



BDO Seidman, LLP  
Accountants and Consultants

March 2006

## Subject:

### IRS Relaxes Treaty-Based Return Disclosure Requirements

# International Tax Alert

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## Issue:

The U.S. Internal Revenue Service (IRS) issued final regulations regarding certain aspects of the nonresident alien withholding tax regime. Among other things, these final regulations relax the rules requiring foreign taxpayers to file U.S. tax returns to disclose the fact that they obtained benefits under an income tax treaty.

## Affecting:

Foreign persons claiming treaty benefits for U.S. source dividends, interest or certain other income items reportable on Form 1042-S.

## Details:

The regulations under Section 6114 generally provide that a foreign taxpayer that takes a return position that an income tax treaty overrules or modifies any provision of the Internal Revenue Code and thus reduces its U.S. tax liability disclose such position by filing a U.S. tax return including a Form 8833. This broad rule forces many foreign taxpayers to file U.S. tax returns.

Certain exceptions (waivers) from the disclosure requirement exist currently. But the waivers did not apply, for instance, in many cases where foreign corporations receive U.S. source dividends. The final regulations expand the list of exceptions to benefit, in particular, foreign corporations. The following payments, if received in taxable years ending after December 31, 2004, generally no longer trigger the disclosure (and return filing) requirement for the foreign recipient:

- Any amount received from a domestic corporation, if the foreign recipient owns 25 percent or more of the domestic company and if the payment was properly reported on Form 1042-S.
- Any amount received from and properly reported on Form 1042-S by a withholding agent that is (a) a U.S. financial institution, (b) a qualified intermediary, (c) a withholding foreign partnership, or (d) a withholding foreign trust.
- Amounts of \$500,000 or less received by foreign entities (i.e. taxpayers that are not individuals or States) and that have been properly reported on Form 1042-S and are not received through an intermediary or flow-through entity.

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## **How BDO Seidman can help:**

If you have questions as to how you and your company may benefit from any of these changes, please contact us. Our international tax professionals have the knowledge and experience to give advice on this and other issues affecting foreign taxpayers.

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