

Part III - Administrative, Procedural, and Miscellaneous

IRC Section 5000C - Qualified Income Tax Treaty Countries

Notice 2015-35

SECTION 1. OVERVIEW

Section 5000C, added to the Internal Revenue Code by section 301 of the James Zadroga 9/11 Health and Compensation Act of 2010, Public Law 111-347 (124 Stat. 3623) (the "Act"), imposes on any foreign person that receives a specified Federal procurement payment a tax equal to 2 percent of the amount of the payment. Section 5000C(b) defines a specified Federal procurement payment as any payment made to a foreign person pursuant to a procurement contract with the Government of the United States (U.S. government) entered into on and after January 2, 2011, to provide goods or services if the goods are manufactured or produced in, or the services are provided in, any country that is not a party to an international procurement agreement with the United States.

Section 301(c) of the Act requires that section 5000C be applied in a manner consistent with the United States' obligations under international agreements. Accordingly, section 5000C will not be applied if the payment is made to a foreign person entitled to relief from the tax imposed under section 5000C pursuant to an

international agreement with the United States, including relief pursuant to a nondiscrimination provision of a qualified income tax treaty when the foreign person is entitled to the benefit of that provision.

A “qualified income tax treaty” means a U.S. income tax treaty in force that contains a nondiscrimination article that applies to the tax imposed by section 5000C and prohibits taxation that is more burdensome on a foreign national than on a U.S. national (or in the case of certain income tax treaties, taxation that is more burdensome on a foreign citizen than a U.S. citizen), regardless of residence. A foreign person that is entitled to relief from tax under section 5000C pursuant to a qualified income tax treaty is exempt from the tax under section 5000C, regardless of whether the payment it receives is for goods manufactured or produced, or for services provided, in a country that is not a party to an international procurement agreement with the United States.

To assist both the U.S. government and foreign persons in determining whether the tax shall be imposed under section 5000C and the regulations thereunder, the Appendices to this notice identify all “qualified income tax treaties” as of the date of publication of this notice.

SECTION 2. EXPLANATION OF TREATY LISTS IN APPENDIX A AND B

U.S. income tax treaties are bilateral agreements that eliminate double taxation on cross-border investments and activities of residents of the two contracting states. These agreements also generally prevent discriminatory taxation. In general, nondiscrimination articles include a provision that prevents taxation that is more

burdensome on foreign nationals than U.S. nationals, where nationality is the sole basis for the more burdensome treatment (“the nationality provision”). The tax imposed under section 5000C applies only to specified Federal procurement payments made to foreign persons, regardless of their residence, and not U.S. persons. Therefore, in general, the tax imposed under section 5000C constitutes taxation more burdensome on foreign nationals than U.S. nationals. Thus, depending on the particular terms of the nondiscrimination provision in an income tax treaty, the tax may not be imposed on nationals who benefit from this protection.

Scope of persons covered by the nationality provision

The definition of national in U.S. income tax treaties generally includes citizens or nationals of a contracting state as well as legal persons, such as corporations, whose status as such is derived from the laws of that country. See Article 3(1)(j) of the 2006 U.S. Model Tax Treaty (U.S. Model). There is no requirement that the legal person be a taxable entity or that the national be treated as a resident of that country under its treaty with the United States. In addition, there is no requirement that the national satisfy the limitation on benefits article, if any, in the treaty between the national’s country and the United States. Some treaties apply only to nationals who are natural persons (that is, individuals) and not entities. Other treaties apply only to natural persons who are also residents of the United States. The tax imposed by section 5000C would not apply to payments to nationals resident in the United States.

Scope of taxes covered

Not all treaty nondiscrimination articles cover taxes of every kind and description, such as the tax imposed by section 5000C. Some apply only to federal income taxes, in which case, the article would not cover the tax imposed under section 5000C.

Appendix A provides a list of qualified income tax treaties that exempt all nationals of that country from the tax imposed under section 5000C. Appendix B provides a list of qualified income tax treaties that exempt only individual nationals of that treaty country.

SECTION 3. EFFECTIVE DATE

This notice is effective for all payments received pursuant to specified Federal procurement contracts entered into on and after January 2, 2011. The list of qualified income tax treaties will be updated as necessary in subsequent IRS Forms, Instructions, Publications or other media (including electronic media).

SECTION 4. CONTACT INFORMATION

The principal author of this notice is Rosy Lor of the Office of Associate Chief Counsel (International). For further information regarding this notice contact Rosy Lor at (202) 317-6933 (not a toll-free call).

APPENDIX A (Complete exemption for all nationals)

The following qualified income tax treaties cover all nationals of the treaty country and exempt all such nationals from the tax imposed by section 5000C:

Austria	Bangladesh	Belgium	Bulgaria	Canada
Czech Republic	Denmark	Estonia	Finland	Germany
Hungary	Iceland	Italy	Jamaica	Japan
Latvia	Lithuania	Luxembourg	Malta	Mexico
Netherlands	Portugal	Slovak Republic	Slovenia	South Africa
Spain	Sri Lanka	Sweden	Switzerland	Turkey
United Kingdom	Venezuela			

APPENDIX B (Exemption only for individual nationals)

The following qualified income tax treaties cover only individual nationals of the treaty country and exempt all such individual nationals from the tax imposed by section 5000C:

Cyprus	Israel	Kazakhstan	Russia	Ukraine
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