



*Financial Services Tax Group*

# **News Letter**

*Special Issue – June 28, 2004*

## **New US-Japan Treaty Guidance Dividends, Interest and Royalties**

Further to our Financial News Letter issued on June 4, 2004, we provide further information regarding the application process involving dividends, interest and royalties payments based on recent clarification released by the IRS and the NTA.

### **New treaty forms, including US residency forms**

In order to receive the benefit of the reduced rates of Japanese withholding on dividends, interest and royalties under the new treaty, US residents must complete the following forms:

<b>Income</b>	<b>Number</b>	<b>Forms</b>
Dividends	1	Relief from Japanese Income Tax on Dividends
Interest	2	Relief from Japanese Income Tax on Interest
Royalties	3	Relief from Japanese Income Tax on Royalties

Forms 1, 2, and 3 require the following attachments:

- Form 16, “List of the Member of Foreign Company or List of the Partners of Entity”, is required where members/shareholders of a foreign corporation/entity claim treaty benefits (e.g., an LLC which has elected U.S. tax treatment as a partnership or disregarded entity);
- Form 17, “Attachment Form for Limitation on Benefits Article”; and
- In the case of royalties, a document which describes the content of the agreement underlying the royalty payment.

Further, Forms 1, 2, and 3, must be filed with an original U.S. residency certification, Form 6166, “Certification of Filing a Tax Return”, issued by the IRS. Accordingly, where the treaty rate is nil, the submission package should include Forms 1, 2 and/or 3, together with Form 17 and an original Form 6166. To receive a Form 6166, U.S. residents should apply for current and/or prior year certification of U.S. residency by

filing Form 8802, "Application for United States Residency Certification". Instructions for completing Form 8802 were issued by the IRS (IR-2004-78) on June 8, 2004.

**Date of item of income for treaty withholding tax purposes**

Additional guidance from the IRS and the NTA on the relevant dates for withholding tax purposes together with some illustrative examples is available through press releases issued by the US Treasury and the NTA on June 23, 2004. The full details are available at <http://www.irs.gov/> and <http://www.nta.go.jp/>.

The new treaty shall be applicable with respect to taxes withheld at source for amounts taxable on or after July 1, 2004 for Japanese withholding tax and for amounts paid or credited on or after July 1, 2004 for US withholding tax. Therefore, the new treaty is applicable to the amount of investment income (dividends, interest, and royalties) "due to be received" on or after that date for Japanese withholding tax purposes and the amount of investment income paid or, where amounts are credited, credited on or after that date for US withholding tax purposes.

The date on which an amount is applicable to the new treaty is as follows:

	<b>IRS Guidance on US withholding of "amounts paid or credited"</b>	<b>NTA Guidance on Japan withholding of "due to be received"</b>
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.	The date of shareholder's meeting where dividends are declared.  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	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.	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.

Topics provided in this Financial News Letter are based only on general case studies. For practical application to an individual case or a transaction structure, please refer to your usual PwC contact.

PricewaterhouseCoopers-Tax, Tokyo  
Kasumigaseki Bldg. 15F,  
2-5, Kasumigaseki 3-chome, Chiyoda-ku  
Financial Services (TEL 81-3-5251-2400)

Partner : Sachihiko Fujimoto  
Yonetaro Ori  
Katsuyo Oishi  
Yuka Matsuda  
Tetsuo Imura  
Raymond Kahn

Director :Stuart Porter

Senior Manager : Kazumi Ishida  
Akemi Kitou  
Hiroshi Takagi

Manager : Takeo Mizutani  
Yoshikazu Hirai  
Kimihito Takano