

## Part III - Administrative, Procedural, and Miscellaneous

Information reporting and other guidance regarding distributions with respect to securities issued by foreign corporations

Notice 2006-3

### SECTION 1. OVERVIEW

The Jobs and Growth Tax Relief Reconciliation Act of 2003 (P.L. 108-27, 117 Stat. 752) (the “2003 Act”) was enacted on May 28, 2003. Subject to certain limitations, the 2003 Act generally provides that a dividend paid to an individual shareholder from either a domestic corporation or a “qualified foreign corporation” is subject to tax at the reduced rates applicable to certain capital gains. A qualified foreign corporation includes certain foreign corporations that are eligible for benefits of a comprehensive income tax treaty with the United States which the Secretary determines is satisfactory for purposes of this provision and which includes an exchange of information program. In addition, a foreign corporation not otherwise treated as a qualified foreign corporation is so treated with respect to any dividend it pays if the stock with respect to which it pays such dividend is readily tradable on an established securities market in the United States. The 2003 Act excluded from the definition of qualified foreign corporation any foreign corporation which for the taxable year of the corporation in which the dividend was paid, or the preceding taxable year, was a foreign personal holding company (as defined in section 552), a foreign investment company (as defined in section 1246(b)), or a passive foreign investment company (as defined in section 1297). Effective for taxable years of foreign corporations beginning after December 31, 2004, the American Jobs Creation Act (P.L. 108-357) (the “AJCA”) repealed the rules applicable to foreign personal holding companies and foreign investment companies from the Code. The AJCA made conforming amendments to section 1(h)(11)(C)(iii).

This notice provides guidance for persons required to make returns and provide statements under section 6042 of the Internal Revenue Code with respect to securities issued by a foreign corporation, and for individuals receiving such statements. This notice provides generally that the simplified procedures regarding information reporting of distributions with respect to securities issued by foreign corporations and other rules contained in Notice 2003-79 and Notice 2004-71 for tax years 2003 and 2004, respectively, are extended to apply for 2005 and future years.

## SECTION 2. NOTICE 2003-79 and NOTICE 2004-71

In November of 2003, the Treasury Department and the IRS issued Notice 2003-79, 2003-50 I.R.B. 1206, which provided guidance for persons required to make returns and provide statements under section 6042 of the Internal Revenue Code (e.g., Form 1099-DIV) regarding distributions made in 2003 with respect to securities issued by a foreign corporation, and for individuals receiving such statements. Notice 2003-79 identified a series of separate determinations that must be made in order to determine whether a distribution with respect to a security issued by a foreign corporation is eligible for the reduced rates of tax under the 2003 Act. Notice 2003-79 provided simplified procedures to be used for 2003 information reporting of a distribution with respect to such a security. Notice 2003-79 also provided guidance regarding the determination as to whether a security (or an American depositary receipt in respect of such security) issued by a foreign corporation other than ordinary or common stock (such as preferred stock) is considered readily tradable on an established securities market in the United States for purposes of the 2003 Act.

In November of 2004, Treasury and the IRS issued Notice 2004-71, 2004-45 I.R.B. 793, which provided guidance for persons required to make returns and provide statements under section 6042 of the Internal Revenue Code regarding distributions made in 2004 with respect to securities issued by a foreign corporation, and for individuals receiving such statements. Notice 2004-71 generally provided that the simplified procedures and other rules contained in Notice 2003-79 were extended to apply for 2004 information reporting of distributions with respect to securities issued by foreign corporations.

## SECTION 3. GUIDANCE FOR 2005 AND FUTURE YEARS

### .01 Generally.

While the Treasury Department and the IRS continue to acknowledge that more detailed information reporting guidance may be necessary, and such procedures continue to be under study, Treasury and the IRS have concluded that it is appropriate to extend the simplified procedures that were provided in Notice 2003-79 and Notice 2004-71 with respect to tax years 2003 and 2004, to 2005 and future years with appropriate modifications to take into account the changes enacted by the AJCA.

Section 3.02 of this notice summarizes guidance for 2005 and future years information reporting of a distribution with respect to a security issued by a foreign corporation. Section 3.03 provides guidance for 2005 and future years for recipients of Form 1099-DIV.

### .02 Persons Required to File Form 1099-DIV.

The rules for 2003 information reporting of a distribution with respect to a security issued by a foreign corporation that are described in detail in sections 3.01 through 3.07 of Notice 2003-79 will continue to apply for 2005. Those rules are outlined in the following summary. However, in order to account for the amendments enacted by the AJCA, for 2006 and future years the foreign investment company exclusion test shall be applied without regard to whether the foreign corporation is or was a foreign personal holding company or a foreign investment company.

A person required to make a return under section 6042 shall report a distribution with respect to such a security in Box 1b of Form 1099-DIV as a qualified dividend if:

1. either the security with respect to which the distribution is made is a common or an ordinary share, or a public SEC filing contains a statement that the security will be, should be, or more likely than not will be treated as equity rather than debt for U.S. federal income tax purposes; and
2. either:
  - a. the security is considered “readily tradable on an established securities market in the United States”;<sup>1</sup>
  - b. the foreign corporation is organized in a possession of the United States; or
  - c. the foreign corporation is organized in a country whose income tax treaty with the United States is comprehensive, is satisfactory to the Secretary for purposes of section 1(h)(11), and includes an exchange of information program,<sup>2</sup> and if the relevant treaty contains a limitation on benefits provision, the corporation’s common or ordinary stock is listed on an exchange covered by that limitation on benefits provision’s public trading test, unless the person required to file an information return knows or has reason to know that the corporation is not eligible for benefits under that treaty; and
3. the person required to file Form 1099-DIV does not know or have reason to know that the foreign corporation is or expects to be, in the taxable year of the corporation in which the dividend was paid, or was, in the preceding taxable year, a foreign personal holding company (as defined in section 552), a foreign investment company (as defined in section 1246(b)), or a passive foreign investment company (as defined in section 1297);<sup>3</sup> and

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<sup>1</sup> Notice 2003-71, 2003-43 I.R.B. 922, and section 3.02 of Notice 2004-71, 2004-45 I.R.B. 793, provide guidance regarding when a security is considered readily tradable on an established securities market in the United States for purposes of section 1(h)(11).

<sup>2</sup> Notice 2003-69, 2003-42 I.R.B. 851, contains a list of qualifying treaties for this purpose.

<sup>3</sup> Notice 2004-70, 2004-44 I.R.B. 1, provides guidance regarding the extent to which distributions,

4. the person required to make a return under section 6042 determines that the owner of the distribution has satisfied the holding period requirement of section 1(h)(11) or it is impractical for such person to make such determination.

The IRS will exercise its authority under section 6724(a) of the Code to waive penalties under sections 6721 and 6722 with respect to reporting of payments if persons required to file Form 1099-DIV make a good faith effort to report payments consistent with the rules summarized above and described in detail in sections 3.01 through 3.06 of Notice 2003-79. A person required to make a return under section 6042 may report a distribution in Box 1b as a qualified dividend even if the distribution does not satisfy these simplified information reporting procedures, subject to the applicable penalty provisions, as described in detail in section 3.07 of Notice 2003-79.

#### .03 Recipients of Form 1099-DIV.

For taxable years beginning in 2005 and future tax years, a recipient of Form 1099-DIV may treat amounts reported in Box 1b as qualified dividends, unless and to the extent the recipient knows or has reason to know that such amounts are not qualified dividends, as described in detail in section 3.08 of Notice 2003-79.

#### SECTION 4. EFFECTIVE DATE

This notice is effective for taxable years beginning on or after January 1, 2005.

#### SECTION 5. COMMENTS

Treasury and the IRS continue to invite interested persons to comment on the information reporting procedures contained in this Notice and the certification procedures outlined in Section 5 of Notice 2003-79. Written comments may be submitted to CC:PA:LPD:PR (Notice 2006-3), room 5207, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 am and 5 pm to: CC:PA:LPD:PR (Notice 2006-3), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. Alternatively, taxpayers may submit comments electronically via the following e-mail address: [Notice.Comments@irs.counsel.treas.gov](mailto:Notice.Comments@irs.counsel.treas.gov). Please include "Notice 2006-3" in the subject line of any electronic communications.

#### SECTION 6. PAPERWORK REDUCTION ACT

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inclusions, and other amounts received by, or included in the income of, individual shareholders as ordinary income from foreign corporations subject to certain anti-deferral regimes may be treated as qualified dividend income for purposes of section 1(h)(11).

The information collection referenced in this notice has been previously reviewed and approved by the Office of Management and Budget as part of the promulgation of Form 1099-DIV. See OMB Control Number 1545-0110. This notice merely provides additional guidance regarding the proper filing of such returns and furnishing of such statements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. § 6103.

## SECTION 7. CONTACT INFORMATION

The principal author of this notice is Karen A. Rennie of the Office of Associate Chief Counsel (International). For further information regarding this notice contact David Lundy at (202) 622-3880 (not a toll-free call).