

## Part III

### Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters.  
(Also: Part I, Section 7528)

Rev. Proc. 2006-26

#### SECTION 1. PURPOSE

The purpose of this revenue procedure is to announce the introduction of user fees for requests submitted to the U.S. competent authority for discretionary determinations under limitation on benefits provisions of U.S. income tax treaties. This revenue procedure modifies section 14 (Fees) of Rev. Proc. 2002-52, 2002-2 C.B. 242, and will be effective for such requests submitted on or after May 4, 2006.

#### SECTION 2. BACKGROUND

Almost all U.S. income tax treaties contain a limitation on benefits article. A resident of a Contracting State must satisfy one of the enumerated tests set forth in that article to

be entitled to U.S. treaty benefits with respect to an item of income, profit or gain. The U.S. competent authority will not make a determination on whether or not a resident of a Contracting State meets the conditions of one of these enumerated tests. However, if a resident of a Contracting State does not meet one of the tests, most limitation on benefits articles authorize the U.S. competent authority to make a discretionary determination that the resident be entitled to some or all of the benefits of the income tax treaty. Rev. Proc. 2002-52, Procedures for Obtaining Competent Authority Assistance, currently sets forth rules for requesting a discretionary determination under a limitation on benefits provision of an income tax treaty. Section 3.08 of Rev. Proc. 2002-52.

Section 14 of Rev. Proc. 2002-52 currently provides that user fees are not required as a condition to requesting competent authority assistance, including requests for a discretionary determination pursuant to section 3.08. The Internal Revenue Service has recently determined that user fees are appropriate for this limited type of request for competent authority assistance. The rules for these user fees are set forth below and will be incorporated into the next update of Rev. Proc. 2002-52.

## SECTION 3. PROCEDURES

### **.01 Fees**

Effective May 4, 2006, a user fee of \$15,000 will be charged for each entity requesting a discretionary limitation on benefits determination. The fee will apply regardless of whether the request is for: (1) an initial determination; (2) a renewal of a previously issued determination; or (3) a supplemental determination required, for example, if there

is a material change in fact, or the applicant seeks benefits with respect to a different type of income, or requests a lower rate of withholding tax on dividends. If a request is submitted that requires the competent authority to make a discretionary determination for more than one entity, a separate fee will be charged for each entity.

## **.02 Acceptance of Request**

A user fee will not be charged until the U.S. competent authority has formally accepted the request for consideration. Requests should continue to be submitted to the Director, International (LMSB), and include the information required in section 3.08 of Rev. Proc. 2002-52. Within 30 days of receipt of a complete submission, the U.S. competent authority will provide written notice to the applicant as to whether the request will be accepted or rejected for consideration. If a request is accepted, the applicant will be required to mail a check or money order in the appropriate amount, along with a copy of the written notice of acceptance to the IRS office identified below. The check or money order should be payable to the United States Treasury. Substantive consideration of a request for a discretionary determination will not begin until the applicant has submitted the appropriate user fee.

The mailing address for the user fee is:

IRS/BFC  
P.O. Box 9002  
Beckley, WV 25802

## **.03 Refunds of user fees**

In general, a user fee will not be refunded once the competent authority accepts a

request for consideration and the user fee is paid. For example, the Service will not refund the user fee if the request for a discretionary determination is withdrawn by the applicant, or if the applicant fails to submit additional information as requested by the Competent Authority.

A user fee may be refunded, however, if:

- (a) A higher user fee is paid than is required; or
- (b) Taking into account all the facts and circumstances, including the Service's resources devoted to the request, the Competent Authority declines to rule and, in his or her sole discretion, decides a refund is appropriate.

#### SECTION 4. EFFECT ON OTHER DOCUMENTS

Section 14 of Rev. Proc. 2002-52, 2002-2 C.B. 242, is modified accordingly.

#### SECTION 5. EFFECTIVE DATE

This revenue procedure is effective May 4, 2006.

#### SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Quyen P. Huynh of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure contact Quyen P. Huynh at (202) 622-3880 (not a toll free call).