



Maintaining Treaty Benefits: Time to File?

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Taxpayers with Favorable Treaty Rulings Facing First Deadline to Preserve Benefits

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Taxpayers who were among the first to receive discretionary limitation on benefits assistance under U.S. Competent Authority guidance issued in 2015 should be prepared to submit their first triennial statements in the coming months or else risk seeing an increase in their U.S. tax bills. The guidance, Revenue Procedure 2015-40, ushered in several changes to the process of seeking and maintaining Competent Authority relief, including one that requires a taxpayer to submit a statement every three years as a condition of maintaining a favorable limitation on benefits, or "LOB," determination. Residents who have been relying on such a determination will need to make certain representations in the statement to avoid a lapse in benefits that may result in a sudden increase in U.S. tax.

Many U.S. tax treaties contain an LOB article as a mechanism to help prevent treaty shopping. A typical provision sets forth several alternative, objective tests to determine whether a resident in a treaty country may receive treaty benefits, thereby limiting such benefits to claimants with true presence in the contracting countries. If a resident doesn't meet any of those tests, some treaties provide that the U.S. Competent Authority may exercise its discretion to extend treaty benefits to the resident in appropriate circumstances. Rev. Proc. 2015-40 outlines the process for seeking and maintaining such discretionary relief.

New in the 2015 guidance, a resident that receives a favorable discretionary LOB determination is required to file a statement every three years as a condition of retaining it. In the statement, which must be provided under penalties of perjury, the resident must declare that:



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- There haven't been any material changes in the taxpayer's facts;
- There haven't been any material changes in law relevant to the benefits sought; and
- The applicant isn't claiming any benefits different from what was originally granted.

Because penalties could attach to any misstatements, an affected taxpayer should consider working with an outside advisor to ensure they can accurately and confidently provide the required representations. Subtle changes to business structures and practices may be considered "material" to a resident's continuing enjoyment of discretionary LOB relief, so a robust (but generally simple) process should be undertaken to vet any potential sticking points. Likewise, the tax laws in the U.S. as well as in many of its treaty partners have undergone significant changes in the last three years, so it's worth discussing whether any such changes could be considered "relevant" and "material" to the taxpayer's favorable LOB determination. A conversation with an outside advisor may also be useful in identifying other potential U.S. tax treaty benefits that apply to new or newly changed business structures.

Please contact Douglas Andre or Helna Klumpp of Ivins, Phillips & Barker if you have questions about seeking or maintaining benefits under any U.S. tax treaty, or if you need assistance with preparing your triennial statement under Rev. Proc. 2015-40.