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U.S., LUXEMBOURG AGREE ON INTERPRETATION OF TAX TREATY'S TRANSITION RULES

WASHINGTON – The competent authorities of the United States and Luxembourg have entered into a mutual agreement concerning the interpretation of the transition rules set forth in Article 30 (Entry Into Force) of the Convention Between the Government of the United States of America and the Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed at Luxembourg on April 3, 1996 and entered into force on December 20, 2000 (the "Treaty" or "1996 Treaty").

Paragraph 2 of Article 30 provides that in the case of taxes withheld at source, the Treaty generally has effect for amounts paid or credited on or after the first day of January next following the date on which the Treaty enters into force, i.e., for amounts paid or credited on or after January 1, 2001. In the case of taxes on other income and on capital ("other taxes"), paragraph 2 provides that the Treaty generally has effect for fiscal periods beginning on or after the first day of January next following the date on which the Treaty enters into force, i.e., for fiscal periods beginning on or after January 1, 2001.

Paragraph 3 of Article 30 provides that where any greater relief from tax would have been afforded to a person entitled to the benefits of the Convention between the United States and Luxembourg with respect to taxes on income and property, signed in Washington on December 18, 1962 (the "1962 Treaty"), the 1962 Treaty shall, at the election of such person, continue to have effect in its entirety for the first assessment period or taxable year following the date on which the 1996 Treaty would otherwise have effect under the provisions of paragraph 2.

Paragraph 4 of Article 30 provides that the 1962 Treaty shall cease to have effect in respect of income and capital to which the 1996 Treaty applies in accordance with paragraphs 2 or 3 of Article 30.

Questions have arisen concerning the application of paragraphs 3 and 4 of Article 30 of the 1996 Treaty, regarding fiscal year taxpayers receiving income that is subject to tax withheld at source. In order to resolve potential ambiguities and to provide certainty to taxpayers, the United States and Luxembourg have agreed to the following application of the transition rules:

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Calendar year taxpayers. If a calendar year taxpayer in existence on December 19, 2000 makes the election under paragraph 3 of Article 30 of the 1996 Treaty, the 1962 Treaty will continue to apply to the taxpayer through December 31, 2001 with respect to both taxes withheld at source and taxes on other income and on capital. The 1962 Treaty will cease to have effect with respect to the taxpayer beginning on January 1, 2002.

Fiscal year taxpayers. If a fiscal year taxpayer in existence on December 19, 2000 makes the election under paragraph 3 of Article 30 of the 1996 Treaty, the 1962 Treaty will continue to apply to the taxpayer with respect to both taxes withheld at source and taxes on other income and on capital through the last day of the taxpayer's first fiscal year beginning on or after January 1, 2001. The 1962 Treaty will cease to have effect with respect to the taxpayer beginning on the first day of the taxpayer's second fiscal year beginning on or after January 1, 2001. Thus, for example, if a taxpayer in existence on December 19, 2000, with a fiscal year that terminates on November 30, makes the election under paragraph 3 of Article 30 of the 1996 Treaty, the 1962 Treaty will continue to apply to the taxpayer with respect to both taxes withheld at source and taxes on other income and on capital through November 30, 2002, and the 1962 Treaty will cease to have effect with respect to the taxpayer beginning on December 1, 2002.

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Taxpayers that did not exist prior to the date of entry into force of the 1996 Treaty, and taxpayers that were in existence but did not qualify for benefits under the 1962 Treaty, will not be entitled to claim the benefits of the 1962 Treaty under the grandfather rule of Article 30(3).

An election to apply the 1962 Treaty means that the 1962 Treaty, and not the 1996 Treaty, will apply in all respects to the electing taxpayer.

For further information in the United States, please contact Lynn Bartlett, IRS Large & Mid-size Business, Office of the Director, International, Tax Treaty, ((202) 874-1550 (not a toll-free number)). For further information in Luxembourg, please contact Guy Heintz, Head of the Division international relations of the Administration of Direct Taxes, 40800-2204.

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