Double Tax Treaties with the United States

Introduction

A number of jurisdictions have entered into Double Tax Treaties ("DTTs") with the United States ("the US"). The DTTs allow residents of the said jurisdictions to obtain reduced tax rate on U.S. source dividends. To qualify for this relief, the claimants must meet the requirements of the Limitation on Benefits ("LOB") Articles of the relevant DTT. To obtain the DTT benefits, Form W-8BEN-E with a valid treaty claim in Part III must be provided to Credit Suisse. The purpose of this communication is to offer some publicly available information on the subject of DTT claims. Credit Suisse does not provide tax advice. It is the responsibility of clients to determine their tax situation and entitlement to DTT benefits.

United States Tax Treaties

The U.S. Tax Authority, the Internal Revenue Service ("the IRS"), has published all Double Tax Treaties and related documents, such as protocols and technical explanations, at the following link: https://www.irs.gov/businesses/international-businesses/united-states-income-tax-treaties-a-to-z

Treaty Table

To make a valid DTT claim in Part III of Form W-8BEN-E, an entity must choose a plausible LOB category.
The IRS has published a table that lists the LOB provisions possible under each DTT. The table is available at the following link: https://www.irs.gov/pub/irs-utl/Tax_Treaty_Table_4.pdf
For further information on the Tax Treaty Rate on U.S. dividend income please refer to the following link (column 6): https://www.irs.gov/pub/irs-utl/Tax_Treaty_Table_1_2019_Feb.pdf

LOB categories explanation

The IRS has included a general description of every LOB types in the instructions for Form W-8BEN-E, page11, available at the following link: https://www.irs.gov/pub/irs-pdf/iw8bene.pdf

IRS guidance on LOB categories in Instructions for Form W-8BEN-E

Government

This test is met if the entity is the
Contracting State, political subdivision, or local authority.

Tax-exempt pension trust or pension fund

This test generally requires more than half of the beneficiaries or participants in the trust or fund be residents of the country of residence of the trust or fund itself.

Other tax-exempt organization

This test generally requires that more than half of the beneficiaries, members or associates of religious, charitable, scientific, artistic, cultural, or educational organizations be residents of the country of residence of the organization.

Publicly traded corporation

Under this test, the corporation's principal class of shares must be primarily and regularly traded on a recognized stock exchange in its country of residence.

Subsidiary of publicly traded corporation

In principle, this test requires that at least 50% of the total voting rights and value of the company's shares are owned, directly or indirectly, by five or fewer publicly traded corporations, as long as all companies in the chain of ownership are resident in either the U.S. or the same country of residence as the subsidiary. Furthermore, the owning companies must meet themselves the publicly traded corporation test.

Company that meets the ownership and base erosion test

Under this test, more than 50% of the total voting rights and value of the company's shares must be owned, directly or indirectly, by individuals, governments, tax-exempt entities, or publicly-traded corporations who are also residents in the same country as the company, of the Contracting State. Furthermore all companies in the chain of ownership must be resident in the same country of residence, and less than 50% of the company's gross income is accrued or paid, directly or indirectly, to persons who would not be good shareholders for purposes of the ownership test.

Company that meets the derivative benefits test
This test is limited to USMCA (United States-Mexico-Canada Agreement), EU (European Union) and EEA (European Economic Area) member states. The test generally requires more than 95% of the total voting rights and value of the company's shares to be owned, directly or indirectly, by seven or fewer beneficiaries. The beneficiaries must be resident in a member state of the EU, EEA, or USMCAand can claim identical benefits under their DTT with the U.S.. In addition, this test requires that less than 50% of the company's gross income be paid or accrued, directly or indirectly, to persons who would not be equivalent beneficiaries.

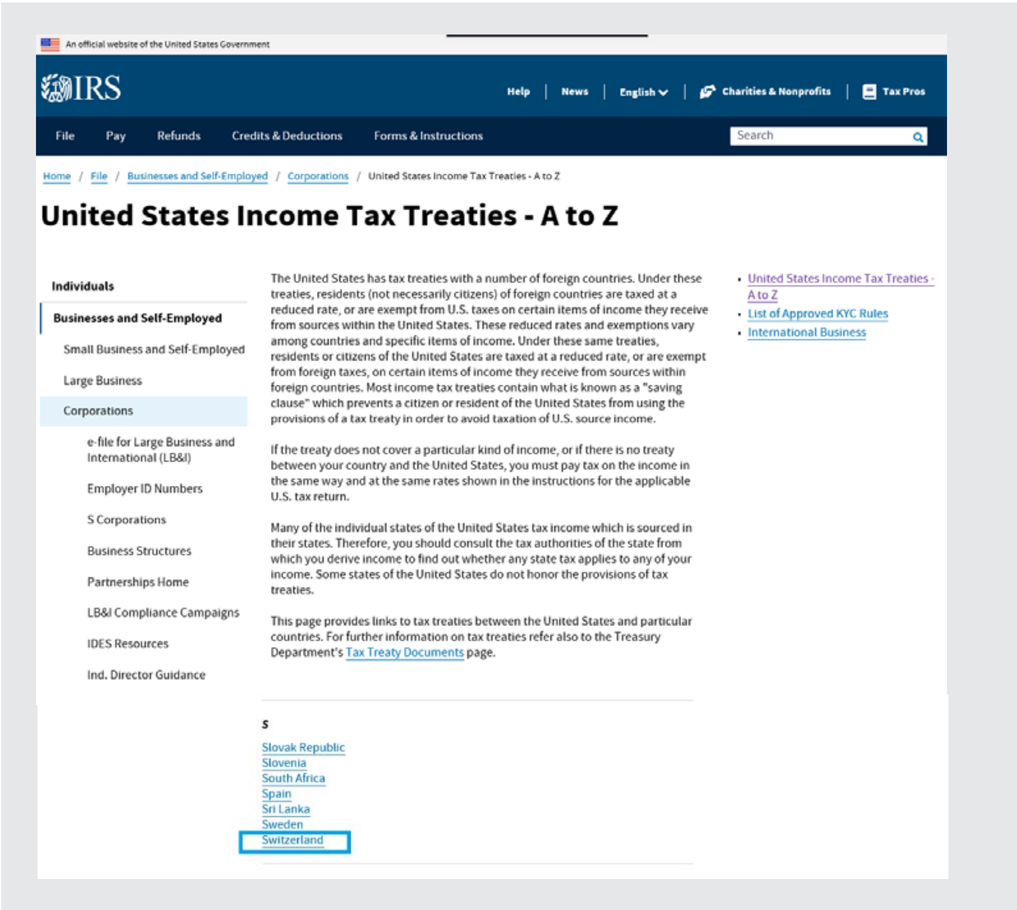
Company with an item of income that meets active trade or business test
In principle, this test requires the company to carry out an active trade or business in its country of residence and that its activities in that country be substantial in relation to its U.S. activities,

No LOB article in treaty
This test generally requires that the entity is a resident in a foreign country that has entered into an income tax treaty with the U.S. that does not contain an LOB article.

Favorable discretionary determination by the U.S. competent authority received
This test requires that the company obtain a favorable determination granting benefits from the U.S. competent authority despite the company's failure to meet a specific objective LOB test in the applicable treaty.

Other
Other LOB tests that are not listed above can be applied here. Identify the test name and article.

Illustrated example – Switzerland
Tax Treaty Documents with Switzerland published by IRS
https://www.irs.gov/businesses/international-businesses/united-states-income-tax-treaties-a-to-z



Summary of possible LOBs for Switzerland in Table 4
https://www.irs.gov/pub/irs-utl/Tax_Treaty_Table_4.pdf

://www.irs.gov/pub/irs-utl/Tax_Treaty_Table_4.pdf

Table 4. Limitation on Benefits

- The "Limitation on Benefits" article is an anti-treaty shopping provision intended to prevent residents of third countries from obtaining benefits under a treaty. Residents of a country whose income tax treaty with the United States contains a "Limitation on Benefits" article are eligible for benefits only if they satisfy one of the tests under the Limitation on Benefits article. Residents who are individuals of one of the Contracting States or political subdivision thereof are generally not affected by the Limitation on Benefits article. Residents of a country whose income tax treaty with the United States does not contain a Limitation on Benefits article do not need to satisfy these additional tests.
- The treaty or protocol article describing each of these tests is identified below for the general convenience of taxpayers. However, you must check the text of the relevant LOB article to determine which tests are available under the treaty and the particular requirements of those tests to make a final determination that you meet an LOB test.
- LOB Test Category Codes used to identify these various tests are as follows:
  01- Individual
  02- Government – contracting state/political subdivision/local authority
  03- Tax exempt/ pension trust/ Pension fund
  04- Tax exempt/ Charitable organization
  05- Publicly-traded corporation
  06- Subsidiary of publicly-traded corporation
  07- Company that meets the ownership and base erosion test
  08- Company that meets the derivative benefits test
  09- Company with an item of income that meets the active trade or business test
  10- Discretionary determination
  11- Other

			Limitation on Benefits Tests (Safe Harbors) [2]											Exceptions and Special Rules
Name	Code	Treaty Article Citation	Publicly Traded Companies [05] or Subsidiary of Publicly Traded Companies [06]		Tax Exempt Organization and Pension Funds [03, 04]	Stock Ownership and Base Erosion Test [07]		Active Business [09]	Discretionary Determination [10]	Derivative Benefits [08]			Other [11]	Triangular provision
			Same Country [3a]	U.S. or Same Country [3b]		Same Country [5a]	U.S. or same country [5b]			Comp benefits [8a]	Comp Rates [8b]	Named benefits [8c]		
Switzerland	SZ	22		22(1)(e)	22(2)			22(1)(c)	22(6)			22(3)	22(1)(d), (f), (g)	22(4)

W-8BEN-E, Part III – a possible DTT claim

Part III **Claim of Tax Treaty Benefits** (if applicable). (For chapter 3 purposes only.)

14 I certify that (check all that apply):

a ☑ The beneficial owner is a resident of Switzerland within the meaning of the income tax treaty between the United States and that country.

b ☑ The beneficial owner derives the item (or items) of income for which the treaty benefits are claimed, and, if applicable, meets the requirements of the treaty provision dealing with limitation on benefits. The following are types of limitation on benefits provisions that may be included in an applicable tax treaty (check only one; see instructions):

☐ Government
☐ Tax-exempt pension trust or pension fund
☐ Other tax-exempt organization
☐ Publicly traded corporation
☐ Subsidiary of a publicly traded corporation
☐ Company that meets the ownership and base erosion test
☐ Company that meets the derivative benefits test
☑ Company with an item of income that meets active trade or business test
☐ Favorable discretionary determination by the U.S. competent authority received
☐ No LOB article in treaty
☐ Other (specify Article and paragraph):

c ☐ The beneficial owner is claiming treaty benefits for U.S. source dividends received from a foreign corporation or interest from a U.S. trade or business of a foreign corporation and meets qualified resident status (see instructions).

15 **Special rates and conditions** (if applicable—see instructions):
The beneficial owner is claiming the provisions of Article and paragraph
of the treaty identified on line 14a above to claim a % rate of withholding on (specify type of income):
Explain the additional conditions in the Article the beneficial owner meets to be eligible for the rate of withholding:

* Example

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