



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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CC:INTL:1: [REDACTED]
GENIN-142986-03

[REDACTED]

Dear [REDACTED]:

Reference: U.S.-Venezuela Income Tax Treaty

This responds to your letter to the Associate Chief Counsel (International) dated July 24, 2003. In response to your inquiry, we are providing the following general information. This information letter is advisory only and has no binding effect on the Internal Revenue Service.

You inquired about the application of the United States-Venezuela Income Tax Treaty ("Treaty"), available on the internet at <http://www.irs.treas.gov/pub/irs-trty/venezu.pdf>, to Venezuelan residents who purchase a variable annuity or invest in mutual funds in the United States. Specifically, you inquired whether the Treaty limits the application of the U.S. withholding rules to these two types of investments.

With respect to variable annuities, paragraph 3 of Article 19 of the Treaty (Pensions, Social Security, Annuities, and Child Support) provides, in pertinent part:

Annuities, other than those covered in paragraph 1 [pertaining to pensions and other similar remuneration], that are derived from a Contracting State and beneficially owned by an individual resident of the other Contracting State shall be taxable only in the first-mentioned State. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated times during a specific time period, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

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Article 19(3) applies to both fixed and variable annuities. Accordingly, a variable annuity derived from the United States and beneficially owned by an individual resident of Venezuela is taxable only in the United States, and the Treaty does not provide for a reduced rate of taxation on annuities. Therefore, distributions from a variable annuity are subject to the 30% withholding rate provided by Internal Revenue Code sections 871(a)(1) and 1441.

With respect to Venezuelan residents who invest in a U.S. mutual fund qualifying as a "Regulated Investment Company" (RIC), Article 10 of the Treaty (Dividends) provides, in pertinent part (emphasis added):

- (1) Dividends paid by a company that is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
- (2) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State, but, except as provided in paragraph (3), if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:
 - a) 5 percent of the gross amount of the dividends if the beneficial owner is a company that owns at least 10 percent of the voting stock of the company paying the dividends;
 - b) 15 percent of the gross amount of the dividends in all other cases. * * *
- (3) Subparagraph a) of paragraph (2) shall not apply in the case of dividends paid by a Regulated Investment Company (RIC) or a Real Estate Investment Trust (REIT). In the case of dividends paid by a RIC, subparagraph b) of paragraph (2) shall apply. * * *

Accordingly, the Treaty provides a reduced 15% rate of withholding of U.S. tax on dividends paid by a RIC to a Venezuelan resident who is eligible for Treaty benefits.

We hope this information will be helpful to you. For general information about withholding requirements and procedures, please see IRS Publication 515, "Withholding of Tax on Nonresident Aliens and Foreign Entities," available on the internet at <http://www.irs.gov/pub/irs-pdf/p515.pdf>.

If you require a definitive determination of the law applicable to your particular facts, you may submit a request for a private letter ruling to this office pursuant

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to the rules set forth in Revenue Procedure 2003-1, which is available on the Internet at <http://www.irs.gov/pub/irs-irbs/irb03-01.pdf>. If you should have any further questions in this matter, please contact [REDACTED] (not a toll-free number).

Sincerely,

M. Grace Fleeman
Senior Counsel, Branch 1
Office of Associate Chief Counsel
(International)