



This document has been provided by the International Center for Not-for-Profit Law (ICNL).

ICNL is the leading source for information on the legal environment for civil society and public participation. Since 1992, ICNL has served as a resource to civil society leaders, government officials, and the donor community in over 90 countries.

Visit ICNL's **Online Library** at
<http://www.icnl.org/knowledge/library/index.php>
for further resources and research from countries all over the world.

Disclaimers

Content. The information provided herein is for general informational and educational purposes only. It is not intended and should not be construed to constitute legal advice. The information contained herein may not be applicable in all situations and may not, after the date of its presentation, even reflect the most current authority. Nothing contained herein should be relied or acted upon without the benefit of legal advice based upon the particular facts and circumstances presented, and nothing herein should be construed otherwise.

Translations. Translations by ICNL of any materials into other languages are intended solely as a convenience. Translation accuracy is not guaranteed nor implied. If any questions arise related to the accuracy of a translation, please refer to the original language official version of the document. Any discrepancies or differences created in the translation are not binding and have no legal effect for compliance or enforcement purposes.

Warranty and Limitation of Liability. Although ICNL uses reasonable efforts to include accurate and up-to-date information herein, ICNL makes no warranties or representations of any kind as to its accuracy, currency or completeness. You agree that access to and use of this document and the content thereof is at your own risk. ICNL disclaims all warranties of any kind, express or implied. Neither ICNL nor any party involved in creating, producing or delivering this document shall be liable for any damages whatsoever arising out of access to, use of or inability to use this document, or any errors or omissions in the content thereof.

basis for distinguishing between stock-based compensation and other forms of compensation in the context of cost sharing agreements.

In addition to amending the cost sharing regulations of US Treas. Reg. § 1.482-7, the regulations also provide rules for measuring the costs associated with stock-based compensation, clarify that the utilization and amount of stock-based compensation is appropriately taken into account as a comparability factor for purposes of the comparability method and set out rules to coordinate QCSAs with the arm's length standard.

Final regulations are effective for stock-based compensation granted in taxable years beginning on or after 26 August 2003. The amendments to the regulations provides that the regulations are the first in a series of acts that will update, clarify and improve practice in the transfer pricing area. The Treasury Department and the IRS stated that a broader regulatory project on the treatment of QCSAs is underway, and also a regulatory project on the transfer pricing treatment of services. Both projects are intended to result in the issuing of proposed regulations in the near future.

Source: TNS-538 (2002); TP, 3-33.

Competent authority agreement included on derivative benefits under 22 of US-Switzerland treaty

Internal Revenue Service has announced that the competent authorities of the United States and Switzerland concluded an agreement on 20 August 2003 regarding the application of the limitation on fits article in the US-Switzerland income tax treaty of 2 October 1996 and the accompanying Revised Memorandum of Understanding ("the Revised MOU"). The agreement provides guidance on the derivative benefits provisions in Art. 22(3) of the Revised MOU, and Art. 7 of the Revised MOU, and, in particular, the categories of persons that may be taken into account in determining whether or not a Swiss company is 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 copies 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, 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(i)(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, or.

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

SEPTEMBER

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

TNS E-mail and TNS Online

For the latest developments, see TNS E-mail and TNS Online at www.ibfd.org. Access to the latest TNS Online headlines is free. For new subscriptions to TNS E-mail and TNS Online, send an e-mail to info@ibfd.org, telephone 31-20-554 0106 or fax 31-20-620 8626.