORITY: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805.

SOURCE: Treasury Decision 6431, 24 FR 10100, Dec. 15, 1959; 25 FR 14022, Dec. 31, 1960, unless otherwise noted.

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Subpart—Withholding of Tax

§ 517.1 Introductory.

(a) *Pertinent provisions of the convention*. The income tax convention between the United States and Pakistan, signed on July 1, 1957, referred to in §§ 517.1 to 517.9 as the convention, provides in part as follows, effective for taxable years beginning on or after January 1, 1959:

ARTICLE I

(1) The taxes which are the subject of the present Convention are:

(a) In the United States of America: The Federal income taxes, including surtaxes (hereinafter referred to as United States tax)..

(b) In Pakistan: The income tax, supertax and the business profits tax (hereinafter referred to as Pakistan tax).

(2) The present Convention shall also apply to any other taxes of a substantially similar character (including excess profits tax) imposed by either contracting State after the date of signature of the present Convention, or by the Government of any territory to which the present Convention is extended under Article XVIII.

ARTICLE II

(1) In the present Convention, unless the context otherwise requires:

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

(b) The term "Pakistan" means the Provinces of Pakistan and the Capital of the Federation;

(c) The terms "one of the contracting States" and "the other contracting State" mean the United States or Pakistan, as the context requires;

(d) The term "tax" means United States tax, or Pakistan tax, as the context requires;

(e) The term "person" includes any body of persons, corporate or not corporate;

(f) The term "company" means any body corporate or not corporate, assessed as a company under Pakistan law relating to Pakistan tax;

(g) The term "United States corporation" means a corporation, association or other like entity created or organized in the United States or under the law of the United States or of any State or Territory of the United States;

(h) The term "resident of the United States" means any individual or fiduciary who is resident in the United States for the purposes of the United States tax, and not resident in Pakistan for the purposes of the Pakistan tax, and any United States corporation or any partnership created or organized in the United States or under the laws of the United States, being a corporation or partnership which is not resident in Pakistan for the purposes of Pakistan tax;

(i) The term "resident of Pakistan" means any person (other than a citizen of the United States or a United States corporation) who is resident in Pakistan for the purposes of Pakistan tax and not resident in the United States for the purposes of the United States tax. A company is to be regarded as a resident of Pakistan if its business is managed and controlled in Pakistan;

(j) The terms "resident of one of the contracting States" and "resident of the other

contracting State" means a person who is a resident of the United States or a person who is a resident of Pakistan, as the context requires;

(k) The terms "United States enterprise" and "Pakistan enterprise" mean, respectively an industrial or commercial enterprise or undertaking carried on in the United States by a resident of the United States and an industrial or commercial enterprise or undertaking carried on in Pakistan by a resident of Pakistan; and the terms "enterprise of one of the contracting States" and "enterprise of the other contracting State" mean a United States enterprise or a Pakistan enterprise, as the context requires;

(l) The term "industrial or commercial profits" does not include rents or royalties in respect of motion picture films or of oil wells, mines and quarries, or income in the form of dividends, interest, rents or royalties, or fees or other remuneration derived by an enterprise from the management, control or supervision of the trade, business, or other activity of another enterprise or concern, or remuneration for labor or personal services, or income from the operation of ships;

(m) The term "permanent establishment", when used with respect to an enterprise of one of the contracting States, means a branch, management, factory or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. In this connection—

(i) An enterprise of one of the contracting States shall not be deemed to have a permanent establishment in the other contracting State merely because it carries on business dealings in that other contracting State through a bona fide broker or general commission agent acting in the ordinary course of his business as such; and

(ii) The fact that a corporation or company which is a resident of one of the contracting States has a subsidiary corporation or company which is a resident of the other contracting State or which is engaged in trade or business in such other contracting State (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary corporation or company a permanent establishment of its parent corporation or company;

(n) The term "taxation 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 Pakistan, the Central Board of Revenue or their authorized representatives; and, in the case of any territory to which the present Convention is extended under Article XVIII, the competent

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authority for the administration in such territory of the taxes to which the present Convention applies.

(2) In the application of the provisions of the present Convention by one of the contracting States, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that contracting State relating to the taxes which are the subject of the present Convention.

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ARTICLE VI

(1) The rate of United States tax on dividends paid by a United States corporation to a Pakistan company—

(i) Not having a permanent establishment in the United States and

(ii) Owning shares carrying more than 50 percent of the voting power in the corporation paying such dividends shall not exceed fifteen percent.

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ARTICLE VII

(1) Dividends paid by a company which is a resident of Pakistan shall be exempt from United States tax except where the recipient thereof is a citizen or resident or corporation of the United States.

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ARTICLE VIII

(1) Any royalty (other than royalties or rentals from motion picture films) paid as consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trademark, or other like property, and derived from sources in one of the contracting States by a resident of the other contracting State not having a permanent establishment in the former State shall be exempt from tax by such former State.

(2) Where any royalty exceeds a fair and reasonable consideration in respect of the rights for which it is paid, the exemption provided by the present Article shall apply only to so much of the royalty as represents such fair and reasonable consideration.

ARTICLE IX

(1) Remuneration, including pensions and annuities, paid by or on behalf of the Government of the United States or its political subdivisions to an individual who is a citizen of the United States, not ordinarily resident in Pakistan, for services rendered to that Government in the discharge of govern-

mental functions shall be exempt from Pakistan tax.

(2) Remuneration, including pensions and annuities, paid by or on behalf of the Government of Pakistan or the Government of a Province in Pakistan or any local authority thereof to any individual who is a citizen of Pakistan not having immigrant status in the United States, for services rendered in the discharge of functions of that Government or of local authority, as the case may be, shall be exempt from United States tax.

(3) The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on for purposes of profit.

ARTICLE X

(1) A pension or annuity (other than a pension or annuity of the kind referred to in paragraphs (1) and (2) of Article IX) derived from sources within one of the contracting States by a resident of the other contracting State shall be exempted from tax by the former State.

(2) The term “annuity,” for the purposes of this Article, means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money’s worth.

(3) This Article shall not apply to a pension or annuity payable from a superannuation fund approved or recognized under the tax law of Pakistan nor to a pension or annuity from a fund, under an employees’ pension or annuity plan, contributions to which under the tax law of the United States are deductible in determining the taxable income of the employer.

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ARTICLE XIV

(1) Effective January 1, 1956 the State Bank of Pakistan shall be exempted from United States tax with respect to interest from sources within the United States.

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ARTICLE XVI

(1) The taxation authorities of the contracting States shall exchange such information (being information which is available under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or for the administration of statutory provisions in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as

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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 trade process.

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(3) The taxation authorities of both contracting States may prescribe regulations necessary to interpret and carry out the provisions of the present Convention and may communicate with each other directly for the purpose of giving effect to the provisions of the present Convention.

(4) 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 either contracting State in determining the tax of such State.

ARTICLE XVII

(1) The citizens or nationals of one of the contracting States shall not, while resident in the other contracting State, be subjected in such other State to taxes or any requirement connected therewith which is other, higher or more burdensome than the taxes and connected requirements to which the citizens or nationals of such other State resident therein are or may be subjected.

(2) The term "citizens" or "nationals", as used in this Article, includes all legal persons, partnerships and associations deriving their status from, or created or organized under, the laws in force in the respective contracting States.

(3) Nothing contained in this Article shall be construed—

(a) as obliging either of the contracting States to grant to persons not resident in its territory those personal allowances, reliefs and reductions for tax purposes which are by law available only to persons who are so resident; or

(b) as affecting any provisions of the law of Pakistan regarding the imposition of tax on a non-resident or the grant of rebate of tax to companies fulfilling specified requirements regarding the declaration and payment of dividends, unless those requirements are fulfilled.

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ARTICLE XIX

The present Convention shall come into force on the date when the last of all such things shall have been done in the United States and Pakistan as are necessary to give the Convention the force of law in the United States and Pakistan, respectively, and shall thereupon have effect—

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(a) In the United States, for the taxable years beginning on or after the first day of January of the year in which the instruments of ratification are exchanged;

(b) In Pakistan, in respect of the "previous years" or the "chargeable accounting periods" (as defined by the tax laws of Pakistan) beginning on or after the first day of January of the year in which the instruments of ratification are exchanged.

ARTICLE XX

The present Convention shall continue in effect indefinitely but either of the contracting States may, on or before the 30th day of June in any calendar year not earlier than three years from the date of signature of the present Convention, give to the other contracting State written notice of termination and, in such event the present Convention shall cease to be effective—

(a) in the United States, for the taxable years beginning on or after the first day of January next following such written notice of termination; and

(b) in Pakistan, in respect of the "previous years" or the "chargeable accounting periods" (as defined by the tax laws of Pakistan) beginning on or after the first day of January next following such written notice of termination.

(b) *Meaning of terms.* As used in §§517.1 to 517.9, 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.

§517.2 Dividends paid by, or to, a Pakistan company.

(a) *Exemption from, or reduction in rate of, United States tax—*(1) *Dividends paid by a foreign company managed and controlled in Pakistan.* Dividends which are paid by a foreign company whose business is managed and controlled in Pakistan and are received in a taxable year beginning on or after January 1, 1959, by a recipient who is not a citizen or resident or corporation of the United States are exempt from United States tax under the provisions of Article VII(1) of the convention.

(2) *Dividends paid to a Pakistan parent company.* The rate of United States tax imposed upon dividends paid by a domestic corporation and received from sources within the United States in a taxable year beginning on or after January 1, 1959, by a Pakistan company