

TREATY USA - VENEZUELA

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF VENEZUELA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL, SIGNED AT CARACAS ON JANUARY 25, 1999

GENERAL EFFECTIVE DATE UNDER ARTICLE 29: 1 JANUARY 2000

ARTICLE 17 Limitation on Benefits

1. A person that is a resident of a Contracting State and derives income from the other Contracting State shall be entitled to the benefits of this Convention in that other Contracting State only if such person is:

- a) an individual and would not be a resident of another country under the principles of subparagraphs a) and b) of paragraph 3 of Article 4 (Residence); or
- b) a Contracting State, a political subdivision or local authority thereof, a wholly-owned instrumentality of a Contracting State, a political subdivision or local authority thereof, or a company wholly-owned, directly or indirectly, by a Contracting State, a political subdivision or local authority thereof; or
- c) an entity that is a not-for-profit organization (including a pension fund or private foundation) and that, by virtue of that status, is generally exempt from income taxation in its Contracting State of residence, provided that more than half of the beneficiaries, members, or participants, if any, in such organization are entitled to the benefits of this Convention; or
- d) 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 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; or
- e) a company in whose principal class of shares there is substantial and regular trading on a recognized securities exchange; or

- f) a company of which at least 50 percent of each class of shares in the company is owned directly or indirectly by five or fewer companies entitled to the benefits under subparagraph e), provided that in the case of indirect ownership, each intermediate owner is a person entitled to benefits of the Convention under this paragraph; or
- g) both of the following conditions are satisfied:
 - (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 who are entitled to the benefits of the Convention under subparagraphs a), b), c), e), or f) or who are citizens of the United States; and
 - (ii) less 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 the benefits of the Convention under subparagraphs a), b), c), e), or f) or who are citizens of the United States.

2. Notwithstanding paragraph 1, an *entidad* or *colectividad* formed under the laws of Venezuela otherwise entitled to benefits under paragraph 1 shall not be entitled to the benefits of this Convention if that *entidad* or *colectividad*, or another *entidad* or *colectividad* or other person that controls such *entidad* or *colectividad*, has outstanding a class of interests:

- a) the terms of which, or which is subject to other arrangements that, entitle its holders to a portion of the income of the *entidad* or *colectividad* derived from the United States that is larger than the portion such holders would receive absent such terms or arrangements; and
- b) 50 percent or more of the vote or value of which is owned by persons who are not persons entitled to the benefits of this Convention under subparagraphs a), b), c), e), or f) of paragraph 1 or citizens of the United States.

3. Notwithstanding paragraph 1, a former long-term resident of the United States shall not be entitled to the benefits of this Convention for the 10-year period following loss of such status, if such loss had for one of its principal purposes the avoidance of U.S. tax, determined in accordance with the provisions of United States law applicable to former U.S. citizens and long-term residents.

4. A person that is not entitled to the benefits of the Convention pursuant to the provisions of paragraph 1 may, nevertheless, demonstrate to the competent authority of the State in which the income arises that such person should be granted the benefits of the Convention. For this purpose, one of the factors the competent authorities shall take into account is whether the establishment, acquisition, and maintenance of such person

and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under the Convention.

5. For purposes of subparagraph e) of paragraph 1, the term "recognized securities exchange" means:

- a) the Caracas and Maracaibo stock exchanges, the Bolsa Electrónica and any stock exchange registered with the Comisión Nacional de Valores in accordance with the Ley de Mercado de Capitales;
- b) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for purposes of the Securities Exchange Act of 1934; and
- c) any other stock exchange agreed upon by the competent authorities of the Contracting States.

6. For purposes of subparagraph g) ii) of paragraph 1, the term "gross income" means gross receipts, or where an enterprise is engaged in a business which includes the manufacture or production of goods, gross receipts reduced by the direct costs of labor and materials attributable to such manufacture or production and paid or payable out of such receipts.

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14. With reference to paragraph 3 of Article 17 (Limitation on Benefits):

The term "long-term resident" shall mean any individual who is a lawful permanent resident of the United States in 8 or more taxable years during the preceding 15 taxable years. In determining whether the threshold in the preceding sentence is met, there shall not count any year in which the individual is treated as a resident of Venezuela under this Convention, or as a resident of any country other than the United States under the provisions of any other tax treaty of the United States, and, in either case, the individual does not waive the benefits of such treaty applicable to residents of the other country.