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Global Tax Alert

US IRS publishes a 2019 revised Tax Treaty Table 1 with numerous updates and footnote clarifications

Recently, the United States (US) Internal Revenue Service (IRS) published a revised version of "Tax Treaty Table 1" on its website. Tax Treaty Table 1 lists the income tax and withholding rates on income other than personal service income, including rates for interest, dividends, royalties, pensions and annuities, and social security payments. The table is referenced by but no longer included in IRS Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*.

In general, the revised table contains updates and clarifications that can be categorized as follows:

- Footnote revisions clarifying treaty rate eligibility requirements
- Corrections to footnote references to withholding tax rates
- Removal of certain footnotes and marking them as "reserved" for future updates
- Update of treaty article citation references
- Change or correction of certain treaty rates on interest income

Withholding agents whose systems rely on Tax Treaty Table 1 should carefully review the numerous changes and related treaty articles and update their systems as needed. Examples of noteworthy revisions include the following:

Withholding on lump-sum pension payments

Under certain treaties, pension distributions to a resident of one country generally are subject to tax only in the country where the recipient resides even if the pension was earned as the result of employment in the other country (Source State). Footnote (d) has been revised to clarify that certain treaties with pension articles do not reduce the withholding rate for lump-sum pension payments. It also cross-references footnote (ii), which has also been updated to provide the following specific withholding guidance for five treaty countries:

1. **Canada** – The 15% rate does not apply to a lump-sum payment
2. **Italy** – The exemption does not apply to lump-sum or severance payments received if the applicable past employment was performed in the United States while the recipient was a resident of the United States
3. **Netherlands** – The exemption does not apply if (i) the recipient was a US resident during the five-year period before the payment date, (ii) the amount is attributable to employment in the United States, and (iii) the amount is not a periodic payment, or is a lump-sum payment in lieu of a right to receive an annuity
4. **United Kingdom** – The exemption does not apply to a lump-sum distribution derived from a US pension plan
5. **India** – The exemption does not apply to a lump-sum payment

The update to footnote (ii) in Tax Treaty Table 1 responds to Recommendation C.1, which the Information Reporting Program Advisory Committee (IRPAC) made in its 2018 General Report. The recommendation advises the IRS to update the table to provide written guidance on which specific treaties have specialized treatment of withholding on pension payments depending upon whether the payment is a periodic payment or a lump-sum distribution.

Treaty tax rate on interest income for Norway and Spain

For Norway, the treaty rate on interest income changed from 10% to 0%. The related footnote reference changed from footnote (z) to (s). Footnote (s) was also revised to clarify, "In Norway, the rate is 0% so long as Norway continues to exempt from tax interest derived within Norway (not attributable to a permanent establishment in Norway) by persons not resident in Norway."

For Spain, the treaty rate on interest income changed from 15% to 10%.

The change in the Spanish treaty rate is a correction of a prior error.

The IRS also included cautionary notes in the revised table to remind users that, although Table 1 is a convenient reference tool used by many withholding agents for withholding rates, it should not be viewed as a substitute for the greater details provided in the relevant treaty provisions. For example,

The table is not a comprehensive guide to all eligibility requirements for every treaty rate of tax or exemption listed. Withholding agents should review the text of each applicable treaty, the Treasury Department Technical Explanation accompanying the treaty, IRS rulings and relevant competent authority agreements to determine whether a reduced rate of tax or an exemption is available.

Treaty rules are often complex and subject to facts and circumstances. Withholding agents should use the table in conjunction with related tax treaty articles to correctly apply withholding rates or program their systems, and should consult with their tax advisors as needed.

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