basis for distinguishing between stock-
d compensation and other forms of
pensation in the context of cost sharing
ıgements.

ddition to amending the cost sharing
lations of US Treas. Reg. § 1.482-7, the
regulations also provide rules for meas-
g the costs associated with stock-based
pensation, clarify that the utilization and
ment of stock-based compensation is
opriately taken into account as a compa-
ity factor for purposes of the comparable
its method and set out rules to coordi-
QCSAs with the arm's length standard.

final regulations are effective for stock-
d compensation granted in taxable years
nning on or after 26 August 2003. The
mble to the regulations provides that the
regulations are the first in a series of
ects that will update, clarify and improve
ance in the transfer pricing area. The
Treasury Department and the IRS stated
a broader regulatory project on the treat-
t of QCSAs is underway, and also a reg-
ry project on the transfer pricing treat-
t of services. Both projects are intended
sult in the issuing of proposed regula-
in the near future.

ence: TNS-538 (2002); TP, 3.3.3.

npetent authority agreement cluded on derivative benefits under 22 of US–Switzerland treaty

Internal Revenue Service has an-
nced that the competent authorities of
United States and Switzerland con-
ed an agreement on 20 August 2003
ding the application of the limitation on
fits article in the US–Switzerland
me tax treaty of 2 October 1996 and the
mpanying Revised Memorandum of
erstanding ("the Revised MOU"). The
ement provides guidance on the deriva-
benefits provisions in Art. 22(3) of the
y and Para. 7 of the Revised MOU, and
ies, in particular, the categories of per-
that may be taken into account in deter-
ng whether or not a Swiss company
s the 70% qualified stock ownership
of Art. 22(3)(a)(ii) or the 95% qualified
ownership test of Para. 7.

competent authorities agreed that the
ories of persons that may be taken into account in determining whether or not the 70% and 95% qualifying tests are met include the following: (i) an individual who is a resident of the United States (as determined under Art. 4), (ii) the United States or a political subdivision of the United States, (iii) an instrumentality of the United States or a political subdivision of the United States and (iv) a company incorporated in the United States, the principal class of the shares of which is primarily and regularly traded on a recognized stock exchange within the meaning of Art. 22(1)(e)(i). These persons will be treated as residents of a state that is a party to the North American Free Trade Agreement, as required by Art. 22(3)(b), and they can, therefore, be taken into account for purposes of the stock ownership tests of Art. 22(3)(a)(ii) of the treaty and Para. 7 of the Revised MOU.

Reference: SUPP. S., C.

Competent authority agreement concluded on taxation of deferred payments under 1956 US–Austria treaty

The Internal Revenue Service has announced that the competent authorities of the United States and Austria have entered into an agreement on the taxation of deferred payments for services. The agreement provides that the US–Austria income tax treaty of 25 October 1956 does not prohibit Austria from taxing deferred payments for services that were earned by US citizens whilst working and residing in the United States and which were paid after the employees became residents of Austria. The agreement also confirms that, as required by the treaty, Austria must deduct from its tax the amount of taxes imposed on the deferred payments by the United States. The agreement states that the 1956 US–Austria treaty applies for assessment periods up to and including 1998.

Reference: SUPP. S., C.

VENEZUELA

Report from our correspondent
Mr Ronald Evans, Baker & McKenzie,
Caracas

Supreme Court holds VAT on medical, dental, surgical and hospital services unconstitutional

The Constitutional Chamber of the Supreme Court held in a decision of 19 May 2003 that the imposition of VAT on medical, dental, surgical and hospital services was unconstitutional. The Supreme Court stated that Art. 63(5) of the VAT Law (see TNS-726 (2002)), published in Extraordinary Official Gazette No. 5,600 of 26 August 2002 and, due to material errors, reprinted in Extraordinary Official Gazette No. 5,601 of 30 August 2002, cannot be applied from the date of the decision, i.e. from 19 May 2003. The Supreme Court's decision does not have retroactive effect and does not affect those taxpayers who have already paid VAT on these services. Details of the decision are summarized below.

(a) Background. The VAT Law of 2002 established a special 8% rate on medical, dental, surgical and hospital services with effect from 1 January 2003.

(b) Decision. The President of the Supreme Court and its Constitutional Chamber stated that the imposition of VAT on medical, dental, surgical and hospital services affects the constitutional right to adequate medical care and that, given the state's inability to fulfill its duties in respect of this, the general population has to use the services provided by the private sector. VAT on these services, therefore, poses an imminent threat to the basic human right to health and well-being and is also an undue discrimination against private health sector providers vis-à-vis public sector entities. In addition, given the practical non-existence of a social security system in Venezuela, in the opinion of the Supreme Court, VAT on these services could impose an undue burden on citizens and prevent some of them from using private medical services, something which should be regarded as unacceptable under the constitution.

Reference: TNS-726 (2002); LA, C, 8.01.

Investment protection agreement with France ratified

* See under France.

YEMEN

Treaty negotiations with Pakistan – developments

* See under Pakistan.

ZAMBIA

Investment protection agreement with the Netherlands signed

* See under Netherlands.

CONFERENCE DIARY

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US Corporate Taxation, Amsterdam, the Netherlands, 29-30 September 2003 (English):

IBFD International Tax Academy, P.O. Box 20237, 1000 HE Amsterdam, the Netherlands, Tel.: 31-20-554 0100, Fax: 31-20-620 9397, E-mail: ita@ibfd.org

International Trust & Tax Planning Summit, The Biltmore Hotel, Coral Gables, Florida, the United States, 29 September-2 October 2003 (English):

IBC USA, One Research Drive, Suite 400 A, PO Box 5195, Westborough, MA 01581-5195, the United States, Tel.: 508-616-5550, Fax: 508-616-5522, E-mail: reg@ibcusa.com