

Part III

26 CFR 601.201: Rulings and determination letters.

Rev. Proc. 98-21

SECTION 1. PURPOSE

This revenue procedure sets forth the procedures concerning requests to the U.S. competent authority for assistance in resolving cases under Article XIII(8) of the Convention Between the United States of America and Canada with respect to Taxes on Income and Capital, dated September 26, 1980, as amended by the Protocols dated June 14, 1983, March 28, 1984, March 17, 1995, and July 29, 1997 ("the Treaty"), 1986-2 C.B. 258. Article XIII(8) of the Treaty permits taxpayers to request the competent authority to defer the recognition of profit, gain, or income with respect to property alienated in the course of a corporate or other organization, reorganization, or similar transaction. See also Rev. Proc. 96-13, 1996-1 C.B. 616, for an updated discussion of the general procedures concerning requests by taxpayers for assistance of the U.S. competent authority under the provisions of an income, estate, or gift tax treaty to which the United States is a party.

SEC. 2. SCOPE

.01 General. The U.S. competent authority assists taxpayers concerning matters covered in the mutual agreement provisions of tax treaties in the manner specified in those provisions. A tax treaty generally permits taxpayers to request

competent authority assistance when they consider that the actions of the United States, a treaty partner, or both, result, or will result, in taxation that is contrary to the provisions of the treaty. Competent authority matters are a government-to-government activity that does not include the taxpayer's participation.

.02 Requests for Assistance. In general, all requests for competent authority assistance must be in accordance with Rev. Proc. 96-13. However, to the extent that this revenue procedure provides additional or inconsistent procedures from those set forth in Rev. Proc. 96-13, the procedures set forth in this revenue procedure must be followed when requesting competent authority assistance under Article XIII(8) of the Treaty.

.03 U.S. Competent Authority. The Assistant Commissioner (International) acts as the U.S. competent authority in administering the operative provisions of tax treaties (including Article XIII(8) of the Treaty) and in interpreting and applying these treaties. In interpreting or applying these tax treaties, the Assistant Commissioner (International) acts only with the concurrence of the Associate Chief Counsel (International). See Delegation Order No. 114 (Rev. 10), Effective date: June 2, 1994.

SEC. 3. BACKGROUND

.01 General. Article XIII(8) of the Treaty, as revised by the Protocol of March 17, 1995, provides that:

"Where a resident of a Contracting State alienates property in the course of a corporate or other organization, reorganization, amalgamation, division or similar transaction and

profit, gain, or income with respect to such alienation is not recognized for the purpose of taxation in that State, if requested to do so by the person who acquires the property, the competent authority of the other Contracting State may agree, in order to avoid double taxation and subject to terms and conditions satisfactory to such competent authority, to defer the recognition of the profit, gain, or income with respect to such property for the purpose of taxation in that other State until such time and in such manner as may be stipulated in the agreement."

.02 Purpose of this Provision. The purpose of Article XIII(8) of the Treaty is to coordinate the U.S. and Canadian nonrecognition rules concerning corporate and other organizations, reorganizations, amalgamations, divisions, and similar transactions in order to avoid double taxation of gain from the alienation of property in the United States and Canada.

SEC. 4. GENERAL CONDITIONS UNDER WHICH THIS PROCEDURE APPLIES

.01 General. The assistance of the competent authority is entirely discretionary.

.02 Types of Assistance. In connection with Article XIII(8) of the Treaty, the U.S. competent authority handles two types of requests for relief:

(a) requests by Canadian transferees of property for relief from U.S. taxation, and

(b) requests by Revenue Canada for verification of the U.S. tax treatment of transactions of U.S. transferees of property.

.03 Transactions Subject to U.S. Taxation but not Subject

to Canadian Taxation. Where a transaction is subject to taxation within the United States but qualifies for nonrecognition treatment in Canada, the transferee may request that the U.S. competent authority defer taxation until the time that Canada would impose taxation. In these cases, the U.S. competent authority will contact the Canadian competent authority for verification of the nonrecognition treatment under Canadian law. If nonrecognition treatment in Canada is verified, the U.S. competent authority will consider the facts and circumstances supporting the request in deciding whether to defer the recognition of profit, gain, or income under Article XIII(8) of the Treaty. The taxpayer(s) may be required to enter into a closing agreement in order to obtain the relief. See section 5 of this revenue procedure for guidance in requesting relief from U.S. taxation.

.04 Transaction Subject to Canadian Taxation but not Subject to U.S. Taxation. Where Canada would impose tax on a transaction receiving nonrecognition treatment in the United States, the U.S. competent authority will provide verification of nonrecognition treatment by the United States when requested to do so by the Canadian competent authority. To facilitate this process, the taxpayer may wish to request a private letter ruling from the Office of Chief Counsel to substantiate the claim of nonrecognition treatment. Even if the taxpayer does not do so, the U.S. competent authority may require that the taxpayer obtain such a private letter ruling. See section 7 of this revenue procedure for guidance in requesting assistance from the Canadian

competent authority under Article XIII(8) of the Treaty.

SEC. 5. PROCEDURES TO BE FOLLOWED FOR RELIEF REQUESTS TO THE
UNITED STATES COMPETENT AUTHORITY

.01 General. A transferee requesting U.S. competent authority assistance under Article XIII(8) of the Treaty should follow the procedures in Rev. Proc. 96-13.

.02 Information Required. The request for assistance must contain a statement that U.S. competent authority assistance is being requested. In addition, it must provide the following information:

a) a statement that the request is made pursuant to Article XIII(8) of the Treaty and a demonstration that relief is necessary to avoid double taxation;

(b) a statement that the taxpayer seeking benefits from the United States under the Treaty is a "qualified person" within the meaning of Article XXIX A of the Treaty;

(c) the names, addresses, U.S. taxpayer identification number and foreign taxpayer identification number, if any, of the taxpayer and, if applicable, all related persons involved in the matter;

(d) the taxable year(s) at issue;

(e) the Internal Revenue Service Center where the taxpayer (and, if applicable, the related person or persons) filed federal income tax returns (including amended returns) for the taxable years in issue, or if no return was filed, a statement to that effect;

(f) a statement whether the federal income tax returns of

the taxpayer (and, if applicable, of any related person or persons) for the taxable years in issue were examined or are under examination;

(g) a full description of the type and amount of income (in both U.S. and Canadian dollars) or property involved; a full description of the relevant transaction and any related transactions, whether the transactions have already been consummated or, if proposed, when they are likely to be effected; a full description of the respective positions taken or proposed by Canada, the taxpayers, and any relevant related person on the issues raised; and, if applicable, a description of the control and business relationships between the taxpayer and any relevant related person for the years in issue, including any changes in such relationship to the date of the request or any changes thereafter;

(h) an explanation of the treatment for U.S. tax purposes in the absence of relief under the Treaty together with a statement of legal authorities;

(i) an explanation of the treatment of the transaction for Canadian tax purposes. If the taxpayer is relying on a prior ruling given by the Canadian taxing authorities, the taxpayer should attach a copy of that ruling and either provide a statement to the effect that the facts upon which the ruling was based have not changed, or explain exactly how the facts underlying the ruling have changed. The taxpayer should also identify any subsequent change in the law, statute, or

regulations upon which the ruling is based;

(j) a statement whether there has been a prior request made to the U.S. competent authority by the taxpayer or a predecessor in interest on the same or related issue, including copies of pertinent correspondence, and a statement of actions requested of, proposed by, or taken by the Assistant Commissioner (International); and

(k) U.S. powers of attorney with respect to the taxpayers.

.03 Penalties of Perjury Statement. In addition, the taxpayer must provide a penalties of perjury statement in the following form: "Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the facts presented in support of the request for competent authority assistance are true, correct, and complete." This declaration must be signed by the person or persons making the request and not by such person's or persons' representative. The person signing for a corporate taxpayer must be an authorized officer of the taxpayer who has personal knowledge of the facts. The person signing for a trust, an estate, or a partnership must be, respectively, a trustee, an executor, or a partner who has personal knowledge of the facts.

.04 No deletion statement required. No deletions statement under section 6110 of the Code is necessary.

.05 Updates. It shall be the responsibility of the taxpayer to keep the U.S. competent authority informed of all material changes in the information or documentation previously submitted as part of, or in connection with, the request for

competent authority assistance, as well as any new information (including English translations where necessary) or documentation relevant to the resolution of the issues under consideration as it becomes known or available.

SEC. 6. ACTION BY THE U.S. COMPETENT AUTHORITY

.01 Notification of Taxpayer. Upon receiving a request for relief pursuant to this revenue procedure, the U.S. competent authority will consider whether the facts provide a basis for assistance.

.02 Extending Period of Limitations for Assessment. If the U.S. competent authority accepts a request for assistance, the taxpayer may be requested to execute a consent extending the period of limitations for assessment of tax for the taxable periods in issue. Failure to comply with the provisions of this subsection can result in denial of assistance by the U.S. competent authority with respect to the request.

.03 Determination regarding relief. The decision whether to grant relief will be made based upon all of the facts and circumstances.

.04 No Review of Denial of Request for Assistance. The U.S. competent authority's denial of a taxpayer's request for assistance or dismissal of a matter previously accepted for consideration pursuant to this revenue procedure is final and not subject to administrative review.

SEC. 7. PROCEDURES TO BE FOLLOWED FOR REQUESTS FOR RELIEF TO THE CANADIAN COMPETENT AUTHORITY

This revenue procedure is intended to coordinate requests for competent authority assistance made to the United States and Canada under Article XIII(8) of the Treaty. Taxpayers who wish to request relief under Article XIII(8) of the Treaty from the Canadian competent authority should follow the procedures outlined in Revenue Canada Information Circular 71-17R4.

Information regarding such requests may be obtained from: Revenue Canada, Director General, International Tax Programs Directorate, Ottawa ON K1A 0L8.

SEC. 8. FEES

No user fees are required for a request for competent authority assistance pursuant to this revenue procedure. Section 15 of Rev. Proc. 97-1, 1997-1 I.R.B. 11, at page 46, requires the payment of user fees for requests to the Service for rulings, opinion letters, determination letters, and similar requests.

SEC. 9. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 96-13 is amplified.

SEC. 10. EFFECTIVE DATE

This revenue procedure is effective for requests for U.S. competent authority assistance pursuant to Article XIII(8) of the Treaty that are filed after [the date of publication of this revenue procedure in the Internal Revenue Bulletin]*.

DRAFTING INFORMATION

The principal author of this revenue procedure is David Bergkuist of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure, contact the Office of the Assistant Commissioner

(International), Tax Treaty Division, on (202) 874-1550 (not a toll-free call).

* add the date of publication of this revenue procedure in the Internal Revenue Bulletin.