

# Guidance on Effective Dates Under Japan Treaty

## Announcement 2004-60

Following is a copy of the News Release issued by the Director, International (U.S. Competent Authority), on June 23, 2004 (IR-2004-82).

### Guidance Relating to July 1st Application of New U.S.-Japan Income Tax Treaty

IR-2004-82, June 23, 2004

WASHINGTON — Today, the Internal Revenue Service and the Japanese National Tax Agency respectively have

issued guidance regarding the commencement of application of the new income tax treaty between the United States and Japan in each country.

The United States-Japan tax treaty, which was signed on November 6, 2003, entered into force on March 30, 2004. Pursuant to Article 30, the treaty generally is applicable with respect to withholding taxes on July 1, 2004. In the case of U.S. withholding taxes, the treaty is applicable for amounts paid or credited on or after July 1st. In the case of Japanese withholding taxes, the treaty is applicable for amounts taxable on or after July 1st.

The guidance issued today by the IRS provides illustrative examples regarding the application of the new treaty in the case of U.S. withholding taxes on dividends, interest, and royalties. Incorporated in the guidance is an attachment prepared by the Japanese National Tax Agency providing similar illustrative examples regarding the application of the new treaty in the case of Japanese withholding taxes on dividends, interest, and royalties. The Japanese National Tax Agency also has issued guidance providing these illustrative examples and incorporating the U.S. illustrative examples as an attachment.

The text of the Guidance is as follows:

#### Guidance regarding the Commencement of Application of the New Tax Convention between the United States and Japan June 23, 2004

##### Internal Revenue Service

In the United States, the provision with respect to taxes withheld at source in paragraph 2 of Article 30 of the Convention between the Government of the United States of America and the Government of Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (“the Convention”), entered into force on March 30, 2004, for amounts (such as dividends, interest, and royalties) to be paid before, on or after July 1, 2004, provides for the commencement of application of the Convention as indicated in Attachment 1.

In Japan, the commencement of application is as indicated in Attachment 2, which was prepared by the Japanese National Tax Agency.

#### Note

Paragraph 2 of Article 30 of the Convention states:

2. This Convention shall be applicable:

(a) in Japan

(i) with respect to taxes withheld at source:

(aa) for amounts taxable on or after July 1 of the calendar year in which the Convention enters into force, if the Convention enters into force before April 1 of a calendar year; or

(bb) . . .

(ii) . . . ; and

(b) in the United States:

(i) with respect to taxes withheld at source:

(aa) for amounts paid or credited on or after July 1 of the calendar year in which the Convention enters into force, if the Convention enters into force before April 1 of a calendar year; or

(bb) . . .

(ii) . . . .

## Attachment 1

### Commencement of Application of the New U.S.-Japan Income Tax Convention in the United States (With respect to Taxes Withheld at Source regarding Investment Income)

#### Internal Revenue Service

The Convention shall be applicable with respect to taxes withheld at source for amounts paid or credited on or after July 1, 2004. Therefore, the Convention is applicable to the amount of investment income (dividends, interest, and royalties) paid or, where amounts are credited, credited on or after that date.

Specifically, the date on which an amount is paid or credited for the purposes of the Convention is as follows:

#### DIVIDENDS

In the case of all dividends (including interim dividends), amounts are paid or credited on the date on which they are paid or, where amounts are credited, on the date on which they are credited.

#### Interest and Royalties

In the case of interest or royalties, amounts are paid or credited on the date on which they are paid or, where amounts are credited, on the date on which they are credited. When an amount is paid (for example in the case where an amount required to be paid by contract on a specified date actually is paid on a later date) shall be determined on the basis of United States tax law.

#### *Examples:*

##### Dividends

1. U.S. Company A has a fiscal year that ends on March 31, 2004. At a shareholders' meeting on June 25, 2004, Company A declares dividends. Company A pays the dividends on July 5, 2004.

These dividends are paid or credited on July 5, 2004.

##### Interest

2. U.S. Company B has an obligation to pay to a financial institution interest on a debt-claim. The interest is payable in quarterly installments due at the end of each quarter. In accordance with the terms of the debt-claim, the interest is paid on June 30, 2004.

This interest is paid or credited on June 30, 2004.

3. U.S. Company C has an obligation to pay to a financial institution interest on a debt-claim. The interest is payable in installments three times a year, due at the end of April, August, and December. In accordance with the terms of the debt-claim, the interest is paid on August 31, 2004.

This interest is paid or credited on August 31, 2004.

##### Royalties

4. U.S. Company D has an obligation to pay royalties to Japanese Company E. Pursuant to a license agreement, the royalties are determined based on sales over six-month periods ending June 30 and December 31, and are payable within 15 days of the end of each six-month period. In accordance with the terms of the license, royalties are paid on July 5, 2004.

These royalties are paid or credited on July 5, 2004.

5. U.S. Company F has an obligation to pay royalties to Japanese Company G. Pursuant to a license agreement, the royalties are determined based on sales over six-month periods ending March 31 and September 30 and are payable within 15 days of the end of each six-month period. In accordance with the terms of the license, royalties are paid on October 5, 2004.

These royalties are paid or credited on October 5, 2004.

## Attachment 2

### Commencement of Application of the New Japan-U.S. Income Tax Convention in Japan (With respect to Taxes Withheld at Source regarding Investment Income)

#### *National Tax Agency*

The Convention shall be applicable with respect to taxes withheld at source for amounts taxable on or after July 1, 2004. Therefore, the Convention is applicable to the amount of investment income (dividends, interest, and royalties) “due to be received” on or after that date.

Specifically, the date on which an amount is due to be received for purposes of the Convention is as follows:

#### **DIVIDENDS**

The date of the shareholders’ meeting where dividends are declared. (In Japan a company’s ordinary shareholders’ meeting is held within three months after the end of the fiscal year in accordance with the Commercial Code.)

As for interim dividends, the date of the resolution by the board of directors. If an effective date is specified regarding the resolution, that effective date (which must be a date within three months after the date determined in the company’s articles of incorporation).

#### **Interest and Royalties**

If the date of payment is stipulated in a contract, that date; if not, the date on which the interest or royalties are actually paid.

#### *Examples:*

##### Dividends

1. Japanese Company A has a fiscal year that ends on March 31, 2004. At a shareholders’ meeting on June 25, 2004, Company A declares dividends. Company A pays the dividends on July 5, 2004.

These dividends are taxable on June 25, 2004.

##### Interest

2. Japanese Company B has an obligation to pay to a financial institution interest on a debt-claim. The interest is payable in quarterly installments due at the end of each quarter. In accordance with the terms of the debt-claim, the interest is paid on June 30, 2004.

This interest is taxable on June 30, 2004.

3. Japanese Company C has an obligation to pay to a financial institution interest on a debt-claim. The interest is payable in installments three times a year, due at the end of April, August, and December. In accordance with the terms of the debt-claim, the interest is paid on August 31, 2004.

This interest is taxable on August 31, 2004.

##### Royalties

4. Japanese Company D has an obligation to pay royalties to U.S. Company E. Pursuant to a license agreement, the royalties are determined based on sales over six-month periods ending June 30 and December 31, and are payable within 15 days of the end of each six-month period. In accordance with the terms of the license, royalties are paid on July 5, 2004.

These royalties are taxable on July 5, 2004.

5. Japanese Company F has an obligation to pay royalties to U.S. Company G. Pursuant to a license agreement, the royalties are determined based on sales over six-month periods ending March 31 and September 30 and are payable within 15 days of the end of each six-month period. In accordance with the terms of the license, royalties are paid on October 5, 2004.

These royalties are taxable on October 5, 2004.