

TREATY USA - AUSTRIA

*CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE
REPUBLIC OF AUSTRIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND
THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME,
SIGNED AT VIENNA ON MAY 31, 1996.*

GENERAL EFFECTIVE DATE UNDER ARTICLE 28: 1 JANUARY 1999

ARTICLE 16 Limitation on Benefits

- 1) A person which is a resident of a Contracting State and derives income from the other Contracting State shall be entitled, in that other Contracting State, to benefits of this Convention only if such person is:
 - a) an individual;
 - b) a Contracting State or a political subdivision or local authority thereof;
 - c) engaged in the active conduct of a trade or business in the first-mentioned Contracting State (other than the business of making or managing investments, unless these activities are banking or insurance activities carried on by a bank or insurance company), the income derived from the other Contracting State is derived in connection with, or is incidental to, that trade or business, and, with respect to income derived in connection with that trade or business, the trade or business is substantial in relation to the activity carried on in the other Contracting State giving rise to the income in respect of which treaty benefits are being claimed in that other Contracting State;
 - d) a person, if:
 - i) more than 50 percent of the beneficial interest in such person (or in the case of a company, more than 50 percent of the number of shares of each class of the company's shares) is owned, directly or indirectly, by persons entitled to benefits of this Convention under subparagraphs (a), (b), (e), (f) or (g) of this paragraph or who are citizens of the United States; and
 - ii) not more than 50 percent of the gross income of such person is used, directly or indirectly, to meet liabilities (including liabilities for interest or royalties) to persons who are not entitled to benefits of this Convention under subparagraph (a), (b), (e), (f) or (g) of this paragraph and are not citizens of the United States;
 - e) a company in whose principal class of shares there is substantial and regular trading on a recognized stock exchange;

- f) a company that is at least 90 percent owned, directly or indirectly, by not more than five companies referred to in subparagraph e), provided that each person in the chain of ownership is a resident of a Contracting State, and provided further that the owner of any remaining portion of the company is an individual resident of a Contracting State;
 - g) an entity which is a not-for-profit organization (including pension funds and private foundations), and which, by virtue of that status, generally exempt from income taxation in the Contracting State of which it is a resident, provide that more than half of the beneficiaries, members or participants, if any, in such organization are persons that are entitled, under this Article; to the benefit of the Convention; or
 - h) a recognized headquarters company for a multinational corporate group.
- 2) A person that is not entitled to the benefits of the Convention pursuant to the provisions of paragraphs 1 and 4 may, nevertheless, be granted the benefits of the Convention if the competent authority of the Contracting State in which the income in question arises so determines. The competent authority of the Contracting State in which the income arises will consult with the competent authority of the other Contracting State before denying benefits of this Convention that have been requested under this paragraph.
- 3) For purposes of subparagraph e) of paragraph 1, the term "a recognized stock exchange" means:
- a) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange for purposes of the U.S. Securities Exchange Act of 1934;
 - b) the Vienna Stock Exchange; and
 - c) any other stock exchange agreed upon by the competent authorities of the Contracting States.
- 4) Where an enterprise of Austria derives interest or royalty income from the United States, and that income is attributable to a permanent establishment which the enterprise has in a third jurisdiction (other than a Contracting State), the benefits of paragraph 1 of Article 11 (Interest) and paragraphs 1 and 2 of Article 12 (Royalties), respectively, shall not apply to any such item of income, if the profits of that

permanent establishment are subject to an aggregate effective rate of tax in Austria and the third jurisdiction which is less than 60 percent of the general rate of company tax applicable in Austria. The preceding sentences of this paragraph shall not apply: to interest derived in connection with or incidental to the active conduct of a trade or business carried on by the permanent establishment in the third jurisdiction (other than the business of making or managing investments, unless these activities are banking or insurance activities carried on by a bank or insurance company);

b) to royalties that are received as a compensation for the use of, or the right to use, intangible property produced or developed by the permanent establishment itself; and

c) to income derived by an enterprise of Austria if the United States taxes the profits of such enterprise according to the provisions of subpart F of part III of subchapter N of chapter 1 of subtitle A of the Internal Revenue Code of 1986, as it may be amended from time to time without changing the general principle thereof.

5) The competent authorities shall, in accordance with the provisions of Article 25 (Exchange of Information and Administrative Assistance), exchange such information as is necessary for carrying out the provisions of this Article and safeguarding, in cases envisioned therein, the application of their domestic law.