

RRSPs and RRIFs Under 1995 Protocol to U.S.-Canada Income Tax Treaty

Notice 96-31

This notice clarifies the application of the Convention Between the United States of America and Canada with Respect to Taxes on Income and on Capital, dated September 26, 1980, as amended by the Protocols dated June 14, 1983, March 28, 1984, and March 17, 1995 (the "Convention") to dividends and interest derived by, distributions from, and income accrued in Canadian Registered Retirement Savings Plans ("RRSPs") and Registered Retirement Income Funds ("RRIFs").

Article 9(1) of the Protocol of March 17, 1995 (the "Protocol"), amended paragraph 3 of Article XVIII (Pensions and Annuities) of the Convention to expand the definition of "pensions" to include a retirement "arrangement." Article 9(3) of the Protocol added paragraph 7 to Article XVIII of the Convention, allowing a citizen or resident of one state to defer taxation in that state on income accrued as the beneficiary of a trust, company, organization or other arrangement that is a resident of, and generally exempt from income taxation in the other state, until the income is distributed from the plan, or any plan substituted therefor, provided that the arrangement is operated exclusively to provide pension, retirement or employee benefits. Under Article 21(2)(a) of the Protocol, these revisions of Article XVIII apply to amounts paid or credited on or after January 1, 1996.

Article 10(1) of the Protocol amended paragraph 2 of Article XXI (Exempt Organizations) of the Convention to provide an exemption from taxation for dividends and interest derived from one Contracting State by certain trusts, companies, organizations or other arrangements resident in the other Contracting State. The trust, company, organization or other arrangement generally must be exempt from income taxation in the taxable year in the resident Contracting State, and be operated exclusively either to administer or provide pension, retirement or employee benefits, or to earn income for the benefit of an exempt trust, company, organization or other retirement arrangement providing such benefits. The exemption does not apply to income from carrying on a trade or business or from certain related persons. Under Article 21(2)(b) of the Protocol, the revision of Article XXI applies to taxable years of RRSPs or RRIFs beginning on or after January 1, 1996.

The Treasury Department Technical Explanation of the Protocol ("Technical Explanation") states that RRSPs and RRIFs, for example, are eligible for benefits under paragraph 7 of Article XVIII and paragraph 2 of Article XXI provided that they are "operated exclusively to provide" or "administer," in the case of Article XXI(2) "pension, retirement, or employee benefits."

The Technical Explanation was not intended to imply that, under current Canadian law, RRIFs and RRSPs might not be eligible for benefits under Articles XVIII(3) and (7) and XXI(2)

of the Convention because they might not be operated exclusively to provide pension, retirement or employee benefits. It is the position of the Internal Revenue Service that, under current Canadian law, RRSPs and RRIFs are examples of arrangements that meet the conditions stated in the Protocol. Thus, RRSPs and RRIFs qualify for the benefits of Article XVIII of the Convention, and paragraph 2 of Article XXI of the Convention, as amended by Articles 9(1) and 9(3), and Article 10(1) of the Protocol, respectively.

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