

Internal Revenue Service, Treasury**§ 509.104**

(b) *Exemption from United States tax.* The following items of income from sources within the United States are exempt from United States tax for taxable years beginning on or after January 1, 1951, subject to the respective articles of the convention:

(1) Industrial and commercial profits of a Swiss enterprise having no permanent establishment in the United States (Article III);

(2) Income derived by a Swiss enterprise from the operation of ships or aircraft registered in Switzerland (Article V);

(3) Patent and copyright royalties, and other like amounts, including motion picture film rentals, derived by a nonresident alien who is a resident of Switzerland, or by a Swiss corporation or other entity, if such alien, corporation, or other entity has no permanent establishment in the United States (Article VIII);

(4) Compensation, subject to certain limitations, for personal services performed in the United States by a nonresident alien individual who is a resident of Switzerland (Article X);

(5) Compensation and pensions paid by Switzerland to an alien individual, and to a citizen of Switzerland who is also a citizen of the United States, including such items as are from sources without the United States (Article XI);

(6) Private pensions and life annuities paid to a nonresident alien individual who is a resident of Switzerland (Article XII);

(7) Remuneration derived from certain teaching in the United States by a professor or teacher who is a nonresident alien residing in Switzerland (Article XIII); and

(8) Dividends and interest paid by a foreign corporation to a nonresident alien who is a resident of Switzerland, or to a Swiss corporation, if such alien or corporation has no permanent establishment in the United States (Article XIV).

(c) *Students or apprentices.* Remittances received from abroad for the purpose of maintenance or studies by a student or apprentice, a nonresident alien residing in Switzerland, who is temporarily present in the United States under specified circumstances

are also exempt from United States tax (Article XIII).

(d) *Reduced rates of United States tax.* Dividends and interest derived from sources within the United States by a nonresident alien who is a resident of Switzerland, or by a Swiss corporation or other entity, are subject to United States tax at reduced rates, if such alien, corporation, or other entity has no permanent establishment in the United States (Articles VI and VII).

(e) [Reserved]

(f) *United States citizens, residents, and corporations.* (1) Any citizen of Switzerland who is a resident of the United States is liable to United States tax as though the convention had not come into effect; however, such alien resident of the United States is entitled to the foreign tax credit in accordance with Article XV and is also entitled to the benefits of Article XI (1) and Article XVIII.

(2) A citizen of the United States, even though resident in Switzerland, or a domestic corporation, even though engaged in trade or business in Switzerland through a permanent establishment situated therein, is also liable to United States tax as though the convention had not come into effect but is entitled to the foreign tax credit and, to the extent, applicable, to the benefits of Article XI (1).

(g) *Other provisions applicable to Swiss residents and corporations.* Except as otherwise expressly provided by the convention, the United States tax liability of a nonresident alien who is a resident of Switzerland, or of a Swiss corporation or other entity, is determined in accordance with the provisions of the Internal Revenue Code of 1954 relating to nonresident alien individuals and foreign corporations.

[T.D. 6149, 20 FR 7587, Oct. 12, 1955; 25 FR 14022, Dec. 31, 1960, as amended by T.D. 8734, 62 FR 53497, Oct. 14, 1997]

§ 509.104 Definitions.

(a) *General.* Any term defined in the convention or §§ 509.101 to 509.122 shall have the meaning so assigned to it; any term not so defined shall, unless the context otherwise requires, have the meaning which such term has under the internal revenue laws of the United States.

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(b) *Specific terms.* As used in §§ 509.101 to 509.122—

(1) *United States tax.* The term “United States tax” means the Federal income taxes, including surtaxes and excess profits taxes, and any other income or profits tax of a substantially similar character imposed by the United States after May 24, 1951.

(2) *Swiss tax.* The term “Swiss tax” means the federal, cantonal, and communal taxes on income—that is, on total income, earned income, income from property, industrial and commercial profits, etc.—and any other income or profits tax of a substantially similar character imposed by Switzerland after May 24, 1951.

(3) *United States.* The term “United States” means the United States of America; and, when used in a geographical sense, means the States, the Territories of Alaska and Hawaii, and the District of Columbia.

(4) *Switzerland.* The term “Switzerland” means the Swiss Confederation.

(5) *Permanent establishment—(i) Fixed place of business.* The term “permanent establishment” means an office, factory, workshop, warehouse, branch, or other fixed place of business, but does not include the casual and temporary use of merely storage facilities. It implies the active conduct of a business enterprise. The mere ownership, for example, of timberlands or a warehouse in the United States by a Swiss enterprise does not mean that such enterprise, in the absence of any business activity therein, has a permanent establishment in the United States. Moreover, the maintenance within the United States by a Swiss enterprise of a warehouse for convenience of delivery, and not for purposes of display, does not of itself constitute a permanent establishment in the United States, even though offers of purchase have been obtained by an agent therein of the Swiss enterprise and transmitted by him to the Swiss enterprise for acceptance. The fact that a Swiss enterprise maintains in the United States an office or other fixed place of business used exclusively for the purchase for such enterprise of goods or merchandise shall not of itself constitute such fixed place of business a permanent establishment of such enterprise.

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(ii) *Subsidiary corporation.* The fact that a Swiss corporation has a domestic subsidiary corporation, or a foreign subsidiary corporation which is engaged in trade or business in the United States through a permanent establishment situated therein, does not of itself constitute either subsidiary corporation the United States permanent establishment of the Swiss parent corporation.

(iii) *Agency.* A Swiss enterprise which has an agency in the United States does not thereby have a permanent establishment in the United States, unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or unless he has a stock of merchandise from which he regularly fills orders on its behalf. If the enterprise has an agent in the United States who has power to contract on its behalf, but only at fixed prices and under conditions determined by such principal, it does not thereby necessarily have a permanent establishment in the United States. The mere fact that an agent of a Swiss enterprise—assuming he has no general authority to negotiate and conclude contracts on behalf of his principal—maintains samples, or occasionally fills orders from incidental stocks of goods maintained, in the United States does not of itself mean that such enterprise has a permanent establishment in the United States. The mere fact that salesmen, employees of a Swiss enterprise, promote the sale of their employer's products in the United States or that a Swiss enterprise transacts business in the United States by means of mail order activities does not mean that such enterprise has a permanent establishment in the United States. A Swiss enterprise shall not be deemed to have a permanent establishment in the United States merely because it carries on business dealings in the United States through a commission agent, broker, custodian, or other independent agent, acting in the ordinary course of his business as such.

(6) *Enterprise.* The term “enterprise” means any commercial or industrial enterprise or undertaking carried on by any person, for example, by an individual partnership, or corporation. It

includes such activities as manufacturing, merchandising, mining, processing, banking, and insuring. It does not include the rendition of personal services. Hence, a nonresident alien individual who is resident of Switzerland and who performs personal services is not, merely by reason of such services, engaged in a Swiss enterprise within the meaning of the convention; consequently, his liability to United States tax is not determined under Article III of the convention, if he has not otherwise carried on a Swiss enterprise.

(7) *Swiss enterprise.* The term "Swiss enterprise" means an enterprise carried on in Switzerland by a nonresident alien individual who is a resident of Switzerland, or by a Swiss corporation or other entity. Thus, an enterprise carried on wholly outside Switzerland by a Swiss corporation is not a Swiss enterprise within the meaning of the convention.

(8) *Swiss corporation or other entity.* The term "Swiss corporation or other entity" means a corporation or institution or foundation having juridical personality, or a partnership (association "en nom collectif" or "en commandite"), or other association without juridical personality, created or organized under Swiss laws.

(9) *United States enterprise.* The term "United States enterprise" means an enterprise carried on in the United States by a resident of the United States (including an individual, fiduciary, and partnership) or by a United States corporation or other entity.

(10) *United States corporation or other entity.* The term "United States corporation or other entity" means a corporation or other entity created or organized under the law of the United States or of any State or Territory of the United States.

(11) *Industrial and commercial profits.* The term "industrial and commercial profits" means profits arising from industrial, commercial, mercantile, manufacturing, and like activities of an enterprise, including mining, financial and insurance profits. It does not include income in the form of dividends, interests, rents, royalties, or remuneration for personal services. In determining the industrial and commercial

profits from sources within the United States of a Swiss enterprise, no profits shall be deemed to arise from the mere purchase of goods or merchandise within the United States by such enterprise. Moreover, in determining such profits of the United States permanent establishment of such enterprise, there shall be allowed as deductions all expenses which are reasonably applicable to the permanent establishment, including executive and general administrative expenses so applicable. See sections 861 through 864, Internal Revenue Code of 1954, and the regulations thereunder.

(12) *Commissioner.* The term "Commissioner" means the Commissioner of Internal Revenue or his authorized representative.

(13) *Director of the Federal Tax Administration.* The term "Director of the Federal Tax Administration" means the Director of the Federal Tax Administration (Direktor der eidgenoessischen Steuerverwaltung) of Switzerland.

§ 509.105 Industrial and commercial profits.

(a) *General.* (1) Article III of the convention adopts the principle that an enterprise of one of the contracting States shall not be taxable by the other contracting State upon its industrial and commercial profits unless it is engaged in trade or business in the latter State through a permanent establishment situated therein. Accordingly, a Swiss enterprise is subject to United States tax upon its industrial and commercial profits, to the extent of such profits from sources within the United States, only if it is engaged in trade or business in the United States at some time during the taxable year through a permanent establishment situated therein.

(2) From the standpoint of the United States tax the article has application only to a Swiss enterprise and its industrial and commercial profits from sources within the United States. Thus, a nonresident alien individual who is a citizen of Switzerland, or a Swiss corporation or other entity, carrying on an enterprise which is not Swiss, is subject to tax on such income of such enterprise pursuant to section