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VIA ELECTRONIC DELIVERY

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Dear Ms. Best,

Re: Revenue Ruling 81-100 Group Trust Treaty Claims

The Association of Global Custodians (AGC)¹ appreciates the efforts of the U.S. competent authority (USCA) to ensure that U.S. taxpayers have effective access to tax treaty benefits to which they are entitled from foreign treaty partners of the United States. In that connection, the AGC would like to bring to the USCA's attention certain ongoing problems being faced by one category of U.S. taxpayer and to open a dialogue on whether the USCA could assist in addressing these problems with foreign treaty partners.

AGC Tax Committee members have reported significant problems in recent years in obtaining tax treaty withholding tax relief from foreign governments for Revenue Ruling 81-100 group trusts (Group Trusts). Custodian banks have found that a number of U.S. treaty partners refuse to grant benefits at the level of the Group Trust. Some tax

¹ The Association is an informal group of 12 member banks that provide securities safekeeping and asset servicing functions to cross-border institutional investors worldwide, including investment funds. In providing global custody services, AGC members routinely seek appropriate withholding tax relief on behalf of custody clients by processing millions of such claims in the aggregate each year, affecting substantial amounts of cross-border portfolio investment flows in and out of countries worldwide.

authorities are effectively treating a Group Trust as a fiscally transparent entity and are taking the view that benefits are only available contingent on treaty documentation and information being provided at the level of the participating U.S. pension funds. Others raise concern about whether a Group Trust is eligible for special treaty exemptions available to U.S. pension funds, since the Group Trust itself does not provide pension benefits to retirees. Finally, some tax authorities are concerned about the inclusion of Puerto Rican plans in Group Trusts, which is a driver for them to request information at the level of the participating pension plans.

In this letter, we have set out to:

- provide some useful background information about Group Trusts,
- comment on the effect of the recent change in Form 6166 language on the ability of Group Trusts to access treaty benefits,
- provide a detailed explanation of the situation in treaty partner markets that are particularly problematical,
- provide some useful background on the circumstances prevailing in treaty partner markets where Group Trusts are successful in obtaining benefits, and
- make a recommendation about action we hope the USCA will consider taking to help Group Trusts gain better access to benefits in the problematical markets.

The letter also includes several appendices, described further below, which contain additional information relevant to these topics.

Background on Group Trusts

As you know, the IRS has long provided guidance that recognizes the desire of U.S. pension funds to pool their investments in a collective investment vehicle for efficiency and diversification purposes while retaining the tax exempt status of their investment income. As background to the issues discussed in this letter, **Appendix A** sets out the history of Revenue Ruling 81-100 and its amendments. **Appendix B** sets out a description of the characteristic structure and operation of Group Trusts. The use of Group Trusts by U.S. pension plans has been growing substantially in recent years, and it is now estimated that 20% or more of U.S. pension plan assets are invested through group trusts.² Thus, an inability of Group Trusts to access withholding tax relief to which they are entitled under U.S. treaties represents a very significant, and growing, problem of impaired returns to U.S. workers and retirees.

² See, e.g., U.S. Department of Labor 2018 Direct Filing Entity Annual Report, available at <https://www.dol.gov/sites/dolgov/files/EBSA/researchers/statistics/retirement-bulletins/form-5500-direct-filing-entity-bulletin-abstract-of-form-5500-2018-preliminary-annual-report.pdf> showing that larger defined benefit and defined contribution plans held investments of about \$1.45 trillion in “common collective trusts” in 2018, representing 17% of their total assets; total investments by all defined benefit and defined contribution plans in CCTs was about \$2.88 trillion); see also SEI report that the Retirement Leadership Forum’s analysis indicated that collective investment trusts were estimated to account for 25% of the defined contribution market by the end of 2020, up from 14% in 2013, <https://seic.com/cit-opportunity-series-part-1>.

Impact of Modified Form 6166 Language for Group Trusts

As you are aware from our prior interaction with the USCA in the past few years, AGC Member banks were hopeful that the problems referenced above could be mitigated by requesting that the IRS modify the wording of Forms 6166 to support recognition of Group Trusts as treaty residents of the United States, eligible for benefits in their own right, and entities that satisfy various treaty definitions of pension funds eligible for full exemption on their income.

The following language was agreed upon, and newly worded Forms 6166 were issued beginning in the 2020 calendar year:

I certify that the above-named fund is a Revenue Ruling 81-100 group trust, that it is a resident of the United States of America for purposes of U.S. taxation, that it is exempt from U.S. taxation, and that it consists exclusively of pension, retirement, or similar arrangements that are themselves exempt from U.S. taxation.

This was a helpful first step towards clarification of the status of Group Trusts, but unfortunately, the new Form 6166 did not have its intended positive impact. Group Trusts continue to experience rejections for treaty relief from the same U.S. treaty partners. The remainder of this letter outlines problems Group Trusts are facing in various key markets, identifies certain markets where Group Trust treaty claims proceed more smoothly, and suggests certain steps we believe the USCA could usefully take to try to achieve better results for Group Trusts in the problem markets.

Background on Problem Markets for Group Trusts' Treaty Claims

We provide here details of the treaty provisions and unsuccessful benefit claim experience faced by Group Trusts in the following key markets (further details with respect to these markets can be found in **Appendix C**): Denmark, France, Germany, Indonesia, Japan, and Switzerland. In each case, we report on reactions of the local tax authorities to the new version of Form 6166 for Group Trusts, to the extent known.

Denmark

Group Trusts investing in Danish equities are granted a partial withholding tax refund based on Article 10, paragraph 2, subparagraph (b) of the 1999 Income Tax Convention between the United States and Denmark. The exemption available to pensions pursuant Article 10, paragraph 3, subparagraph (c) is denied to Group Trusts.

Article 4 (Residence), paragraph (1) of the Convention defines "resident of a Contracting State" as "any person who, under the law of the State, is liable to tax therein by reason of domicile, residence, citizenship, place of management, place of incorporation, or any other criterion of a similar nature." Subparagraph (1)(b) further provides that a "legal person organized under the laws of a Contracting State and that is

generally exempt from tax in that State and is established and maintained in that State ... (ii) to provide pension or other similar benefits to employees... pursuant to a plan is to be treated for purposes of this paragraph as a resident of the Contracting State."

Article 10 (Dividends), paragraph (3) provides for a withholding tax exemption for "(c) a pension fund, which is described in subparagraph (e) of paragraph 2 of Article 22 (Limitation of Benefits), that is a resident of the other Contracting State, provided that such dividends are not derived from the carrying on of a business by the pension fund or through an associated enterprise." Article 22, paragraph 2, subparagraph (e) states that a resident of a Contracting State shall be entitled to all the benefits of this Convention only if such resident is "a legal person, whether or not exempt from tax, organized under the laws of a Contracting State to provide a pension or other similar benefits to employees, including self-employed individuals, pursuant to a plan, provided that more than 50 percent of the person's beneficiaries, members or participants are individuals resident in either Contracting State."

The Danish Tax Agency, Skattestyrelsen (SKTST), commented as follows on the newly worded 6166 issued to Group Trusts:

To be entitled to full treaty exemption it is a condition that the beneficial owner of the shares is a legal person organized to provide pension or other similar benefits. This is stated in article 10(3)(c) and 22(2)(e) of the Double Taxation Agreement between Denmark and the United States of America.

The reason why the Danish Tax Authorities has partially been rejecting refunds to U.S. 81-100 Group Trusts is, that it is the participating pension funds that have the obligation to provide pension and not the Group Trust itself. Thus, the U.S. 81-100 Group Trusts do not meet the condition stated in article 10(3)(c) and 22(2)(e) of the Double Taxation Agreement. Therefore, the U.S. 81-100 Group Trusts are only entitled to receive refund of 12% according to article 10(2)(b).

The new wording of the CoR, the U.S. 81-100 Group Trusts are still separate legal entities subject to American taxation. Thus, the U.S. 81-100 Group Trusts are still considered as separate legal entities without any obligation to provide pension. Therefore, there have been no changes that can lead to changes in the perception of the eligibility for full treaty exemption.

Based on the above argumentation the new wording of the CoR will not change the Danish Tax Agency's perception of the eligibility for full treaty exemption regarding U.S. 81-100 Group Trusts.

France

The French Tax Authorities (FTA) take the position that a Group Trust is eligible for treaty benefits only to the extent that all of its participants are treaty eligible. Proof of treaty eligibility is generally required at the participant level.³ Moreover, the FTA appear to recognize only certain categories of potential Group Trust U.S. participants as qualifying for treaty benefits.

Article 4 (Residence), paragraph 1 of the Income and Capital Tax Convention between France and the United States contains the standard language by which the term "resident of a Contracting State" is defined to mean "any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature". Paragraph 2(b)(ii) of Article 4 further specifies that a "resident of a Contracting State" includes "a pension trust and any other organization established in that State and maintained exclusively to administer and provide retirement or employee benefits that is established or sponsored by a person that is a resident of that State under the provisions of this Article..." The Technical Explanation indicates that paragraph 2(b)(ii) is a clarification of the U.S. interpretation of the language in paragraph 1, which supports the status of a Group Trust as a "resident" of the United States.

There does not seem to be any specific language in the current version of the Convention or its legislative history that directly addresses Group Trusts or the types of U.S. pension arrangements that are entitled to reduced withholding rates on dividends. However, prior to the 2009 Protocol, there had been a provision in Article 10 (Dividends) of the Convention which gave a partial dividend tax credit to certain U.S. shareholders, equal to 30/85ths of the then applicable "avoir fiscal" available to French resident shareholders. That provision was eliminated in the 2009 Protocol to reflect the repeal of the avoir fiscal. The original Treasury Technical Explanation section relating to that Article 10 provision stated that:

The Convention provides a partial dividend tax credit to certain other classes of U.S. shareholders. Subparagraph 4(e) provides U.S. residents a credit equal to 30/85 of the "avoir fiscal" available to a French resident shareholder in the case of dividends derived and beneficially owned by: (1) the United States, a state or local authority of the United States or any agency or instrumentality of such a governmental body, from the investment of retirement assets; (2) a pension trust, retirement or employee benefit organization, or tax-exempt organization

³ One AGC member has recently received an indication from the FTA that they would not require documentation at the participant level if the Group Trust's determination letter limited participation "to only pension funds 401(a), Government plans 401(a) and IRA". Another member has reported that the FTA has expressed a willingness to forgo documentation if individual participants provided the determination letter restricts participation to section 401(a) plans and the list of participants does not include any IRAs. Neither view has yet been confirmed as an official FTA position, and in any event these approaches may not be helpful to those Group Trusts whose determination letters allow for participation by a broader range of participants pursuant to applicable IRS guidance (see Appendix A).

described in subparagraph (b)(ii) of Article 4 (Resident); or (3) an individual, from investments in a retirement arrangement under which either the contributions are deductible for U.S. tax purposes or U.S. tax on the accumulated earnings is deferred. The negotiators agreed that these three categories cover all investments by U.S. pension plans or other arrangements described in IRC Code sections 401(a), 403, 408, and 457. However, the scope of subparagraph 4(e) is not limited to plans and arrangements described in one of these sections. For instance, a plan or arrangement described in Code section 414(d) will qualify for the avoir fiscal provided under subparagraph 4(e) if it satisfies the requirements of that subparagraph, even if it is not described in Code section 457. Any other plan or arrangement that satisfies the requirements of subparagraph 4(e) will be entitled to the avoir fiscal provided under that subparagraph, even if it is not a qualified plan under U.S. domestic law.

The Technical Explanation thus seems to leave open the possibility that U.S. pension arrangements beyond those listed in the specific sections referenced in the negotiators' agreement regarding the Convention's partial avoir fiscal credit could qualify as U.S. residents under the Convention.

Pursuant to Article 30 (Limitation on Benefits), paragraph 2, "a resident of a Contracting State shall be entitled to all the benefits of this Convention" if the resident is:

(d) a person described in clause (ii) of subparagraph (b) of paragraph 2 of Article 4 of this Convention provided that (i) in the case of a pension trust and any other organization established in a State and maintained exclusively to administer or provide retirement benefits that is established or sponsored by a person that is a resident of that State under the provisions of Article 4, more than 50 percent of the person's beneficiaries, members or participants are individuals resident in either Contracting State.

On September 2, 2012, the FTA issued a Statement of Practice outlining relief at source requirements for "simple collective trusts of pensions" that automatically transfer dividends of French origin to U.S. pension funds in the year in which they are received.

According to the Statement of Practice the simple collective trusts of pensions may apply for the benefit of the relief at source procedure on behalf of their members by providing the following information/documentation on annual basis:

- A list of members of the trust
- A list of members that are:
 - IRC Section 401(a) Qualified Retirement Plans;
 - IRC Section 401(b) Tax Deferred Annuity Contracts;
 - IRC Section 457 Deferred Compensation Plans; all of which are established and managed exclusively for the purpose of providing retirement benefits and hold less than 10 percent of the voting shares of the French distributing entity;

- Each member must provide an attestation issued by the U.S. authorities or any other supporting documents stating that they have been established and operate in accordance with the referenced IRC Sections (6166 for each participating pension fund).
- An attestation stating the percentage of rights to French dividends received by the collective trust attributable to pension funds that come under the referenced IRC Sections.

Thus, the FTA's formal practice has effectively been to treat a Group Trust's U.S. pension plan participants as the treaty-eligible entity, rather than the Group Trust itself, and to recognize only certain types of U.S. pension plan participants in the Group Trust as treaty-eligible. French subcustodians have reached out to the FTA to receive input on the newly worded 6166 issued to Group Trusts. While they are waiting for the FTA to respond,⁴ the subcustodians stated that they are:

not very optimistic. Please note that tax exempted U.S. Pension Funds are eligible to the reduced rate if they are established and managed as: Qualified Retirement Plans (as described in Sect. 401(a) & (b) IRC), Tax deferred "annuity contracts" (Sect. 403 (b) IRC) and "Deferred compensation plans" (Sect. 457 IRC). The French Tax Authorities will very probably reply that there is no confirmation that the underlying entities are indeed established and managed according to these sections of the IRC.

Perhaps the FTA is asking for the specific Code sections under which the pension funds participating in the Group Trust qualify for their U.S. tax exemption based on their reading of Article 10 of the Convention prior to the implementation of the 2009 Protocol which was eliminated to reflect the repeal of the avoir fiscal.

Germany

The German Tax Authorities are requiring Group Trusts to provide documentation relating to all of their underlying pension plan participants before granting the allowable treaty exemption from dividend withholding tax. Article 10 (Dividends), paragraph 3, subparagraph (b) of the 1989 Income and Capital Tax Convention and Final Protocol between the United States and Germany provides that "notwithstanding the provisions of paragraph 2, such dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner is: ... (b) a pension fund that is a resident of the other Contracting State, provided that such dividends are not derived from the carrying on of a business, directly or indirectly, by such pension fund."

Paragraph 11 further defines the term "pension fund" as any person that:

⁴ As indicated above, a few AGC members have received informal indications from the FTA that a Group Trust may be granted benefits without producing documentation from its underlying pension plans if the Group Trust's determination letter limits participation to specified types of U.S. pension plans.

- (a) is established under the laws of a Contracting State;
- (b) is established and maintained in that Contracting State primarily to administer or provide pensions or other similar remuneration, including social security payments, disability pensions and widow's pensions or to earn income for the benefit of one or more of such persons; and
- (c) is either,
 - aa) in the case of the United States, exempt from tax in the United States with respect to the activities described in subparagraph b) of this paragraph, or
 - (bb) in the case of the Federal Republic of Germany, a plan the contributions to which are eligible for preferential treatment under the Income Tax Act.

In 2012 the U.S. and German Competent Authorities entered into an agreement clarifying that that the term "pension fund" within the meaning of Article 10, paragraph 11 includes the following entities and that dividends derived by such entities are eligible for benefits under Article 10(3)(b), as if the entity is the beneficial owner of the dividends, if all other requirements of the treaty are satisfied: "(2) A group trust described in IRS Revenue Ruling 81-100, as modified by IRS Revenue Rulings 2004-67 and 2011-1, provided that all of its participants are pension funds within the meaning of Article 10(11) that are established in the United States."

Upon review of a tax reclaim submitted by a Group Trust, the German Tax Authorities issue a request for additional information including Forms 6166 and Letters of Determination per participant of the Group Trust, as proof that each participant is a treaty-eligible pension.

The newly worded Form 6166 does not sufficiently address the above mentioned requirement in the competent authority agreement. In practice, this means that for Group Trusts, which may have hundreds of participants, it is impossible to gather such a volume of documentation to provide to the authorities and the Group Trusts must therefore forgo their claim.

Indonesia

Indonesian issuers' withholding agents determine treaty eligibility based on documentation provided by the Group Trust. Some do so by reviewing the wording of the Form 6166, while others look to the information provided by the investor on the Certificate of Domicile of Non-Residents for Indonesia Withholding Tax (Form DGT). Those that rely on the Form 6166 deny treaty benefits to Group Trusts.

Article 4, (Fiscal Residence), paragraph 1 of the 1988 Income Tax Convention between the U.S. and Indonesia defines a "resident of a Contracting State" as:

any person who under the laws for that State is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature. For purposes of United States tax, in the case of a partnership, estate, or trust, the term applies only to the extent that the income derived by such person is subject to United States tax as the income of a resident either in its hands or in the hands of its partners or beneficiaries.

The Technical Explanation to the Convention states that "The references to 'liable to tax' and 'subject to tax' in paragraph 1 do not cause a tax-exempt organization to lose its status as a resident."

Although recently the treaty relief application process has been somewhat simplified, some withholding agents maintain that a Group Trust is not a beneficial owner in its own right and that the language of the previously issued Form 6166 confirms this by referring to the entity as a "group trust arrangement." Other withholding agents determine treaty eligibility based on how investors complete part V of the Form DGT, which asks a number of questions about the substance of the entity. Those withholding agents that rely on the Form DGT generally support treaty relief at source.

Local subcustodians contacted withholding agents who in the past rejected applications for treaty benefits based on the previously issued Form 6166 to inquire whether the new Form 6166 wording sufficiently addressed their concern regarding the application of treaty benefits to a Group Trust. As expected, the same withholding agents continue to maintain that that a Group Trust is not a single beneficial owner and therefore is not treaty eligible, saying, for example:

The main issue here is, that the entity is a group trust (meaning they are not the beneficial owner). The below new wording on 6166 form only declare the type of various client behind this entity (it does not change the fact that the entity itself is still a group trust).

Therefore, since group trust has several investor/beneficial owners behind them, the only way to benefit tax treaty is to segregate the securities account (per end client basis), whereby the name of the end client /beneficial owner will be clearly stated in securities account name and DGT Form (match against each other). In this case, the entity will be able to benefit tax treaty rate in Indonesia (if original DGT Form is provided within the DGT Form submission deadline of each event the account is entitled to).

For example, the group trust has 7 end clients. Hence, if those 7 end client wish to benefit tax treaty in Indonesia, each 7 end client has to segregate the securities account under each end client's name and provide original DGT Form

that states the name of each end client. Meaning, there will be 7 separate securities account with 7 separate DGT Form (not combined).

By determining that the Group Trust does not meet the criteria for beneficial ownership, the solution suggested by the Indonesian withholding agents would clearly negate any benefit for the pooling of pension assets in a Group Trust and, in practice, would be extremely challenging to manage if there are hundreds of participants in a Group Trust.

Japan

The 2002 Income Tax Convention and Final Protocol between the United States and Japan provides for a dividend withholding tax exemption for pension funds. However, the Japanese Tax Authorities take the position that a Group Trust is eligible for treaty benefits only to the extent that all the participants are treaty eligible. Proof of treaty eligibility is required at the participant level.

Article 3, paragraph 1, subparagraph (m) of the Convention between the United States and Japan defines a “pension fund” as:

any person that:

- (i) is organized under the laws of a Contracting State;
- (ii) is established and maintained in that Contracting State primarily to administer or provide pensions or other similar remuneration, including social security payments; and
- (iii) is exempt from tax in that Contracting State with respect to the activities described in clause (ii)."

Pursuant to Article 4 (Residence), paragraph 1, subparagraph (b) of the Convention, the term “resident of Contracting State” includes “a pension fund organized under the laws of that Contracting State”.

The dividend withholding tax exemption is set forth in Article 10 (Dividends), paragraph 3 which states that:

such dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is:

...

- (b) a pension fund that is a resident of the other Contracting State, provided that such dividends are not derived from the carrying on of a business, directly or indirectly, by such pension fund.

Pursuant to Article 22 (Limitation on Benefits), paragraph 1:

Except as otherwise provided in this Article, a resident of a Contracting State that derives income from the other Contracting State shall be entitled to all the benefits accorded to residents of a Contracting State for a taxable year by the provisions of other Articles of this Convention only if such resident satisfies any other specified conditions for the obtaining of such benefits and is ... :

- (e) a pension fund, provided that as of the end of the prior taxable year more than 50 percent of its beneficiaries, members or participants are individuals who are residents of either Contracting State.

When applying for treaty benefits, pensions are required to provide a disclosure that includes the total number of the fund's individual participants, as well as the number of participants that are U.S. residents. This disclosure is required as proof that U.S. resident participants meet the 50 percent threshold of the Limitation on Benefits provision. This declaration is required in addition to the Form 17, Limitation on Benefits statement. Further complications are experienced by Group Trusts, where in order to qualify for treaty relief at source, the Japanese Tax Authorities require that each pension participant in the Group Trust provide the same declaration.

The Japanese Tax Authorities commented as follows on the newly worded Form 6166:

They have no objection so far, as it could be understood that this rather clarify the status of group trust as pension like entity.

This does not mean that they will ease the documentation, but they are just acknowledging the wording.

Switzerland

Article 4 (Residence), subparagraph 1(c)(i) of the 1996 Tax Convention between the United States and Switzerland defines a "resident of a Contracting State" to include "a pension trust and any other organization established in that State and maintained exclusively to administer or provide pensions, retirement or employee benefits, that is established or sponsored by a person resident in that State under this Article ... that by reason of its nature as such is generally exempt from income taxation in that State."

Article 10 (Dividends), paragraph 3, as amended by the 2009 Protocol to the Convention, provides that

notwithstanding paragraph 2, dividends may not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is a pension or other retirement arrangement which is a resident of the other Contracting State, or an individual retirement savings plan set up in, and owned by a resident of, the other Contracting State, and the

competent authorities of the Contracting States agree that the pension or retirement arrangement, or the individual retirement savings plan, in a Contracting State generally corresponds to a pension or other retirement arrangement, or to an individual retirement savings plan, recognized for tax purposes in the other Contracting State.

Prior to the 2009 Protocol, Article 10(3) had provided for an exemption on dividend payments to a pension or retirement arrangement which is a resident of the other Contracting State where “the competent authority of [the source] State agrees that the pension or other retirement arrangement in the other Contracting State generally corresponds to a pension or other retirement arrangement recognized for tax purposes by that first-mentioned State.”

Article 22 (Limitation on Benefits), paragraph 2 states that “notwithstanding the preceding paragraph, an entity described in paragraph 1(c) of Article 4 (Resident) may claim the benefits of this Convention, provided that more than half of the beneficiaries, members or participants, if any, in such organization are persons that are entitled, under this Article, to the benefits of this Convention.”

We note that the U.S. and Swiss Competent Authorities recently announced the conclusion of an agreement on May 6, 2021 concerning the entitlement of certain U.S. and Swiss pension or other retirement arrangements, including individual retirement savings plans, to the benefits of the Article 10(3) exemption. The 2021 agreement supersedes an agreement which had been concluded by the U.S. and Swiss Competent Authorities in December 2004. Before commenting on the 2021 agreement, it is useful to lay out the situation as it related to Group Trusts under the 2004 agreement.

In the 2004 agreement, it was clarified that Group Trusts (specifically, “a group trust described in IRS Revenue Ruling 81-100 (as modified by IRS Revenue Ruling 2004-67)”) are treated as beneficial owners and therefore qualify for benefits under Article 10 (Dividends), paragraph 3 of the Tax Convention, albeit only with respect to participants that are section 401(a), 457(g), or 403(b) trusts. The agreement set forth documentation requirements for U.S. pension and retirement arrangements. Specifically, it provided that in order for a U.S. pension or other retirement arrangement to obtain the benefits of Article 10(3), it must provide the following documentation:

- a. a certification letter (Form 6166) issued by the IRS for the taxable year(s) in question; and
- b. a Swiss Form 82E to which the U.S. pension or other retirement arrangement has attached a statement that it does not control the company paying the dividends and that it satisfied the requirements of the relevant treaty article.

Despite these arrangements, the Swiss Tax Authorities continued to request to look through Group Trusts to their participants to establish treaty eligibility. Following the submission of withholding tax reclaims, Group Trusts received requests for additional

information from the Swiss Tax Authorities. The requests sought to establish beneficial ownership and also asked for the following:

- For each due date a supplement 20XX client list that shows names, complete address, the Taxpayer Identification Number (TIN) and the proportionate share of each participant in the Group Trust;
- A Form 6166 (relating to tax year 20XX for each participant figuring on the 20XX client list attached to the claim for refund). As the Competent Authority Agreement provided that a Group Trust described in RIF Revenue Ruling 81-100 qualified for benefits under Article 10(3) of the Swiss-U.S. Income Tax Treaty only with respect to participants that are trusts mentioned under subparagraph 3. a), b) or c) of the Competent Authority Agreement, this additional documentation is needed in order to verify if all participants meet these requirements;
- Detailed information about the participants' possibilities to invest in the Group Trust. Is it possible that participants will contribute securities as well?

Although the 2004 agreement laid out the documentation criteria for treaty benefits as agreed upon by the contracting parties, the requests for additional information from the Swiss Tax Authorities were seeking to look through the Group Trusts by requiring that each participant in the Group Trust provide a Form 6166, as well as a list disclosing detailed information pertaining to each participant.

Local subcustodians reached out to the Swiss Federal Tax Administration (FTA) during 2020 to discuss the newly worded Form 6166. The Swiss FTA inquired whether it is possible that non-U.S. domiciled pensions (e.g. Canada or Puerto Rico) could be part of a Group Trust and whether the IRS would issue this confirmation.

The FTA then commented that "*the new wording would not change the principle of look-through-basis review. The Swiss FTA should still be able to check the information, which will not change the information level requested so far.*"

Thus, the situation under the 2004 agreement was that the Swiss FTA was requiring detailed documentation concerning all the underlying plans participating in the Group Trust before granting benefits, and they did not view the newly worded Form 6166 as sufficient to change that practice.

The 2021 agreement identifies the U.S. pension or other retirement arrangements that "will qualify for benefits under Article 10(3) provided that they do not control the Swiss company paying the dividend and that they satisfy all additional applicable requirements set forth in the Treaty, including Article 22 (Limitation on Benefits)." Under the agreement, these include "A group trust described in IRS Revenue Ruling 81-100 (as amended by IRS Revenue Ruling 2014-24 and IRS Revenue Ruling 2011-1), provided that it is operated exclusively or almost exclusively to earn income for the benefit of pension funds

that are themselves entitled to benefits under the Treaty as a resident of the United States.”

The 2021 agreement does not specify the documentation requirements a Group Trust should meet to obtain Swiss tax relief under the Convention. The AGC members are hopeful that the language of the agreement will allow a Group Trust to qualify for full exemption on its Swiss dividends even if it has a limited number of Puerto Rico plans as participants (i.e., on the grounds that it is operated “almost exclusively” to earn income for the benefit of U.S. resident pension funds). The members are not yet sure, however, that the 2021 agreement will allow Group Trusts to obtain the Swiss tax exemption without producing the detailed participant-level documentation the Swiss FTA required under the 2004 agreement. A lack of improvement in that respect would continue to limit severely the ability of Group Trusts to obtain the Swiss treaty relief to which they are entitled.

Examples of Less Problematical Markets

Appendix D sets out examples of relevant treaty language from a number of U.S. treaties⁵ with countries that consistently grant treaty benefits to Group Trusts. It includes excerpts from a number of specific bilateral competent authority agreements or other agreements explicitly addressing the status of group trusts.

Netherlands

Article 35 (Exempt Pension Trusts) of the 1992 Income Tax Convention between the United States and the Netherlands provides that dividends and interest derived by a trust or other organization, constituted and operated exclusively to administer or provide benefits under one or more funds or plans established to provide pension, retirement or other employee benefits shall be exempt from tax in one of the States if it is a resident of the other State according to the laws of that other state and its income is generally exempt from tax in that other State.

Article 4 (Resident) defines a “resident of one of the States” as a person that is an exempt pension trust, as dealt with in Article 35 (Exempt Pension Trust) and that is a resident of that State according to the laws of that State.

Article 26 (Limitation on Benefits) goes on to describe a “qualified person” as a resident that is a person described in Article 35 (Exempt Pension Trusts), provided that (i) more than 50 percent of the person’s beneficiaries, members or participants are individuals who are residents of either State; or (ii) the organization sponsoring such person is entitled to the benefits of the Convention pursuant to this Article.

⁵ The examples are drawn from the following U.S. treaties: the 1992 Netherlands Treaty; the 1990 Spain Treaty as amended; and the 2002 U.K. Treaty.

Chapter II of the 2007 Competent Authority Agreement between the Netherlands and the United States further clarifies that a Group Trust described in IRS Revenue Ruling 81-100 and meeting the conditions of IRS Revenue Ruling 2004-67 is treated as a beneficial owner of dividends and interest derived from the Netherlands and is considered to qualify for benefits under Article 35 (Exempt Pension Trusts) of the tax treaty.

Group Trusts have been successfully filing reclaims pursuant to the tax treaty with the Netherlands. The reclaim application is supported by an IRS Form 6166 and proof of distribution.

Spain

Article 10 (Dividends) of the 1990 Convention between Spain and the United States as amended by the 2013 Protocol provides for a dividend withholding tax exemption to pension funds that are residents of the other Contracting State and are generally exempt from tax or subject to a zero rate of tax, provided the dividends are not derived from the carrying on of a trade or business by the pension fund or through an associated enterprise.

Paragraph 1 of Article 3 (General Definitions), subparagraph (j)(ii)(A) and (B) of the Convention define a United States pension fund as any person established in the United States that is generally exempt from income taxation in the United States and operated principally either (A) to administer or provide pension or retirement benefits; or (B) to earn income principally for the benefit of one or more persons established in the United States that are generally exempt from income taxation in the United States and operated principally to administer or provide pension or retirement benefits.

Paragraph 2(d), subparagraphs (ii)(A) and (B) of Article 17 (Limitation on Benefits) of the Convention goes on to describe a qualified person as a person described in Article 3(1)(j), provided that in the case of a person described in Article 3(1)(j)(ii)(B) (i.e., a person operated principally to earn income principally for the benefit of one or more exempt U.S. pension funds), **all** the persons for which such person earns the income are tax-exempt U.S. pension funds more than 50 percent of whose beneficiaries, members, or participants are individuals resident in either Contracting State.

Noteworthy is that the 2014 Corrective Notes to the 2013 Protocol and Memorandum of Understanding clarify that with reference to subparagraph (j) of paragraph 1 of Article 3 (General Definitions) of the Convention as amended by the 2013 Protocol, the term pension fund includes a Group Trust described in Revenue Ruling 81-100, as amended by Revenue Ruling 2004-67 and Revenue Ruling 2011-1 if it earns income **principally** for the benefit of one or more pension funds entitled to benefit under the Convention as residents of the United States (the original text had required that “each participant” in the Group Trust be a pension fund entitled to benefit under the Convention as a U.S. resident).

The Treasury Department's 2014 Technical Explanation also notes that the definition of pension funds ensures that if a fund is a collective fund that earns income for the benefit of other funds, then in order for the collective fund to qualify as a resident of a Contracting State, **substantially** all of the funds that participate in the collective fund must be residents of the same Contracting State as the collective fund and must be entitled to benefits under the Convention in their own right.

The Protocol and the Treasury Department's Technical Explanation seem to best address the Group Trust being able to make claims, despite the possibility of the Group Trust including assets of Puerto Rican plans. Group Trusts have been successfully filing reclaims pursuant to the tax treaty with the Spain. The reclaim application is supported by an IRS Form 6166.

United Kingdom

Article 10 (Dividends) of the 2001 Convention between the United Kingdom and the United States provides for a dividend withholding tax exemption for a pension scheme, provided that such dividends are not derived from the carrying on of a business, directly or indirectly, by such pension scheme.

Article 3 (General Definitions) paragraph 1, subparagraph (o) defines a pension scheme as any plan, scheme, fund, trust or other arrangement established in a Contracting State which is (i) generally exempt from income taxation in that State; and (ii) operated principally to administer or provide pension or retirement benefits or to earn income for the benefit of one or more such arrangements.

The Treasury Department's Technical Explanation of Article 3, paragraph 1, subparagraph (o) provides that the:

reference to entities that are operated principally to earn income for the benefit of one or more such arrangements is intended to ensure that income earned by group trusts, which invest the assets of pension schemes but do not administer pension benefits, will nevertheless qualify for benefits. The term "pension scheme" also includes any scheme identical or substantially similar to the foregoing schemes that are established pursuant to legislation introduced after the date of signature of the Convention.

Group Trusts have been successfully filing reclaims pursuant to the tax treaty with the United Kingdom. The reclaim application is supported by an IRS Form 6166.

Sample Rejection Letters

The rejection letters issued to Group Trusts by some foreign governments and provided as **Appendix E** suggest that they are looking through to the underlying plans as the

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beneficial owners of the Group Trust income, and that entitlement to treaty relief must be based on the status of those plans.

Recommendations

We encourage the USCA to approach individual foreign governments directly to reach the best possible agreement with the treaty partners. The most favorable agreement would be one in which the treaty partners agreed to grant treaty benefits, including enhanced treaty benefits for pension funds, to Group Trusts based upon the receipt of Form 6166 for the Group Trust itself. If the treaty partner requires further documentation from the Group Trust, a simple self-certification, along the lines of the document required by the Belgian tax authorities (see **Appendix F**) would be desirable. In that self-certification, the Group Trust certifies that the dividends are derived from assets invested in the framework of the basic activity of a pension fund to provide retirement benefits and undertakes to communicate immediately to the Belgian Tax Authorities any amendment affecting the correctness of the certificate. We also encourage initiating negotiations of a Memorandum of Understanding (MoU) with each treaty partner specifically addressing treaty entitlement of Group Trusts.

* * * * *

Once again, the AGC appreciates the attention the USCA pays to making sure U.S. investors are effectively able to benefit from the foreign treaty benefits to which they are entitled. Our members would of course be willing to meet with you to discuss these issues or to answer any questions you may have. We look forward to your thoughts and to the possibility for future cooperation.

Sincerely yours on behalf of the Association,



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Attachments:
Appendix A: Summary of Revenue Ruling 81-100 and follow-up guidance

Appendix B: Characteristic Structure and Operation of Group Trusts

Appendix C: Sample treaty language from a selection of treaties with negative outcomes

Appendix D: Sample treaty language from a selection of treaties with positive outcomes

Appendix E: Sample group trust rejection letters

Appendix F: Belgian self-certification

APPENDIX A

APPENDIX A

SUMMARY OF REVENUE RULING 81-100 AND FOLLOW-UP GUIDANCE

– **Rev. Rul. 81-100 Group Trusts** -- IRS rules allow participation by

- employer's pension and profit-sharing trusts exempt under 501(a) / 401(a);
- IRAs exempt under 408(e);
- Roth IRAs described in 408(a);
- governmental plans under 457(b);
- custodial accounts under 403(b)(7);
- retirement income accounts under 403(b)(9);
- governmental retiree benefit plans under 401(a)(24);
- Puerto Rican plans described in ERISA section 1022(i)(1)

– **Rev. Rul. 81-100** – allows pooling of IRAs exempt under 408(e) and employer's pension and profit-sharing trusts exempt under 501(a) / 401(a); such group trusts are exempt from tax under 501(a) with respect to its funds that equitably belong to participating trusts described in 401(a) and also is exempt from tax under 408(e) with respect to its funds that equitably belong to IRAs that satisfy the requirements of 408

– **Rev. Rul. 2004-67** – extends ability to participate in group trusts to eligible governmental plans under 457(b) and clarifies ability of Roth IRAs described in 408(a) and deemed IRAs described in 408(1) to participate in these trusts

– **Rev. Rul. 2011-1** – permits in some cases the participation in group trusts of custodial accounts under 403(b)(7), retirement income accounts under 403(b)(9), and governmental retiree benefit plans under 401(a)(24); also extends by one year existing transitional relief under RR 2008-40 regarding Puerto Rican plans

– **Notice 2012-6** -- extends the ability of group trusts to include assets of an ERISA section 1022(i)(1) plan (i.e., retirement plans qualified under the Puerto Rican Code) pending the issuance of IRS guidance on their eligibility to participate in group trusts

– **Rev. Rul. 2014-24** -- a retirement plan that is qualified only under the Puerto Rico Code, and that is described in section 1022(i)(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") ("section 1022(i)(1) plan"), may be a group trust retiree benefit plan eligible to participate in an 81-100 group trust provided requirements of RR 2011-1, as modified by 2014-24, are met; also, a separate account maintained by an insurance company may invest in an 81-100 group trust without affecting the tax status of either the group trust or the group trust retiree benefit plans participating in the group trust as long as (1) all of the assets in the separate account consist solely of assets of group trust retiree benefit plans as defined in Rev. Rul. 2011-1 and as modified by this revenue ruling, (2) the insurance company maintaining the separate account enters into a written arrangement with the trustee of the group trust consistent with the requirements of Rev. Rul. 2011-1 (including the requirement that no part of the corpus or income of any of the group trust retiree benefit plans be used for, or diverted to, any

purpose other than for the exclusive benefit of the plan participants and their beneficiaries), and (3) the assets of the separate account are insulated from the claims of the insurance company's general creditors

APPENDIX B

Appendix B

Characteristic Structure and Operation of Group Trusts

The purpose of this Appendix is to provide a brief explanation of the characteristics for United States (U.S.) pension trusts organized and operating in accordance with Internal Revenue Service (IRS) Revenue Ruling 81-100 (Group Trusts)¹ and the prevalent use of this entity type as a collective investment fund scheme for the majority of U.S. qualified retirement plans.

Organization and Operations

A Group Trust represents a pooling of assets beneficially owned by qualifying U.S. retirement plans.² Most large U.S. investment management companies of institutional assets operate a Group Trust to offer qualified retirement plans cost-effective and efficient access to global markets, while retaining their tax-exempt status for U.S. federal income tax purposes and abroad. Thus, due to the significant U.S. regulatory requirements and standards of care to operate a qualified retirement plan, the IRS set forth equally stringent criteria on the types of plans permissible in a Group Trust in order for the trustee to retain its status.

The following bullets highlight the salient aspects of a Group Trust and common uses by U.S. investment managers of institutional qualified requirement plan assets.

- **Establishment and Compliance Requirements of a Group Trust.** The IRS, in Rev. Rul. 81-100, 1981-1 C.B. 326, provides that a trust operating exclusively for the benefit of qualifying pension plans may pool the assets of those other qualifying plans while retaining tax exempt status for U.S. federal income tax purposes under U.S. Internal Revenue Code sections 501(a) and 401(a). For obvious scalability and cost drivers, it is common practice amongst investment management companies to operate a pool of pension assets within a collective trust (qualifying under Rev. Rul. 81-100 as a Group Trust), as opposed to individual accounts on behalf of each qualified retirement plan (often referred to as a separately managed account). In order to create a Group Trust, an investment manager or other fiduciary service provider will establish a master pension trust in accordance with the Employee Retirement Income Security Act

¹ Department of the Treasury - Internal Revenue Service - Revenue Ruling 81-100, 1981-1 C.B. 326; clarified and modified by Rev. Rul. 2004-67; modified by Rev. Rul. 2011-1.

²This document limits discussion to the use of Rev. Rul. 81-100 Group Trusts by institutional retirement plans, whereas the intent of this supplement is to offer additional detail highlighting the intended benefit for the use of this structure, in particular, equal tax treatment for cross border investment purposes and qualifications for benefits under U.S. double taxation treaties.

of 1974 (ERISA).³ The master trust, which is designed to qualify as a Group Trust under Rev. Rul. 81-100, contains all reporting and disclosure, participation, vesting, funding, fiduciary responsibility, and administration provisions as required by both the Department of Labor (DOL) and the IRS. It is critical to note that a Group Trust must adhere to the same regulatory requirements enforced by the DOL and IRS as a qualified retirement plan in order to maintain its tax-exempt status. Compliance failures result in a loss of tax-exempt status and inability to pool qualified retirement plan assets as defined under Rev. Rul. 81-100 and/or to enjoy any associated benefits. Within a Group Trust, a trustee may create many plans, which represent a specific and unique investment strategy to accommodate the investment objectives of the qualified retirement plan.

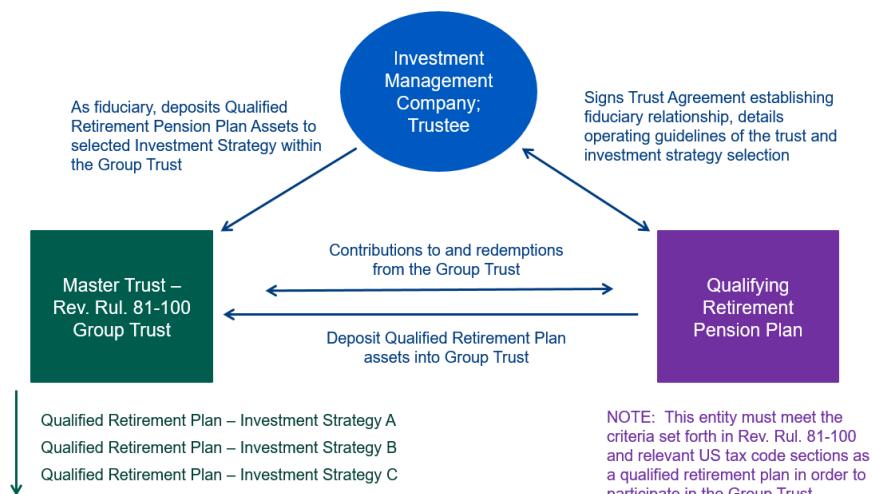
- **Establishment Fiduciary Responsibility for Trustee of Rev. Rul. 81-100 Group Trust.** As noted, a common use of the Group Trust is as a collective investment fund to manage the assets of institutional qualifying retirement plans. To establish a fiduciary relationship, the trustee of a Group Trust will enter into a master trust agreement with the trustee of the qualified retirement plan. By signing this agreement, the qualified retirement plan grants the trustee of the Group Trust authority to manage the assets as agreed to in the terms of the master trust agreement. Generally, this enables the trustee of the Group Trust to serve as fiduciary of the qualified retirement plan assets for purposes of executing the instructed investment strategy and in accordance with the operating guidelines of the master trust agreement. Based on the direction of the qualified retirement plan, the trustee of the Group Trust will deposit the assets in the corresponding plan of the Group Trust representing the investment objective of the qualified retirement plan. The trustee of a Rev. Rul. 81-100 Group Trust may enter into a master trust agreement with the maximum allowable number of qualified retirement plans under the regulations.
- **Custodial Bank Accounts.** The assets of an institutional qualified retirement plan often exceed hundreds of billions U.S. dollars. Generally, in order for institutional qualified retirement plans to execute an investment strategy that requires the purchase and sale of common stock or debt traded on an established exchange, the plan will engage a custodial bank. The custodial bank will service the plan's assets and facilitate all cash and securities activity as instructed by the qualified retirement plan. All cash and securities accounts used to facilitate the activity of the plan are established in the name of the plan as beneficial owner of the assets. Managing the investment process directly is costly and an administrative burden for a retirement plan (even more complex for

³ The Employee Retirement Income Security Act of 1974 (ERISA) is a U.S. law designed to protect the benefit rights of participants and beneficiaries of employee pension and welfare plans. The Department of Labor enforces the regulations under ERISA.

portfolios with cross-border assets), and many plans engage the services of an investment manager to execute the investment strategy on behalf of the retirement plan. In the case where a retirement plan deposits its assets into a Group Trust, the plan is able to shift the execution of its investment strategy to the asset manager, without jeopardizing its tax-exempt status as a qualifying retirement plan. Further, due to the nature of the Group Trust, the retirement plan retains its pro rata ownership in the assets contributed to the trust. Thus, the retirement plan enjoys the same tax benefits and ownership of assets without the cost and operations necessary to manage the plan's assets (all cash and securities accounts are registered in the name of the Group Trust with its custodial bank).

- **Cross-Border Tax Treatment of Qualified Retirement Plans and Group Trusts.** A primary benefit for a qualified retirement plan to deposit its assets in a Group Trust is the ability to retain its tax-exempt status as a qualified retirement plan domestically and abroad under U.S. double taxation treaties (DTTs). To enjoy treaty benefits for income paid on its cross-border investments, a Group Trust must complete Form 8802 [Application for U.S. Residency Certification] for filing with the IRS in order to obtain a U.S. Form 6166 tax letter confirming its status as a U.S. resident pension trust. The IRS will issue a Form 6166 in the name of the Group Trust, with acknowledgement of its status as a Group Trust described in Rev. Rul. 81-100. Most U.S. treaty partners acknowledge a Rev. Rul. 81-100 Group Trust as qualifying for favorable tax rates applicable to pension trust or funds and apply those benefits on payment. Further, most foreign tax authorities will also extend the same statutory relief (if any) available to foreign qualifying retirement plans to Rev. Rul. 81-100 Group Trusts.

The following diagram is a high-level diagram of the use of a Group Trust by a qualified retirement plan.



APPENDIX C

APPENDIX C
Sample Treaty Language Regarding Group Trusts in Problem Markets

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
DENMARK		
<p>Denmark- United States: 1999 Income Tax Convention as Amended</p> <p>Article 3</p> <p>General Definitions</p> <p>1. For the purposes of this Convention, unless the context otherwise requires:</p> <p>b) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes according to the laws of the state in which it is organized;</p> <p>c) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State, and an enterprise carried on by a resident of the other Contracting State; the terms also include an enterprise carried on by a resident of a Contracting State through an</p>		<p>Denmark- United States Technical Explanation of the Protocol</p> <p>ARTICLE 2 / PARAGRAPH 2</p> <p>The term "beneficial owner" is not defined in the Convention, and is, therefore, defined as under the internal law of the country imposing tax (<i>i.e.</i>, the source country). The beneficial owner of the dividend for purposes of Article 10 is the person to whom the dividend income is attributable for tax purposes under the laws of the source State. Thus, if a dividend paid by a corporation that is a resident of one of the States (as determined under Article 4 (Residence)) is received by a nominee or agent that is a resident of the other State on behalf of a person that is not a resident of that other State, the dividend is not entitled to the benefits of this Article. However, a dividend received by a nominee on</p>

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
<p>entity that is treated as fiscally transparent in that Contracting State;</p> <p>h) the term "national of a Contracting State," means:</p> <p style="margin-left: 2em;">(ii) any legal person, partnership or association deriving its status as such from the laws in force in that State;</p> <p>Article 4</p> <p>Residence</p> <p>1. Except as provided in this paragraph, for the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, citizenship, place of management, place of incorporation, or any other criterion of a similar nature.</p> <p>a) The term "resident of a Contracting State" does not include any person who is liable to tax in that State in respect only of income from sources in that State or of profits attributable to a permanent establishment in that State.</p>		<p>ARTICLE 2/ PARAGRAPH 3</p> <p>Paragraph 3 provides exclusive residence-country taxation (i.e., an elimination of withholding tax) with respect to certain dividends distributed by a company that is a resident of one Contracting State to a resident of the other Contracting State. As described further below, this elimination of withholding tax is available with respect to certain inter-company dividends, with respect to qualified governmental entities, and with respect to pension funds.</p> <p>Subparagraph (c) of paragraph 3 of Article 10 of the Convention provides that dividends beneficially owned by a pension fund described in subparagraph e) of paragraph 2 of Article 22 (Limitation of Benefits) may not be taxed in the Contracting State of which the company paying the dividends is a resident, unless such dividends are derived from the carrying on of a business, directly by the pension fund or indirectly, through an associated enterprise.</p> <p>This rule is necessary because pension funds normally do not pay tax (either through a general exemption or because reserves for future pension liabilities effectively offset all of the fund's income), and therefore cannot benefit from a</p>

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
<p>b) A legal person organized under the laws of a Contracting State and that is generally exempt from tax in that State and is established and maintained in that State either:</p> <p style="margin-left: 40px;">(ii) to provide pensions or other similar benefits to employees, including self-employed individuals, pursuant to a plan</p> <p style="margin-left: 40px;">is to be treated for purposes of this paragraph as a resident of that Contracting State.</p> <p>Article 10</p> <p>Dividends</p> <p>3. Notwithstanding the provisions of paragraph 2, such dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner is:</p> <p style="margin-left: 40px;">c) a pension fund, which is described in subparagraph e) of paragraph 2 of Article 22 (Limitation of Benefits), that is a resident of the other Contracting State, provided that such dividends are not derived from the carrying on of a business by the</p>		<p>foreign tax credit. Moreover, distributions from a pension fund generally do not maintain the character of the underlying income, so the beneficiaries of the pension are not in a position to claim a foreign tax credit when they finally receive the pension, in many cases years after the withholding tax has been paid. Accordingly, in the absence of this rule, the dividends would almost certainly be subject to unrelieved double taxation</p> <p>ARTICLE 3 / Tax-Exempt Organizations -- Subparagraph 2(d)</p> <p>Subparagraphs 2(d) and 2(e) provide rules by which tax-exempt organizations described in Article 4(1)(b)(i) and pension funds will be entitled to all of the benefits of the Convention. Pensions – Subparagraph 2(e)</p> <p>A legal person, whether tax-exempt or not, that is organized under the laws of either Contracting State to provide pension or similar benefits to employees (including self-employed individuals) pursuant to a plan will qualify for benefits if, as of the close of the end of the prior taxable year, more than 50 percent of the pension's beneficiaries, members or participants are individuals resident in either Contracting State. For purposes of this provision, the term "beneficiaries"</p>

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
<p>pension fund or through an associated enterprise.</p> <p>Article 22</p> <p>Limitation of Benefits</p> <p>2. A resident of a Contracting State shall be entitled to all the benefits of this Convention only if such resident is</p> <p>e) a legal person, whether or not exempt from tax, organized under the laws of a Contracting State to provide a pension or other similar benefits to employees, including self-employed individuals, pursuant to a plan, provided that more than 50 percent of the person's beneficiaries, members or participants are individuals resident in either Contracting State;</p>		<p>should be understood to refer to the persons receiving benefits from the pension fund.</p>
<p>Note re Denmark</p> <ul style="list-style-type: none"> SKTS allows partial tax treaty refunds based on the standard treaty rate of 15%. Treaty exemption available to pensions is denied to 81-100 group trusts. SKTS provided the following comment regarding the newly worded 6166 issued to Rev. Rul. 81-100 Group Trust: <i>"To be entitled to full treaty exemption it is a condition that the beneficial owner of the shares is a legal person organized to provide pension or other similar benefits. This is stated in article 10(3)(c) and 22(2)(e) of the Double Taxation Agreement between</i> 		

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
<p><i>Denmark and the United States of America. The reason why the Danish Tax Authorities has partially been rejecting refund to U.S. 81-100 Group Trusts is, that it is the participating pension funds that have the obligation to provide pension and not the Group Trust itself. Thus, the U.S. 81-100 Group Trusts do not meet the condition stated in article 10 (3)(c) and 22(2)(e) of the Double Taxation Agreement. Therefore, the U.S. 81-100 Group Trusts are only entitled to receive refund of 12% according to article 10 (2)(b). The new wording of the CoR, the U.S. 81-100 Group Trusts are still separate legal entities subject to American taxation. Thus, the U.S. 81-100 Group Trusts are still considered as separate legal entities without any obligation to provide pension. Therefore, there have been no changes that can lead to changes in the perception of the eligibility for full treaty exemption. Based on the above argumentation the new wording of the CoR will not change the Danish Tax Agency's perception of the eligibility for full treaty exemption regarding U.S. 81-100 Group Trusts."</i></p>		

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
FRANCE		
<p>France – United States: 1994 Income and Capital Tax Convention and Notes, as Amended</p> <p>Article 4</p> <p>Resident</p> <p>2. (b) The term "resident of a Contracting State" includes:</p> <p>(ii) a pension trust and any other organization established in that State and maintained exclusively to administer or provide retirement or employee benefits that is established or sponsored by a person that is a resident of that State under the provisions of this Article; and any not-for-profit organization established and maintained in that State, provided that the laws of such State or (in the case of the United States) a political subdivision thereof limit the use of the organization's assets, both currently and upon the dissolution or liquidation of such organization, to the accomplishment of the purposes that serve as the basis for such organization's exemption from income tax; notwithstanding that all or part of the income of such trust, other organization, or not-for-profit organization may be exempt from income taxation in that State</p>		<p>ARTICLE 4</p> <p>Resident</p> <p>Subparagraph 2(b) clarifies that the "liable to tax" language of paragraph 1 is not meant to deny residence status, for purposes of treaty benefits, to the Government of a Contracting State or to certain organizations to which that State grants tax-exempt status. ... Subparagraph 2(b)(ii) clarifies that pension trusts, other retirement or employee benefit organizations, and not-for-profit organizations qualify as residents if they meet the conditions specified in that subparagraph.</p> <p>ARTICLE 10</p> <p>Dividends (Prior to 2009 Protocol)</p> <p>The Convention provides a partial dividend tax credit to certain other classes of U.S. shareholders. Subparagraph 4(e) provides U.S. residents a credit equal to 30/85 of the "avoir fiscal" available to a French resident shareholder in the case of dividends derived and beneficially owned by: (1) the United States, a state or local authority of the United States¹ or any agency or instrumentality of such a governmental body, from the investment of retirement assets; (2) a pension trust, retirement or employee benefit</p>

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
<p>Article 10</p> <p>Dividends (Prior to 2009 Protocol)</p> <p>4(e) (i) A resident of the United States described in subparagraph (ii) that does not own, directly or indirectly, 10 percent or more of the capital of a company that is a resident of France, and that derives and beneficially owns dividends paid by such company that, if derived by a resident of France, would entitle such resident to a tax credit ("avoir fiscal"), shall be entitled to a payment from the French Treasury equal to 30/85 of the amount of such tax credit ("avoir fiscal"), subject to the deduction of the tax provided for in subparagraph (b) of paragraph 2;</p> <p>(ii) The provisions of subparagraph (i) shall apply to:</p> <ul style="list-style-type: none"> (aa) a person described in subparagraph (b)(i) of paragraph 2 of Article 4 (Resident), with respect to dividends derived by such person from the investment of retirement assets; (bb) a pension trust and any other organization described in subparagraph (b)(ii) of paragraph 2 of Article 4 (Resident); and (cc) an individual, with respect to dividends beneficially owned by such individual and derived from investment in a retirement arrangement under which the contributions or the accumulated earnings 		<p>organization, or tax-exempt organization described in subparagraph (b)(ii) of Article 4 (Resident); or (3) an individual, from investments in a retirement arrangement under which either the contributions are deductible for U.S. tax purposes or U.S. tax on the accumulated earnings is deferred. The negotiators agreed that these three categories cover all investments by U.S. pension plans or other arrangements described in Code sections 401(a), 403, 408, and 457. However, the scope of subparagraph 4(e) is not limited to plans and arrangements described in one of these sections. For instance, a plan or arrangement described in Code section 414(d) will qualify for the avoir fiscal provided under subparagraph 4(e) if it satisfies the requirements of that subparagraph, even if it is not described in Code section 457. Any other plan or arrangement that satisfies the requirements of subparagraph 4(e) will be entitled to the avoir fiscal provided under that subparagraph, even if it is not a qualified plan under U.S. domestic law.</p> <p>ARTICLE 30 Limitation on Benefits of the Convention</p> <p>Subparagraphs 1(e) and 1(f) provide that pension organizations, not-for-profit organizations, and certain investment entities that are residents of a Contracting State under Article 4 (Resident) are</p>

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
<p>receive tax- favored treatment under U.S. law.</p> <p>Article 30 Limitation on Benefits of the Convention</p> <p>2. A resident of a Contracting State shall be entitled to all the benefits of this Convention if the resident is:</p> <p>d) a person described in clause (ii) of subparagraph (b) of paragraph 2 of Article 4 (Resident) of this Convention, provided that</p> <ul style="list-style-type: none"> (i) in the case of a pension trust and any other organization established in a State and maintained exclusively to administer or provide retirement benefits that is established or sponsored by a person that is a resident of that State under the provisions of Article 4, more than 50 percent of the person's beneficiaries, members or participants are individuals resident in either Contracting State; or (ii) the organization sponsoring such person is entitled to the benefits of this Convention pursuant to this Article. 		<p>entitled to benefits from the other Contracting State if more than half of their beneficiaries, members, participants, or owners are persons entitled, under this Article, to the benefits of the Convention.</p>

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE

Note re France:

- Pursuant to a 2012 statement of practice, Rev. Rul. 81-100 group trusts seeking tax treaty benefits in France by means of the standard tax reclaim procedure must provide the following documentation:
 - Form 5000 and Form 5001 for the group trust.
 - A CoR for the group trust
 - A list of all the members of the group trust
 - A list of all member of the group trust that are US pension funds covered by the following Internal Revenue Code sections, where all members must be established and managed exclusively for the purpose of providing retirement benefits and hold less than 10 percent of the voting shares of the French distributing entity:
 - IRC Section 401(a) Qualified Retirement Plans;
 - IRC Section 403(b) Tax Deferred Annuity Contracts;
 - IRC Section 457 Deferred Compensation Plans; all of which are established and managed exclusively for the purpose
 - An attestation stating the percentage of the rights to French dividends received by the collective trust, attributable to pension funds that come under the referenced IRC sections (a certificate of residence for each pension fund).
 - An attestation stating the percentage of right to French dividends received by the collective trust, attributable to pension funds that come under the referenced IRC sections.
 - Investors need to produce the reference documents on annual basis.
- Local subcustodian banks provided the following commentary with respect to the newly worded 6166s issued to Rev. Rul. 81-100 Group Trusts. *"Please note that tax exempted US Pension Funds are eligible to the reduced rate if they are established and managed as: Qualified Retirement Plans (as described in Sect. 401(a) & (b) IRC), Tax deferred "annuity contracts" (Sect. 403 (b) IRC) and "Deferred compensation plans" (Sect. 457 IRC). The French Tax Authorities will very probably reply that there is no confirmation that the underlying entities are indeed established and managed according to these sections of the IRC."*
- One AGC member has recently received an indication from the FTA that they would not require documentation at the participant level if the Group Trust's determination letter limited participation "to only pension funds 401(a), Government plans 401(a) and IRA". Another member has reported that the FTA has expressed a willingness to forgo documentation of individual participants provided the determination letter restricts participation to section 401(a) plans and the list of participants does not include any IRAs. Neither view has yet been confirmed as an official FTA position, and in any event these approaches may not

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
be helpful to those Group Trusts whose determination letters allow for participation by a broader range of participants pursuant to applicable IRS guidance (see Appendix A).		

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
GERMANY		
<p>Germany - United States: 1989 Income and Capital Tax Convention, Final Protocol, and Notes, as Amended</p> <p>Article 10 Dividends</p> <p>3. Notwithstanding the provisions of paragraph 2, such dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner is:</p> <p>b) a pension fund that is a resident of the other Contracting State, provided that such dividends are not derived from the carrying on of a business, directly or indirectly, by such pension fund.</p> <p>11. The term "pension fund" as used in this Article means any person that:</p> <ul style="list-style-type: none"> a) is established under the laws of a Contracting State; b) is established and maintained in that Contracting State primarily to administer or provide pensions or other similar remuneration, including social security payments, disability pensions and widow's pensions or to earn income for the benefit of one or more of such persons; and 	<p>Germany - United States: 2012 Competent Authority Agreement</p> <p>The competent authorities of Germany and the United States also clarify that the term "pension fund" within the meaning of Article 10(11) includes the following entities and that dividends derived by such entities are eligible for benefits under Article 10(3)(b), as if the entity is the beneficial owner of the dividends, if all other requirements of the Treaty are satisfied:</p> <p>2) A group trust described in IRS Revenue Ruling 81-100, as modified by IRS Revenue Rulings 2004-67 and 2011-1, provided that all of its participants are pension funds within the meaning of Article 10 (11) that are established in the United States.</p>	<p>Technical Explanation of the Protocol</p> <p>Article IV</p> <p>Paragraph 3</p> <p>Subparagraph (b) of paragraph 3 of Article 10 provides that dividends received by a pension fund may not be taxed in the Contracting State of which the company paying the dividend is a resident, unless such dividends are derived from the carrying on of a business, directly or indirectly, by the pension fund.</p> <p>The rule is necessary because pension funds normally do not pay tax (either through a general exemption or because reserves for future pension liabilities effectively offset all of the fund's income), and therefore cannot benefit from a foreign tax credit. Moreover, distributions from a pension fund generally do not maintain the character of the underlying income, so the beneficiaries of the pension are not in a position to claim a foreign tax credit when they finally receive the pension, in many cases years after the withholding tax has been paid. Accordingly, in the absence of this rule,</p>

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
<p>c) is either,</p> <p style="margin-left: 2em;">aa) in the case of the United States, exempt from tax in the United States with respect to the activities described in subparagraph b) of this paragraph, or</p> <p style="margin-left: 2em;">bb) in the case of the Federal Republic of Germany, a plan the contributions to which are eligible for preferential treatment under the Income Tax Act.</p> <p>Article 28 Limitation on Benefits</p> <p>2. A resident of one of the Contracting States is a qualified person for a taxable year only if such resident is either:</p> <p style="margin-left: 2em;">e) an entity organized under the laws of one of the Contracting States and established and maintained in that Contracting State to provide, pursuant to a plan, pensions or other similar benefits to employed and self-employed persons, provided that:</p> <p style="margin-left: 2em;">aa) more than 50 percent of the entity's beneficiaries, members or</p>		<p>the dividends would almost certainly be subject to unrelieved double taxation.</p> <p>Paragraph 11</p> <p>Paragraph 11 defines a pension fund to mean a person that is organized under the laws of a Contracting State and that is established and maintained in that State primarily to administer or provide pensions or other similar remuneration (including social security payments, disability pensions and widow's pensions) or to earn income for the benefit of one or more such persons, and in the case of the United States, is exempt from tax in the United States with respect to such activities, or in the case of the Federal Republic of Germany, is a plan the contributions to which are eligible for preferential treatment under the Income Tax Act.</p>

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
<p>participants are individuals resident in either Contracting State; or</p> <p>bb) the organization sponsoring such person is entitled to the benefits of the Convention pursuant to this paragraph</p>		
<p>Note re Germany:</p> <ul style="list-style-type: none"> • 2012 competent authority agreement clarifies that the following entities qualify as pension funds: a group trust described in RR 81-100, provided that all of its participants are pension funds that are established in the US • The German Tax Authorities have provided the following commentary: "The Group Trust itself is not the entitled applicant, moreover, the underlying clients are entitled to get the refund in principle. Therefore, the GTA have asked for a list of all underlying beneficiaries and their respective entitlement to validate the pre-conditions for a tax refund. Next to this, the GTA is in contact with the IRS to clarify such matters as the actual procedures, given different information and opinions, are not fully clear at this moment in time. Reportedly, the processing of these reclaim items is currently on hold at the GTA until a clarification and agreement has been reached with the IRS." • When filing tax reclaims with the German Tax Authorities, Group Trusts receive requests for additional information in the form of 6166s and Letters of Determination as proof that each participant in the Group Trust is a treaty eligible pension. 		

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
INDONESIA		
<p>Indonesia – United States: 1988 Income Tax Convention, as Amended</p> <p>Article 3</p> <p>General Definitions</p> <p>(2) Any other term used in this Convention and not defined in this Convention shall, unless the context otherwise requires, have the meaning which it has under the laws of the Contracting State whose tax is being determined. Notwithstanding the preceding sentence, if the meaning of such a term under the laws of one of the Contracting States is different from the meaning of the term under the laws of the other Contracting State, or if the meaning of such a term is not readily determinable under the laws of one of the Contracting States, the competent authorities of the Contracting States may, in order to prevent double taxation or to further any other purpose of this Convention, establish a common meaning of the term for the purposes of the Convention.</p> <p>Article 4</p> <p>Fiscal Residence</p> <p>(1) In this Convention, the term "resident of a Contracting State" means any person</p>		<p>Article 3</p> <p>General Definitions</p> <p>The definitions of the terms "person", "company", and "international traffic" are consistent with the definitions in the U.S. Model Draft Income Tax Convention of June 1981.</p> <p>Paragraph 2 provides that, in general, undefined terms shall be defined according to the law of the Contracting State whose tax is being determined. However, if the meaning differs from that under the law of the other Contracting State, or if it is not readily determinable, the competent authorities may establish a common meaning for the purposes of applying the Convention.</p> <p>Article 4</p> <p>Fiscal Residence</p> <p>This Article defines those persons who are residents of the United States or Indonesia for purposes of the Convention. Paragraph 1 begins by Stating that a person who is liable to tax as a resident under the taxation laws of a Contracting State is a resident of that State. A U.S. partnership, estate, or trust is considered</p>

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
<p>who under the laws for that State is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature. For purposes of United States tax, in the case of a partnership, estate, or trust, the term applies only to the extent that the income derived by such person is subject to United States tax as the income of a resident either in its hands or in the hands of its partners or beneficiaries.</p> <p>Article 11</p> <p>Dividends</p> <p>(2) However, if the beneficial owner of the dividends is a resident of the other Contracting State, the tax charged by the first-mentioned State may not exceed:</p> <p style="padding-left: 40px;">(b) 15% of the gross amount of the dividends in all other cases.</p>		<p>a U.S. resident only to the extent that the income it derives is subject to U.S. tax as the income of a U.S. resident, either in its hands or in the hands of its partners or beneficiaries. (A similar rule is not needed in the case of Indonesia, which generally taxes partnerships and trusts as corporations and estates as individuals.) The references to "liable to tax" and "subject to tax" in paragraph 1 do not cause a tax-exempt organization to lose its status as a resident.</p> <p>Article 11</p> <p>Dividends</p> <p>Dividends may be taxed in both Contracting States, in the country of source and the country of residence. However, the tax imposed by the country of source may not exceed 15 percent of the gross amount of the dividends when the beneficial owner is a resident of the other Contracting State. In the absence of the Convention, the U.S. tax rate would be 30 percent and the Indonesian rate 20 percent.</p>
<p>Article 21</p> <p>Private Pensions and Annuities</p> <p>1) Except as provided in Article 18 (Government Service), pensions and other similar remuneration in consideration of past employment derived from sources within one of the Contracting States by a resident of the</p>		<p>Article 21</p> <p>Private Pensions and Annuities</p> <p>Paragraph 1 provides that pensions in respect of past employment which are derived by a resident of one of the</p>

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
<p>other Contracting State may be taxed by both Contracting States. If the beneficial owner of pensions and other similar remuneration is a resident of the other Contracting State, the tax so charged may not exceed 15 percent of the gross amount thereof.</p> <p>(4) The term "pensions and other similar remuneration", as used in this Article, means payments made by reason of retirement or death in consideration for services rendered, or by way of compensation for injuries received in connection with past employment.</p>		<p>Contracting States from private sources in the other Contracting State may be taxed by both States, but the tax imposed by the State of source may not exceed 15 percent of the gross amount paid. Article 7 (Source of Income) defines the source of a pension as where the services to which it relates were performed. This provision does not apply to pensions in respect of government service, which are covered in Article 18 (Government Service), or to social security benefits, which are covered in Article 22 (Social Security Payments). The rule of this paragraph differs from that of the U.S. Model, which reserves the exclusive right to tax private pensions to the country of residence of the recipient (except that the United States, under the "saving clause" may also tax its nonresident citizens); it is a concession to Indonesia's interest, as a developing country, in preserving source-basis taxation.</p> <p>Paragraphs 4, 5, and 6 define the terms "pensions and other similar remuneration", "annuities", and "alimony" as used in this Article. A pension provided in the form of an annuity shall be taxed as a pension.</p>
<ul style="list-style-type: none"> • Note re Indonesia • Withholding agents determine treaty eligibility of investors. Some withholding agents maintain that Rev. Rul. 81-100 Group Trusts are not beneficial owners and the language of the (previous) CoR confirms this by referring to the entity as a "group trust arrangement." Other withholding agents determine treaty eligibility based on how investors complete part V of the DGT form. 		

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
<ul style="list-style-type: none"> Having reviewed the newly worded 6166s issued to Rev. Rul. 81-100 Group Trusts, the withholding agent continues to maintain that the group trust is not a single beneficial owner. <p><i>"The main issue here is, that the entity is a group trust (meaning they are not the beneficial owner). The below new wording on 6166 form only declare the type of various client behind this entity (it does not change the fact that the entity itself is still a group trust. Therefore, since group trust has several investor/beneficial owners behind them, the only way to benefit tax treaty is to segregate the securities account (per end client basis), whereby the name of the end client /beneficial owner will be clearly stated in securities account name and DGT Form (match against each other). In this case, the entity will be able to benefit tax treaty rate In Indonesia (if original DGT Form is provided within the DGT Form submission deadline of each event the account is entitled to)For example, the group trust has 7 end clients. Hence, if those 7 end client wish to benefit tax treaty in Indonesia, each 7 end client has to segregate the securities account under each end client's name and provide original DGT Form that states the name of each end client. Meaning, there will be 7 separate securities account with 7 separate DGT Form (not combined)." </i></p>		

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
JAPAN		
<p>Japan - United States: 2003 Income Tax Convention, Final Protocol, and Notes</p> <p>Article 3</p> <p>1. For the purposes of this Convention, unless the context otherwise requires:</p> <p>(m) the term "pension fund" means any person that:</p> <ul style="list-style-type: none"> (i) is organized under the laws of a Contracting State; (ii) is established and maintained in that Contracting State primarily to administer or provide pensions or other similar remuneration, including social security payments; and (iii) is exempt from tax in that Contracting State with respect to the activities described in clause (ii). <p>Article 4</p>		<p>Article 3</p> <p>In the case of the United States, the term "pension fund" includes the following plans under existing U.S. law: qualified plans under section 401(a), individual retirement plans (including individual retirement plans that are part of a simplified employee pension plan that satisfies section 408(k)), individual retirement accounts, individual retirement annuities, section 408(p) accounts, and Roth IRAs under section 408A), section 457 governmental plans, section 403(a) qualified annuity plans, section 403(b) plans, and any fund identical or substantially similar to the foregoing schemes that are established pursuant to legislation introduced after the date of signature of the Convention. Section 401(k) plans qualify as pension funds because a 401(k) plan is a type of 401(a) plan.</p> <p>Article 4</p> <p>Paragraph 1 also provides that the term "resident of a Contracting State" includes that Contracting State and any political subdivision or local authority thereof, and certain tax-exempt entities such as pension funds and charitable or similar organizations regardless of whether they are generally liable for income tax in the</p>

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
<p>1. For the purposes of this Convention, the term "resident of a Contracting State" ... includes:</p> <p>(b) a pension fund organized under the laws of that Contracting State</p> <p>Article 10</p> <p>3. Notwithstanding the provisions of paragraph 2, such dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is:</p> <p>(b) a pension fund that is a resident of the other Contracting State, provided that such dividends are not derived from the carrying on of a business, directly or indirectly, by such pension fund.</p> <p>Article 22</p> <p>1. Except as otherwise provided in this Article, a resident of a Contracting State that derives income from the other Contracting State shall be entitled to all the benefits accorded to residents of a Contracting State for a taxable year by the provisions of other Articles of this Convention only if such resident satisfies any other specified conditions for the obtaining of such benefits and is either:</p> <p>(e) a pension fund, provided that as of the end of the prior taxable year more than 50 percent of its beneficiaries, members or</p>		<p>Contracting State where they are established. This provision is intended to clarify the generally accepted practice of treating an entity such as a pension fund or a charitable organization that would be liable for tax as a resident under the internal law of a Contracting State but for a specific exemption from tax (either complete or partial) as a resident of that Contracting State. Pension funds are defined in subparagraph 1(m) of Article 3 (General Definitions).</p> <p>Article 10</p> <p>Subparagraph (b) of paragraph 3 provides for exclusive taxation by the Contracting State of residence (<i>i.e.</i>, the elimination of source-country withholding tax) for dividends beneficially owned by a pension fund, as defined in subparagraph 1(m) of Article 3 (General Definitions), provided that such dividends are not derived from the carrying on of a business, directly or indirectly, by the pension fund.</p> <p>Article 22</p> <p><u>Pension Funds - Subparagraph 1(e)</u></p> <p>A pension fund is entitled to all the benefits of the Convention if, as of the close of the end of the prior taxable year, more than 50 percent of the beneficiaries, members or participants of the organization are individuals resident in either Contracting State. For purposes of</p>

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
participants are individuals who are residents of either Contracting State		this provision, the term "beneficiaries" should be understood to refer to the persons receiving benefits from the organization.
Note re Japan:		<ul style="list-style-type: none"> The NTA's position is that each pension fund participating in a RR 81-100 group trust is now required to provide disclosure at the level of each participating pension plan to enable the Tax Office to conclude that each pension plan and pension fund meets the Treaty's LOB provision with respect to its individual participants. The following commentary from the Japanese Tax Authorities regarding the newly worded 6166s issued to Rev. Rul. 81-100 Group Trusts: "<i>They have no objection so far, as it could be understand this rather clarify the status of group trust as pension like entity. This does not mean that they will ease the documentation, but they are just acknowledged the wording</i>"

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
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TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
SWITZERLAND		
<p>Switzerland: 1996 Income Tax Convention as Amended</p> <p>Article 4 Resident</p> <p>1. For the purposes of this Convention, the term "resident of a Contracting State" means:</p> <p>c)</p> <p>i) a pension trust and any other organization established in that State and maintained exclusively to administer or provide pensions, retirement or employee benefits, that is established or sponsored by a person resident in that State under this Article; that by reason of its nature as such is generally exempt from income taxation in that State</p> <p>Article 10 Dividends</p> <p>3. Notwithstanding paragraph 2, dividends may not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is a pension or</p>	<p>Switzerland - United States: 2021 Competent Authority Agreement</p> <p>2. Qualified U.S. pension or other retirement arrangements</p> <p>The following arrangements are U.S. pension or other retirement arrangements that will qualify for benefits under Article 10(3) provided that they do not control the Swiss company paying the dividend and that they satisfy all additional applicable requirements set forth in the Treaty, including Article 22 (Limitation on Benefits):</p> <p>a) A trust providing pension or retirement benefits under a Code section 401(a) qualified pension plan (which includes a Code section 401(k) plan) and a profit sharing or stock bonus plan;</p> <p>b) A trust described in Code section 457(g) providing pension or retirement benefits under a Code section 457(b) plan;</p> <p>c) A Code section 403(a) qualified annuity plan and a Code section 403(b) plan;</p>	<p>Article 4:</p> <p>Subparagraph 1(c) provides that certain tax-exempt entities such as pension funds and charitable organizations will be regarded as residents. An entity will be described in this subparagraph if it is generally exempt from tax by reason of the fact that (1) it is organized and operated to perform a charitable or similar purpose or (2) it is organized and maintained exclusively to provide pension or other employee benefits and is established or sponsored by a person who, under the provisions of Article 4, is a resident of that State. The inclusion of this rule is intended to clarify the generally accepted practice of treating an entity that would be liable for tax as a resident under the internal law of a Contracting State but for a specific exemption from tax (either complete or partial) as a resident of that State for purposes of paragraph 1. The reference to a general exemption is intended to reflect the fact that under U.S. law, certain organizations that generally are considered to be tax-exempt entities may be subject to certain excise taxes or to income tax on their unrelated business income. Thus, a U.S pension trust, or an exempt section 501(c) organization (such as a U.S. charity) that is generally exempt from tax under U.S. law is considered a</p>

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
<p>other retirement arrangement which is a resident of the other Contracting State, or an individual retirement savings plan set up in, and owned by a resident of, the other Contracting State, and the competent authorities of the Contracting States agree that the pension or retirement arrangement, or the individual retirement savings plan, in a Contracting State generally corresponds to a pension or other retirement arrangement, or to an individual retirement savings plan, recognized for tax purposes in the other Contracting State. This paragraph shall not apply if such pension or retirement arrangement, or such individual retirement savings plan, controls the company paying the dividend.</p> <p>Article 22 Limitation on Benefits</p> <p>2. Notwithstanding the preceding paragraph, an entity described in paragraph 1 c) of Article 4 (Resident) may claim the benefits of this Convention, provided that more than half of the beneficiaries, members or participants, if any, in such organization are persons that are entitled, under this Article, to the benefits of this Convention.</p> <p>Article 28 Miscellaneous</p> <p>4.</p>	<p>d) A group trust described in IRS Revenue Ruling 81-100 (as amended by IRS Revenue Ruling 2014-24 and IRS Revenue Ruling 2011-1), provided that it is operated exclusively or almost exclusively to earn income for the benefit of pension funds that are themselves entitled to benefits under the Treaty as a resident of the United States;</p> <p>e) The Thrift Savings Fund (Code section 7701(j)).</p> <p>6. Not an exclusive list; verification</p> <p>The pension or other retirement arrangements and individual retirement savings plans described in paragraphs 2 through 5, above, are not intended to be exclusive. Any U.S. or Swiss pension or other retirement arrangement, or individual retirement savings plan, not mentioned above, including any such arrangement or plan established pursuant to legislation enacted after the date of signature of this Arrangement may present its case to the U.S. and Swiss Competent Authorities pursuant to paragraph 3 of Article 25 (Mutual Agreement Procedure) to determine whether it qualifies for benefits under paragraph 3 of Article 10, provided it has satisfied all additional applicable</p>	<p>resident of the United States for all purposes of the Convention.</p> <p>Article 10:</p> <p>Paragraph 3 provides that, notwithstanding the source- country right to tax granted in paragraph 2, the source country may not tax dividends beneficially owned by certain residents of the other Contracting State that are described in paragraph 4(b) of Article 28 (Miscellaneous). This exemption applies only to beneficial owners of dividends that are pension plans or other retirement arrangements of the other Contracting State that have been determined by the competent authority of the source country to correspond to pension plans or other retirement arrangements of the source country. The beneficial owner of the dividend (i.e., the pension plan) is denied the exemption if it controls the company paying the dividend. Individual savings plans, such as individual retirement accounts in the United States and contributory private savings plans in Switzerland, are not pension plans or other retirement arrangements for purposes of this paragraph.</p> <p>Article 22</p> <p>Paragraph 2 provides that pension trusts and not-for- profit organizations described in subparagraph 1(c) of Article 4 (Resident) will be entitled to all the</p>

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
<p>b) the competent authority of that State agrees that the pension or other retirement arrangement in the other Contracting State generally corresponds to a pension or other retirement arrangement recognized for tax purposes by that first-mentioned State.</p>	<p>requirements set forth in the Treaty, including Article 22.</p> <p>Switzerland - United States: 2004 Competent Authority Agreement</p> <p>2) <u>Qualification for benefits under Article 10(3)</u></p> <p>Article 10(3) provides that dividends may not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is a resident of the other Contracting State described in subparagraph 4(b) of Article 28 (Miscellaneous) that does not control the company paying the dividends.</p> <p>Editor's Note: Article 10(3) has been amended by Article 1 of the Protocol signed September 23, 2009.</p> <p>Under subparagraph 1(c) of Article 4 (Resident), the term "resident of a Contracting State" includes a pension trust or other organization established in a Contracting State and maintained exclusively to administer or provide pensions, retirement or employee</p>	<p>benefits of the Convention, as long as more than half of the beneficiaries, members or participants of the organization are entitled to the benefits of the Convention. An organization referred to in this provision is generally exempt from tax in its State of residence and is either (i) an entity that provides pensions, retirement or employee benefits and that is established by a person resident in that State; or (ii) an entity that is organized and maintained in that State for religious, charitable, educational, scientific, cultural or other public purposes. For purposes of this provision, the term "beneficiaries" should be understood to refer to the persons receiving benefits from the organization.</p>

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
	<p>benefits, provided the pension trust or other organization is established or sponsored by a person resident in that State under Article 4.</p> <p>The residents described in Article 28(4)(b) are pension or other retirement arrangements that are established and maintained and recognized for tax purposes in one Contracting State, provided that the competent authority of the other Contracting State has agreed that such pension or other retirement arrangement generally corresponds to a pension or other retirement arrangement recognized for tax purposes by that other State.</p> <p>Paragraph 2 of Article 22 (Limitation on Benefits) provides that the entity described in Article 4(1)(c) may claim benefits under the Treaty only if more than half of its beneficiaries, members, or participants are persons that are entitled to benefits under Article 22.</p> <p>3) <u>Qualified U.S. pension or other retirement arrangements</u></p> <p>Subject to the conditions of Article 22(2), the following types of U.S. pension or other retirement arrangements are treated as the beneficial owners of dividends paid to them by Swiss</p>	

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
	<p>corporations and are considered to qualify for benefits under Article 10(3):</p> <ul style="list-style-type: none"> a) a U.S. resident tax-exempt trust providing pension or retirement benefits under a Code section 401(a) qualified pension plan, profit sharing plan or stock bonus plan (including Code section 401(k) arrangements); b) a U.S. resident tax-exempt trust described in Code section 457(g) providing pension or retirement benefits under a Code section 457(b) plan; c) a U.S. resident tax-exempt trust providing pension or retirement benefits under a Code section 403(b) plan; d) a group trust described in IRS Revenue Ruling 81-100 (as modified by IRS Revenue Ruling 2004-67), with respect only to participants that are trusts mentioned under subparagraphs (a), (b) or (c) above; e) a U.S. common trust fund (Code section 584), to the extent that the participants are trusts described under subparagraphs (a), (b), (c) or (d) above; and 	

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
	<p>f) the Thrift Savings Fund (Code section 7701(j)).</p> <p>As reflected in the U.S. Treasury Department Technical Explanation, the U.S. pension or other retirement arrangements that are considered to qualify for benefits under Article 10(3) do not include individual retirement accounts under Code section 408 or Roth IRAs under Code section 408A.</p> <p><u>Above list is not exclusive.</u> The listing of pension or other retirement arrangements described in subparagraphs (a) through (f) above is not intended to be exclusive. Any type of U.S. pension or other retirement arrangement not mentioned above, including any such arrangement established pursuant to legislation enacted after the date of signature of this Agreement, that considers itself to qualify for benefits under Article 10(3) must present its case to the Swiss competent authority under Article 28(4)(b) or seek a bilateral mutual agreement between the U.S. and Swiss competent authorities.</p> <p><u>Verification.</u> The status of any U.S. pension or other retirement arrangement claiming benefits under Article 10(3) is subject to verification by the Swiss tax authorities. The Swiss tax authorities</p>	

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
	<p>may, if they consider it necessary, request information under Article 26 (Exchange of Information).</p> <p>...</p> <p>6) Appropriate procedure for filing a request with Switzerland for a grant of Treaty benefits by Switzerland</p> <p>Switzerland has only one method for granting benefits under Article 10(3) with respect to dividends paid by Swiss companies to U.S. pension or other retirement arrangements that qualify for benefits under this Agreement. That method is the "refund" method. The Swiss company withholds at the full Swiss statutory rate of withholding tax. Later, upon receiving a claim for refund from the U.S. pension or other retirement arrangement, the Swiss tax authorities refund the full amount of the tax that was withheld.</p> <p>The Swiss tax authority will grant benefits under Article 10(3) if the U.S. pension or other retirement arrangement provides:</p> <p>a) a certification letter (Form 6166) issued by the IRS Philadelphia Service Center for the taxable year(s) in question (Example attached); and</p>	

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
	<p>b) a Swiss Form 82 E to which the U.S. pension or other retirement arrangement has attached a statement that it does not control the company paying the dividends and that it satisfies the requirements of Articles 10(3), 28(4) and 22(2).</p>	

Notes re Switzerland:

- 2004 CA agreement pre-dated IRS expansion of 81-100 treatment to other categories
- Query whether this means a group trust will not qualify under the 2004 CA agreement if it has any of the following: custodial accounts under 403(b)(7), retirement income accounts under 403(b)(9), and governmental retiree benefit plans under 401(a)(24), a Puerto Rican plan, a separate account maintained by an insurance company
- Following submission of the reclaim, group trusts receive requests for additional information.
 - For each due date a supplement 20XX client list that shows names, complete address, the Taxpayer Identification Number (TIN) and the proportionate share of each participant in the group trust;
 - A Form 6166 (relating to tax year 20XX for each participant figuring on the 20XX client list attached to the claim for refund). As the Competent Authority Agreement provided that a group trust described in RIF Revenue Ruling 81-100 qualified for benefits under Article 10(3) of the Swiss-US Income Tax Treaty only with respect to participants that are trusts mentioned under subparagraph 3. a), b) or c) of the Competent Authority Agreement. This additional documentation is needed in order to verify if all participants meet these requirements;
 - Detailed information about the participants' possibilities to invest in the Group Trust. Is it possible that participants will contribute securities as well?
- According to the 2004 CA agreement, in order to claim treaty benefits, the U.S. pension or other retirement arrangement must provide:
 - a certification letter (Form 6166) issued by the IRS for the taxable year(s) in question; and

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
	<ul style="list-style-type: none"> ○ a Swiss Form 82E to which the U.S. pension or other retirement arrangement has attached a statement that it does not control the company paying the dividends and that it satisfied the requirements of the relevant treaty article. • Although the 2004 CA agreement lays out the criteria for treaty benefits as agreed by the contracting parties, the requests for additional information from the Swiss Tax Authorities are seeking to look through the group trusts by requiring that each participant in the group trust provide their own Form 6166, as well as a client list disclosing detailed information pertaining to each participant. <p>In addition, a letter has been received by one such client where the Swiss FTA states that a Group Trust may also include IRAs in the pooling of assets and they are not eligible for a 0% rate under the treaty</p> <ul style="list-style-type: none"> • The 2021 CA agreement supersedes the 2004 CA agreement. It does not specify the documentation requirements a Group Trust should meet to obtain Swiss tax relief under the Convention. The AGC members are hopeful that the language of the agreement will allow a Group Trust to qualify for full exemption on its Swiss dividends even if it has a limited number of Puerto Rico plans as participants (i.e., on the grounds that it is operated “almost exclusively” to earn income for the benefit of U.S. resident pension funds). The members are not yet sure, however, that the 2021 agreement will allow Group Trusts to obtain the Swiss tax exemption without producing the detailed participant-level documentation the Swiss FTA required under the 2004 agreement. 	

APPENDIX D

APPENDIX D

Sample Treaty Language Regarding Group Trusts in Non-Problematrical Markets

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
NETHERLANDS		
<p>Netherlands - United States: 1992 Income Tax Convention, as Amended</p> <p>Article 4</p> <p>1. For the purposes of this Convention, the term "resident of one of the States" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature, or that is an exempt pension trust, as dealt with in Article 35 (Exempt Pension Trust) and that is a resident of that State according to the laws of that State, or an exempt organization, as dealt with in Article 36 (Exempt Organizations) and that is a resident of that State according to the laws of that State.</p> <p>Article 26</p> <p>Limitation on Benefits</p> <p>2. A resident of one of the States is a qualified person for a taxable year only if such resident is either:</p>	<p>Netherlands - United States: 2007 Competent Authority Agreement</p> <p>Chapter II</p> <p><i>U.S. resident tax-exempt trusts, companies, or other organizations</i></p> <p>Subject to the conditions of Article 26, paragraph 2 of Article 35, and paragraph 4 of Article 34 of the Treaty, the following types of U.S. resident trusts, companies, or other organizations are treated as the beneficial owners of dividends and interest derived from the Netherlands and are considered to qualify for benefits under Article 35 of the Treaty:</p> <p>1. a U.S. resident tax-exempt trust providing pension or retirement benefits under a Code section 401(a) qualified pension plan, profit sharing plan or stock bonus plan (including Code section 401(k) arrangements);</p>	<p>ARTICLE 4</p> <p>Resident</p> <p>Paragraph 1 clarifies that certain non-taxable entities, even though not liable to tax in a State, are nevertheless to be treated as residents of a State if so treated under the laws of that State. The entities referred to are exempt pension trusts dealt with in Article 35 (Exempt Pension Trusts), and exempt organizations dealt with in Article 36 (Exempt Organizations). Even in the absence of this explicit reference, such organizations should be considered residents of their State of organization under the general rule because they are subject to the taxation laws of that State. It was deemed useful, however, to include this clarification due to the fact that these entities generally do not incur liability to pay taxes.</p> <p>ARTICLE 26</p> <p>Limitation on Benefits</p>

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
<p>d) a person described in Article 35 (Exempt Pension Trusts) of this Convention, provided that:</p> <ul style="list-style-type: none"> i) more than 50 percent of the person's beneficiaries, members or participants are individuals who are residents of either State; or ii) the organization sponsoring such person is entitled to the benefits of the Convention pursuant to this Article; <p>Article 35 Exempt Pension Trusts</p> <p>1. Subject to the provisions of paragraph 2, income referred to in Articles 10 (Dividends) and 12 (Interest) derived by a trust, company or other organization a constituted and operated exclusively to administer or provide benefits under one or more funds or plans established to provide pension, retirement or other employee benefits shall be exempt from tax in one of the States if it is a resident of the other State according to the laws of that other State and its income is generally exempt from tax in that other State.</p>	<p>2. a U.S. resident tax-exempt trust described in Code section 457(g) providing pension or retirement benefits under a Code section 457(b) plan;</p> <p>3. a U.S. resident tax-exempt trust providing pension or retirement benefits under a Code section 403(b) plan;</p> <p>4. a U.S. resident tax-exempt trust that is an individual retirement account (Code section 408), a Roth individual retirement account (Code section 408A), or a simple retirement account, or a U.S. resident tax-exempt trust that is providing pension or retirement benefits under a simplified employee pension plan;</p> <p>5. a group trust described in IRS Revenue Ruling 81-100 and meeting the conditions of IRS Revenue Ruling 2004-67;</p> <p>6. a U.S. resident common trust fund (Code section 584) to the extent that the participants are trusts mentioned under points 1) through 5) above;</p> <p>7 the Thrift Savings Fund (Code section 7701(j)); and</p>	<p>Subparagraph 8(j) -- Not-for-Profit Organizations</p> <p>Subparagraph 8(j) provides that the not-for-profit organizations referred to in subparagraph 1(e) include, but are not limited to, pension funds, pension trusts, private foundations, trade unions, trade associations, and similar organizations. In addition, a pension fund, trust or similar entity that is organized for the purpose of providing retirement or other employment benefits and that is organized under the laws of a State shall be entitled to the benefits of the Convention if the organization sponsoring such fund, trust or similar entity is entitled to the benefits of the Convention under Article 26. Thus, a Netherlands pension fund established by a Netherlands publicly-traded corporation that is entitled to the benefits of the Convention under paragraph 1 of Article 26 would be entitled to the benefits of the Convention without regard to whether more than half its participants are qualified persons.</p> <p>Subparagraph 1(e) -- Not-for-Profit Organizations</p> <p>Subparagraph 1(e) provides that a not-for-profit organization that is a resident of a Contracting State will be entitled to the benefits of the Convention if it satisfies two conditions: (1) It must be generally</p>

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
	<p>8. a voluntary employees' beneficiary association (Code section 501(c)(9)).</p> <p>However, a U.S. resident tax-exempt trust mentioned under points 2), 3), or 4) above will not be considered to qualify for treaty benefits under Article 35 of the Treaty in any taxable year if less than 70% of the total amount of the withdrawals from such U.S. trust during that year is used to provide pension, retirement or other employee benefits as meant in Article 35 of the Treaty.</p> <p>Any type of U.S. resident tax-exempt trust, company, or other organization not mentioned above, that considers itself to qualify for benefits under Article 35 of the Treaty, may present its case to the Netherlands tax unit Belastingdienst Limburg / kantoor Buitenland (address: P.O. Box 2865, 6401 DJ HEERLEN, The Netherlands), or to the U.S. competent authority (see Rev. Proc. 2006-54, 2006-49 I.R.B. 1035) requesting competent authority consideration under Article 29 of the Treaty.</p>	<p>exempt from tax in its State of residence by virtue of its not-for-profit status, and (2) more than half of the beneficiaries, members or participants, if any, in the organization must be "qualified persons" as defined in subparagraph 8(g). Subparagraph 8(j) provides that the not-for-profit organizations dealt with in subparagraph 1(e) include pension funds, pension trusts, private foundations, trade unions, trade associations and similar organizations. A pension fund or trust or similar entity created for the purpose of providing retirement, disability or other employment benefits is entitled to the benefits of the Convention if the organization sponsoring the fund, trust or entity is entitled to the Convention's benefits under Article 26. Thus, one need not determine that more than half of the beneficiaries of a Netherlands pension plan are residents of the Netherlands in deciding whether the plan is entitled to the benefits of the Convention in respect of its income as long as the Netherlands corporation sponsoring the fund is entitled to benefits under Article 26, because, for example, its principal class of shares is listed on the Amsterdam Stock Exchange and is substantially and regularly traded, thereby entitling it to the benefits of the Convention under subparagraph 1(c)(i). If, however, the sponsoring organization is not entitled to the benefits of the Convention, the tests of subparagraph 1(e) must be met.</p>

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
		<p>ARTICLE 35 Exempt Pension Trusts</p> <p>Paragraph 1 provides that a trust, company or other organization, resident in one of the States, and constituted and operated exclusively to administer or provide benefits under one or more funds or plans established to provide pension, retirement or other employee benefits, is exempt from tax on its dividend and interest income arising in the other State, if the income of the organization is generally exempt from tax in the State in which it is resident. In determining whether a pension fund satisfies the requirement that it be constituted and operated "exclusively" to administer or provide benefits of the type described, the source of the entity's income will not be relevant. Rather, the use to which the entity's income is put will be dispositive. Thus, a pension fund that carries on investment and administrative activities incidental to its purpose of providing pension and other benefits shall not be considered to have failed to meet the requirement that it be constituted and operated "exclusively" for such purposes as a result of having performed such activities. In addition, although by operation of paragraph 2 dividends that are attributable to a trade or business are not entitled to the exemption described in paragraph 1, the receipt of such dividends</p>

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
		would not result in a pension fund being deemed to have failed to operate "exclusively" to administer or provide benefits.
Notes re Netherlands:		<ul style="list-style-type: none"> • 2007 CA agreement pre-dates IRS expansion of group trust concept • Query whether this means a group trust will not qualify if it has any of the following: custodial accounts under 403(b)(7), retirement income accounts under 403(b)(9), and governmental retiree benefit plans under 401(a)(24), a Puerto Rican plan, a separate account maintained by an insurance company

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
SPAIN		
<p>Spain - United States: 2013 Protocol to the 1990 Convention, and Memorandum of Understanding</p> <p>Article II</p> <p>1. Paragraph 1 of Article 3 (General Definitions) of the Convention shall be amended by adding the following:</p> <p style="padding-left: 2em;">(j) the term "pension fund" means:</p> <p style="padding-left: 2em;">(ii) in the United States, any person established in the United States that is generally exempt from income taxation in the United States, and operated principally either:</p> <p style="padding-left: 2em;">(A) to administer or provide pension or retirement benefits; or</p> <p style="padding-left: 2em;">(B) to earn income principally for the benefit of one or more persons established in the United States that are generally exempt from income taxation in the United States and are operated principally to administer or provide pension or retirement benefits."</p>	<p>Spain - United States: 2014 Corrective Notes to the 2013 Protocol and MOU</p> <p>Subparagraph (a) of Paragraph 3 of the texts of the Memorandum of Understanding ... shall now read as follows:</p> <p>3. With reference to subparagraph (j) of paragraph 1 of Article 3 (General Definitions) of the Convention, as amended by the 2013 Protocol:</p> <p style="padding-left: 2em;">"(a) In the case of the United States, the term "pension fund" includes the following: a trust providing pension or retirement benefits under an Internal Revenue Code section 401(a) qualified pension plan (which includes a Code section 401(k) plan), a profit sharing or stock bonus plan, a Code section 403(a) qualified annuity plan, a Code section 403(b) plan, a trust that is an individual retirement account under Code section 408, a Roth individual retirement account under Code section 408A, or a simple retirement account under Code section 408(p), a trust providing pension or retirement benefits under a simplified employee pension plan</p>	<p>Treasury Department Technical Explanation</p> <p>Paragraph 1 adds a new subparagraph (j) to paragraph 1 of Article 3. Subparagraph 1(j) defines the term "pension fund". Clause 1(j)(i) provides that in the case of Spain, the term means any scheme, fund, mutual benefit institution or other entity established in Spain that satisfies two criteria. First, as provided in clause 1(j)(i)(A), the person must be operated principally to manage the right of its beneficiaries to receive income or capital upon retirement, survivorship, widowhood, orphanhood, or disability. Second, contributions to the pension fund must be deductible from the taxable base of personal taxes.</p> <p>Subparagraph 3(a) of the Memorandum of Understanding as corrected by the Exchange of Notes sets forth a non-exhaustive descriptive list of those U.S. entities that will be regarded as pension funds for purposes of the Convention. The list includes: a trust providing pension or retirement benefits under an Internal Revenue Code section 401(a) qualified pension plan (which includes a Code section 401(k) plan), a profit sharing or</p>

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
<p>Article IV</p> <p>Article 10 (Dividends) of the Convention shall be deleted and replaced by the following:</p> <p>"Article 10 Dividends 4. Notwithstanding paragraph 2, dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if:</p> <p>(a) the beneficial owner of the dividends is a pension fund that is a resident of the other Contracting State and is generally exempt from tax or subject to a zero rate of tax; and</p> <p>(b) such dividends are not derived from the carrying on of a trade or business by the pension fund or through an associated enterprise.</p> <p>Article IX</p> <p>Article 17 (Limitation on Benefits) of the Convention shall be deleted and replaced by the following:</p> <p>2. A resident of a Contracting State shall be a qualified person for a taxable year if the resident is:</p> <p>(d) a person other than an individual that is:</p>	<p>under Code section 408(k), a trust described in section 457(g) providing pension or retirement benefits under a Code section 457(b) plan, and the Thrift Savings Fund (section 7701(j)). A group trust described in Revenue Ruling 81-100, as amended by Revenue Ruling 2004-67 and Revenue Ruling 2011-1, shall qualify as a pension fund only if it earns income principally for the benefit of one or more pension funds entitled to benefits under the Convention as residents of the United States.</p>	<p>stock bonus plan, a Code section 403(a) qualified annuity plan, a Code section 403(b) plan, a trust that is an individual retirement account under Code section 408, a Roth individual retirement account under Code section 408A, a simple retirement account under Code section 408(p), a trust providing pension or retirement benefits under a simplified employee pension plan under Code section 408(k), a trust described in section 457(g) providing pension or retirement benefits under a Code section 457(b) plan, and the Thrift Savings Fund (section 7701(j)). A group trust described in Revenue Ruling 81-100, as amended by Revenue Ruling 2004-67 and Revenue Ruling 2011-1, shall qualify as a pension fund only if it earns income principally for the benefit of one or more pension funds that are themselves entitled to benefits under the Convention as residents of the United States.</p> <p>Clause 1(j)(ii) of new subparagraph 1(j) of Article 3 provides that in the case of the United States, the term "pension fund" means any person established in the United States that is generally exempt from income taxation in the United States, and is operated principally either to administer or provide pension or retirement benefits, or to earn income principally for the benefit of one or more persons established in the same</p>

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
<p>(ii) described in subparagraph (j) of paragraph 1 of Article 3 (General Definitions), provided that:</p> <p>(A) in Spain, in the case of a person described in clause (i) of subparagraph (j) of paragraph 1 of Article 3, and in the United States, in the case of a person described in clause (ii) (A) of subparagraph (j) of paragraph 1 of Article 3, more than 50 percent of the person's beneficiaries, members or participants are individuals resident in either Contracting State; and</p> <p>(B) in the United States, in the case of a person described in clause (ii) (B) of subparagraph (j) of paragraph 1 of Article 3, all of the persons for which such person earns the income satisfy the requirements of clause (A) of this subparagraph;</p>		<p>Contracting State that are generally exempt from income taxation in that Contracting State and are operated principally to administer or provide pension or retirement benefits.</p> <p>The definition, as it applies in the case of the United States, recognizes that pension funds sometimes administer or provide benefits other than pension or retirement benefits, such as death benefits. However, in order for the fund to be considered a pension fund for purposes of the Convention, the provision of any other such benefits must be merely incidental to the fund's principal activity of administering or providing pension or retirement benefits. The definition also ensures that if a fund is a collective fund that earns income for the benefit of other funds, then substantially all of the funds that participate in the collective fund must be residents of the same Contracting State as the collective fund and must be entitled to benefits under the Convention in their own right.</p> <p><i>Paragraph 4 of New Article 10</i></p> <p>Paragraph 4 of new Article 10 provides that dividends beneficially owned by a pension fund may not be taxed in the Contracting State of which the company paying the tax is a resident, unless such dividends are derived from the carrying on</p>

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
		<p>of a business, directly or indirectly, by the pension fund or through an associated enterprise. For purposes of application of this paragraph by the United States, the term "trade or business" shall be defined in accordance with Code section 513(c). The term "pension fund" is defined in subparagraph 1(j) of Article 3 (General Definitions) of the Convention, as amended by Article II of the Protocol.</p> <p><i>Paragraph 2 of New Article 17</i></p> <p>Clause (ii) of paragraph 2(d), sets forth a rule to determine when pension funds described in subparagraph 1(j) of Article 3 (General Definitions) will be considered qualified persons. Clause (A) provides that pension funds described in clauses (i) and (ii)(A) of subparagraph 1(j) of Article 3 will be considered qualified persons if more than fifty percent of the beneficiaries, members or participants of the organization are individuals resident in either Contracting State. For purposes of this provision, the term "beneficiaries" should be understood to refer to the persons receiving benefits from the organization. Pension funds described in clause (ii)(B) of subparagraph 1(j) will be qualified persons if all of the persons for which such pension fund earns income satisfy the requirements of clause (A) of subparagraph 2(d).</p>

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
<p>Notes re Spain:</p> <ul style="list-style-type: none"> • LOB provision effectively says group trust qualifies only if ALL of the participating pension funds are US resident funds with more than 50 percent US resident beneficiaries • This even though 2013 MOU was corrected in 2014 to say a group trust qualified as a “pension fund” if it earned income “principally” for the benefit of one or more qualifying US pension funds (as opposed to saying ALL its participants had to be qualifying US pension funds) 		

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
UNITED KINGDOM		
<p>United Kingdom- United States 2001 Income and Capital Gain Tax Convention</p> <p>Article 3 General Definitions</p> <p class="list-item-l1">1. For the purposes of this Convention, unless the context otherwise requires:</p> <p class="list-item-l2">o. the term "pension scheme" means any plan, scheme, fund, trust or other arrangement established in a Contracting State which is:</p> <p class="list-item-l3">(i) generally exempt from income taxation in that State; and</p> <p class="list-item-l3">(ii) operated principally to administer or provide pension or retirement benefits or to earn income for the benefit of one or more such arrangements.</p> <p>Article 4 Residence</p> <p class="list-item-l1">3. The term "resident of a Contracting State" includes:</p> <p class="list-item-l2">(a) a pension scheme;</p>		<p>Treasury Department Technical Explanation</p> <p>ARTICLE 3 (GENERAL DEFINITIONS)</p> <p>Subparagraph (o) defines the term "pension scheme" to include any plan, scheme, fund, trust or other arrangement established in a Contracting State which is generally exempt from income taxation in that State and which is operated principally to provide pension or retirement benefits or to earn income for the benefit of one or more such arrangements. The notes provide an agreed list of existing plans qualifying as "pension schemes" in each Contracting States. In the case of the United States, the term "pension scheme" includes the following: qualified plans under section 401(a), individual retirement plans (including individual retirement plans that are part of a simplified employee pension plan that satisfies section 408(k), individual retirement accounts, individual retirement annuities, section 408(p) accounts, and Roth IRAs under section 408A), section 403(a) qualified annuity plans, and section 403(b) plans. 401(k) plans qualify as pension schemes because a 401(k) plan is a type of</p>

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
Article 10 Dividends <ul style="list-style-type: none"> 3. Notwithstanding the provisions of paragraph 2 of this Article, dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is a resident of the other Contracting State and: <ul style="list-style-type: none"> (b) a pension scheme, provided that such dividends are not derived from the carrying on of a business, directly or indirectly, by such pension scheme. 		<p>401(a) plan....The reference to entities that are operated principally to earn income for the benefit of one or more such arrangements is intended to ensure that income earned by group trusts, which invest the assets of pension schemes but do not administer pension benefits, will nevertheless qualify for benefits. The term "pension scheme" also includes any scheme identical or substantially similar to the foregoing schemes that are established pursuant to legislation introduced after the date of signature of the Convention.</p> <p>ARTICLE 4 (RESIDENCE)</p> <p>Paragraph 3 provides that certain tax-exempt entities such as pension funds and charitable organizations will be regarded as residents of a Contracting State regardless of whether they are generally liable for income tax in the State where they are established. The inclusion of this provision is intended to clarify the generally accepted practice of treating an entity that would be liable for tax as a resident under the internal law of a State but for a specific exemption from tax (either complete or partial) as a resident of that state for purposes of paragraph 1. Subparagraph (a) of paragraph 3 applies to pension schemes, as defined in subparagraph (o) of</p>
Article 23 Limitation on Benefits <ul style="list-style-type: none"> 2. A resident of a Contracting State is a qualified person for a taxable or chargeable period only if such resident is either: <ul style="list-style-type: none"> (e) a person described in subparagraph (a), (b) or (c) of paragraph 3 of Article 4 (Residence) of this Convention, provided that, in the case of a person described in subparagraph (a) or (b) of that paragraph, more than 50 per cent of the person's beneficiaries, members or participants 		

TREATY LANGUAGE	COMPETENT AUTHORITY AGREEMENTS OR MEMORANDA OF UNDERSTANDING	TREASURY TECHNICAL EXPLANATION LANGUAGE
are individuals who are residents of either Contracting State;		<p>paragraph 1 of Article 3 (General Definitions).</p> <p>ARTICLE 10 (DIVIDENDS)</p> <p>Subparagraph (b) of paragraph 3 provides for exclusive residence-State taxation (i.e., a zero rate of withholding tax) for dividends beneficially owned by a pension scheme, as defined in Article 3(1)(o), provided that such dividends are not derived from the carrying on of a business, directly or indirectly, by the pension scheme.</p> <p>ARTICLE 23 (LIMITATION ON BENEFITS)</p> <p>Subparagraph (e) of paragraph 2 provides rules by which the tax-exempt organizations described in paragraph 3 of Article 4 (Residence) may be "qualified persons." A tax-exempt pension scheme or employee benefit arrangement described in subparagraphs (a) or (b) of paragraph 3 of Article 4 is a qualified person if more than fifty percent of the beneficiaries, members or participants of the organization are individuals resident in either Contracting State. For purposes of this provision, the term "beneficiaries" should be understood to refer to the persons receiving benefits from the organization.</p>

APPENDIX E



[REDACTED] Retirement Plan
z.H.: UniCredit Bank Austria AG
TZ-8398 Fr. Elisabeth Puntigam
Lassallestraße 5
1020 WIEN

Finanzamt Bruck Eisenstadt Oberwart
BV 22 KEST
Neusiedlerstraße 46
A – 7000 Eisenstadt
DVR.: 0009385

Evidenznummer
12632/2013
#61823

Datum
18. Februar 2015

Bitte führen Sie bei allen schriftlichen Eingaben
an das Finanzamt Ihre Evidenznummer an.

Bei Rückfragen wenden Sie sich bitte an (Name/Telefon)
Krautsieder Jefferson Tel.Nr.: 0043-2682 / 603 526416 Fax: 0043-2682 / 603 5926059 mail: Austrian.WHT@bmf.gv.at

Bescheid über den Antrag auf Rückzahlung Österreichischer Quellensteuer

Notice for Austrian Withholding Tax Refund

Ihr Antrag vom 06.11.2013, eingelangt am 20.11.2013, auf Rückzahlung Österreichischer Quellensteuer wird zurückgewiesen.

Your claim for Austrian Withholding Tax Refund dated 06.11.2013, received on 20.11.2013, has to be rejected for formal reasons.

Begründung:

Reasons:

- Es handelt sich hierbei um einen Umbrella-Fond, dieser ist nicht Antragsberechtigt, sondern nur seine Investoren selbst dürfen einen Rückerstattungsantrag mit dem Formular ZS-RD/E1 +a einreichen.

Beilage:

Attachments:

Rechtsmittelbelehrung:

Instructions on the right to appeal:

Gegen diesen Bescheid kann innerhalb eines Monats nach Zustellung bei dem oa. Finanzamt das Rechtsmittel der Beschwerde schriftlich oder telegraphisch eingebracht werden. Die Beschwerde ist zu begründen.

There is the opportunity of appealing against this notice within one month after its delivery. The appeal has to be submitted to the above mentioned tax office either in writing or telegraphically. The appeal has to be well-founded.

Für den Vorstand:
For the Head of the Office:



[REDACTED] Retirement Plan
z.H.: UniCredit Bank Austria AG
TZ-8398 Fr. Elisabeth Puntigam
Lassallestraße 5
1020 WIEN

Finanzamt Bruck Eisenstadt Oberwart
BV 22 KEST
Neusiedlerstraße 46
A – 7000 Eisenstadt
DVR.: 0009385

Evidenznummer
1335/2014
#63603

Datum
18. Februar 2015

Bitte führen Sie bei allen schriftlichen Eingaben
an das Finanzamt Ihre Evidenznummer an.

Bei Rückfragen wenden Sie sich bitte an (Name/Telefon)
Krautsieder Jefferson Tel.Nr.: 0043-2682 / 603 526416 Fax: 0043-2682 / 603 5926059 mail: Austrian.WHT@bmf.gv.at

Bescheid über den Antrag auf Rückzahlung Österreichischer Quellensteuer

Notice for Austrian Withholding Tax Refund

Ihr Antrag vom 27.01.2014, eingelangt am 03.02.2014, auf Rückzahlung Österreichischer Quellensteuer wird zurückgewiesen.

Your claim for Austrian Withholding Tax Refund dated 27.01.2014, received on 03.02.2014, has to be rejected for formal reasons.

Begründung:

Reasons:

- Es handelt sich hierbei um einen Umbrella-Fond, dieser ist nicht Antragsberechtigt, sondern nur seine Investoren selbst dürfen einen Rückerstattungsantrag mit dem Formular ZS-RD/E1 +a einreichen.

Beilage:

Attachments:

Rechtsmittelbelehrung:

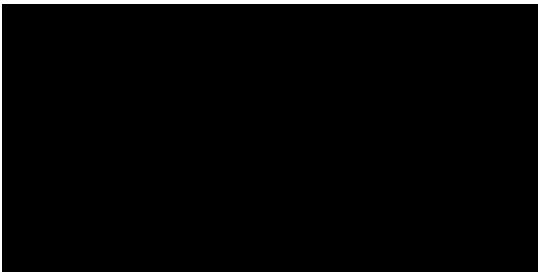
Instructions on the right to appeal:

Gegen diesen Bescheid kann innerhalb eines Monats nach Zustellung bei dem oa. Finanzamt das Rechtsmittel der Beschwerde schriftlich oder telegraphisch eingebracht werden. Die Beschwerde ist zu begründen.

There is the opportunity of appealing against this notice within one month after its delivery. The appeal has to be submitted to the above mentioned tax office either in writing or telegraphically. The appeal has to be well-founded.

Für den Vorstand:
For the Head of the Office:

Return address: Skattestyrelsen, Nykøbingvej 76, DK-4990 Sakskøbing, Denmark



Selskabsprocesser
Udbytte

Lyseng Allé 1
8270 Højbjerg

Telefon 72 22 18 18
E-mail via skat.dk/kontakt

15.09.2020
File no. 2018 - 2820

Proposal for decision of refund of Danish Dividend tax

Dear Nordea

Your ref: Ref: WHT NDEA [REDACTED]

We send you our proposal for decision stating that you will only be partially refunded Danish dividend tax regarding [REDACTED] for the following companies.

Company	AGM	Number of shares	Dividend	Refund Claim 27%	Approved refund 12%
ISS A/S	05.04.2016	64.520	477.448,00	128.910,96	57.293,76
ISS A/S	02.11.2016	124.683	498.732,00	134.657,64	59.847,84
Total DKK:				263.568,60	117.141,60

We are proposing that [REDACTED] are only refunded DKK 117.141,60 which is 12% refund instead of 27% refund. This is because it is not documented that [REDACTED] is a Pension fund according to DBO between USA and Denmark art 22 stk. 2 e and can therefore not be refunded according to DBO between USA and Denmark art 10 stk. 3 c. but only according to DBO between USA and Denmark art 10 stk. 2. The rules are laid down in section 69 b (1), first sentence, of the Danish Withholding Tax Act (Kildeskatteloven).

The Determination letter and Form 5500 for 2016 you send us regards to an other trust - [REDACTED], which do not owned the shares at the time of AGM, and have not received the dividend.

If you agree with our proposal, you do not have to do anything further. Later we will send you a final decision in accordance with this proposal.

If you disagree with our proposal, please send us your comments or objections by 28.09.2020 at the latest.

Please refer to The Danish Tax Agency's file number 2018 - 2820 in your remarks and attachments.

Disclaimer

Please note that Danish is The Danish Tax Agency's official language and in case of any dispute, the Danish version of this letter will prevail.

Forslag: Skattestyrelsen betaler kun delvist udbytteskat tilbage

Vi foreslår, at [REDACTED] kun delvist får betalt dansk udbytteskat tilbage på sine aktier i følgende selskab:

Selskabets navn	Vedtagelses dato	Antal aktier	Udbytte	Ansøgt refusion 27%	Godkendt refusion 12%
ISS A/S	05.04.2016	64.520	477.448,00	128.910,96	57.293,76
ISS A/S	02.11.2016	124.683	498.732,00	134.657,64	59.847,84
I alt:				263.568,60	117.141,60

I kan læse vores begrundelse i sagsfremstillingen.

Er I enige i vores forslag, behøver I ikke gøre noget. Vi sender jer senere en afgørelse, der stemmer med dette forslag.

Er I ikke enige i vores forslag, beder vi jer sende os jeres bemærkninger senest den 28.09.2020

Husk at skrive vores journalnummer 2018 - 2820 på jeres bemærkninger og eventuelle bilag.

Sagsfremstilling

De faktiske forhold

Den 22.01.2018 modtog vi jeres ansøgning om at få betalt dansk udbytteskat tilbage vedrørende udlodninger fra følgende selskab på vegne af [REDACTED]

- ISS A/S

Der er som en del af dokumentationen modtaget Determination letter og Form 5500 for 2016, men dokumenterne vedrører [REDACTED]

Skattestyrelsens begrundelse

Det er vores opfattelse, at aktionæren opfylder de betingelser, der står i kildeskattelovens § 69 b, stk. 1, 1. pkt., for at få betalt dansk udbytteskat tilbage.

Vi forslår at der kun bliver refunderet kr. 117.141,60 i stedet for kr. 263.568,60, som svare til 12% i stedet for 27% som ansøgt, fordi det ikke er dokumenteret at [REDACTED] har pensionsforpligtelse iflg. DBO mellem USA og Danmark art 22 stk. 2 e og derfor ikke kan få refunderet udbytteskat i henhold til DBO mellem USA og Danmark art 10 stk. 3 c men kun iflg. DBO mellem USA og Danmark art 10 stk. 2

Betaling

Det er oplyst, at beløbet med frigørende virkning kan indsættes på Nordeas reg.nr. 5648, kontonr. 6265893935.

Beløbet med tillæg af eventuelle renter vil på et senere tidspunkt blive overført til ovenstående bankkonto.

Love og regler

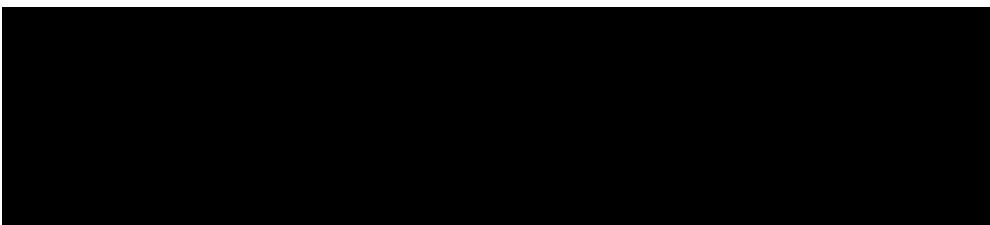
Reglerne om, hvem der kan få dansk udbytteskat betalt tilbage, og hvilke betingelser der gælder, står i kildeskattelovens § 69 b, stk. 1, 1. pkt. Der står også, at vi har seks måneder til at behandle jeres ansøgning.

I kan læse mere om reglerne for at få betalt dansk udbytteskat tilbage i Den juridiske vejledning, afsnit C.F.8.2.2.10.3.2 *Beskattningsret for det land, hvor det udloddende selskab er hjemmehørende (kildelandet)*, på skat.dk/juridiskvejledning.

I kan finde de love og regler vi henviser til på skat.dk/skattelove.

Hvis I har spørgsmål

Har I spørgsmål, er I velkomne til at kontakte mig.



Returadresse: Skattestyrelsen, Nykøbingvej 76, 4990 Sakskøbing

Skandinaviska Enskilda Banken

Selskabsprocesser
Udbytte

Sent by Bluewhale to:

E-mail: Tax.denmark@seb.dk

Mobil: 371-28379513

Lyseng Allé 1

8270 Højbjerg

Telefon 72 22 18 18

E-mail via skat.dk/kontakt

Dear Skandinaviska Enskilda Banken

18. marts 2020

J. nr. 2017 - 6481

We send you our decision stating that we only partially approve your claim for a refund of Danish dividend tax regarding ^h

This means that

will only be refunded 12% or DKK 252.826,53 and not 27% or DKK 568.859,71 because the conditions in article 10, 3 (c) and in article 22, 2 (e) in the Double Taxation Agreement between Denmark and the United States of America, has not been met.

A full refund of dividend tax (27 %) cf. article 22,2 (e) requires that the legal person provide a pension or other similar benefits to employees pursuant to a plan.

does not provide a pension benefits to employees. The Participating Plans have this obligation.

The shareholder will receive interest of the approved amount because the refund takes place after more than six months after we received your claim 29th March 2017. The rules are laid down in section 69 B (1), first sentence, of the Danish Withholding Tax Act (Kildeskatteloven).

You have the right to appeal against our decision to the Danish Tax Appeals Agency (Skatteankestyrelsen). The appeal should be sent by no later than three months after the date you receive this decision. There are three ways to send your appeal:

- online via the appeals portal of the Tax Appeals Agency at www.skatteankestyrelsen.dk
- as digital post via www.borger.dk
- by post to Skatteankestyrelsen, Ved Vesterport 6, 6. sal, 1612 København V, Denmark

The appeal must be in writing and contain all the points that you wish to appeal against. The fee for making an appeal is DKK 400.



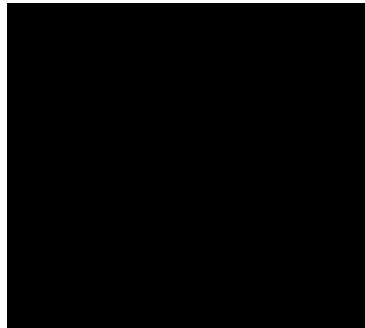
Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Federal Department of Finance FDF

Swiss Federal Tax Administration FTA
Main Division for Federal Direct Tax,
Anticipatory Tax and Stamp Duty

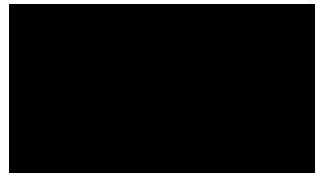
Posteingang UBS AG

03. Mai 2021



Post CH AG

FTA-ID
Case-ID
Contact person
Address
Telephone
E-Mail
Internet



DM4B / OE5Z

Bern, 28 April 2021

Refund of Swiss Anticipatory Tax

Claim Form 82E; [REDACTED]

USA – Swiss Double Taxation Agreement (DTA US)

Submission of Supporting Documents and Information

Dear Sir or Madam

We are writing in reference to your claim for refund of Swiss anticipatory tax, Form 82E.

In accordance with Article 48, paragraph 1 of the federal Law on withholding tax (WHTL) of October 13, 1965, we require the following supporting documents and information to examine your application:

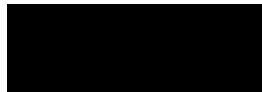
1. A supplementary list of the Group Trust participants. Enter the name, address, Taxpayer Identification Number (TIN), ITS Codes and proportionate share of each participant in the Group Trust in %.
2. For each participant listed on the supplementary list, provide us with IRS Form 6166 (Certification of U.S. Tax Residency) for the taxable year(s) 2016 shown on the claim.

Why does the FTA need IRS Form 6166 for each participant in the Group Trust? The Competent Authority Agreement (copy attached) states that a Group Trust described in IRS Revenue Ruling 81-100 qualifies for benefits under Article 10(3) of the Swiss-U.S. Income Tax Treaty. However, this only applies to participants that are trusts as mentioned under subparagraphs 3) a), b) or c) of the Competent Authority Agreement. IRS Form 6166 for each participant allows us verify whether all participants meet the necessary requirements to qualify for the Treaty benefits.

The Determination Letter issued by the IRS decrees whether or not the Group Trust includes individual retirement accounts in the pool of assets. On the other hand, the Competent Authority Agreement clearly states that individual retirement accounts are not eligible for a full refund under the Treaty. This is another reason why we request IRS Form 6166, i.e. to determine whether all participants in the Group Trust are eligible for a full refund of Swiss anticipatory tax under the Treaty.

3. Please provide us with detailed information about the participants' investment opportunities in the Group Trust.





Please send the required supporting documents and information

by **28.06.2021**

by email or to the Swiss Federal Tax Administration FTA, Refund Division, / ZMB, Eigerstrasse 65, 3003 Bern.

Persons who reclaim withholding tax must, to the best of their knowledge and belief, provide the authorities responsible with information on all facts that could be relevant for the refund application; in particular, they must complete the application form and questionnaire accurately and in full, as well as supply tax deduction certificates and produce accounting records, receipts and other supporting documents upon request. Within the scope of the authorities' examination obligation, applicants have to participate not only in the ascertainment of those facts for which the onus of proof is on them, but also in the establishment of facts for which the burden of proof lies with the refund authorities (Article 48, paragraph 1, subparagraphs (a) and (b) WHTL).

This means that the applicant's general obligation to provide information in accordance with Article 48, paragraph 1 WHTL includes everything that is suitable for clarifying the refund application at hand. The said provision thus sets out a comprehensive obligation to provide information based on facts with which the applicant is generally the most familiar.

Failure to provide the requested information and supporting documents within the time limit indicated will result in the refusal of the application (Article 48, paragraph 2 WHTL).

Thank you for your cooperation.

Yours faithfully

DVS Rückerstattung Team 1 Zone 1-4

copy form 82E

United States - Switzerland
Income Tax Convention
of October 2nd, 1996
<http://www.estv.admin.ch>

CLAIM FOR REFUND
of Swiss anticipatory tax withheld on dividends and
interest derived from sources within Switzerland

Form 82 E

FOR OTHER US ENTITIES ONLY

File number

First claim

Yes No

Refund claimed for the year(s)

2016

Contact Phone _____
E-Mail _____

BENEFICIAL OWNER OF THE INCOME:

Name in full as listed in the trade, commercial and/or tax register, full address

[REDACTED]

Full address of payment

Please consult figure 4 of the general instructions at the end of this set
of formulas.

FNND / OM4B / OEEZ

02 Sep. 2019

Beneficiary's bank:

BIC (SWIFT):

ABA Routing number:

Account number:

IBAN Beneficiary:

Beneficiary:

Postcode/City:

Client code:

[REDACTED]
[REDACTED]

to be left blank

[REDACTED]

AMOUNTS HAVE TO BE INDICATED IN SWISS FRANCS!

Description of securities Name of debtor	Date of acquisition	Number of shares; Total par value of bonds, etc.	Div. per share; Rate (%) of int.	Due date of dividend, interest, etc. (day, month, year)	Gross dividends refund at the rate of			Gross interest re- fund at the rate of	
					20 %	CHF	35 % (pens. trust) CHF	35 %	CHF
1	2	3	4	5	6		7	8	
<p>1,408.00</p>									
<p>Carried over from the attached Income Summary Statement - period: 01.01.2016 - 31.12.2016</p>									
<p>Total gross income</p>									
<p>0.00 1,408.00 0.00</p>									

Attestation (notary public)

(Seal and
signature)

Declared at _____

this _____ day

before me _____

Address _____

Place and date:

20 % on total of column 6	CHF	0.00
35 % on total of column 7	CHF	492.80
35 % on total of column 8	CHF	0.00
Total refund claimed	CHF	492.80

The undersigned declares that the information contained on this form
is correct.

Signature of claimant: //

[REDACTED]



ee reverse

g 5.18 6000 860420802

1st copy for the Federal Tax Admini-
stration, Bern

In order to fill in the claim correctly, consult the instructions at the end of this set of formulas.

The use of official forms to apply for reimbursement is mandatory and the reprint or reproduction of these forms – in whatever form – is prohibited. By using other than official forms the processing can not be ensured and the burden of processing costs remains expressly reserved.

QUESTIONS TO BE ANSWERED BY THE BENEFICIAL OWNER (In case the form is filled in by a representative, the term «you» means the beneficial owner)

1. On the date(s) set out in column 5 on the front page:
- Yes No
- a) were you **beneficially entitled** to the income specified on the front page?
If not, please state the reasons under «6. OBSERVATIONS» on what base you are claiming the refund.
- Yes No
- b) did you **draw this income for yourself**?
If not, please state the reasons under «6. OBSERVATIONS» on what base you are claiming the refund.
- Yes No
- c) If the answer to question b) is «yes», are the shares part of your **own shares position** (Nostro/own portfolio, no underlying beneficiaries)?
- Yes No
- d) If the answer to question c) is «yes», were the securities specified on the front page part of **«Securities Lending and Borrowing» transactions** on the due date of the income? If the answer is «yes», please give full particulars under «6. OBSERVATIONS».
- e) Address of the competent Internal Revenue Service Center [REDACTED]
- f) Claimant's last United States tax return, relating to the year was filed with this office (if claimant is tax exempt, tick this box).
- g) Claimant's Taxpayer Identification Number [REDACTED]
2. During any calendar year in which income specified on the front page became due (column 5):
- Yes No
- were you engaged in trade or business in Switzerland through a **permanent establishment** situated in Switzerland?
If the answer is «yes», give full particulars under «6. OBSERVATIONS».
- Yes No
3. a) Were you a **tax exempt recognized United States pension trust**?
Indicate State of establishment
- Yes No
- b) If the answer is «Yes»:
Were more than 50 percent of the beneficiaries, members or participants residents of the United States or Switzerland?
- Yes No
4. a) Were you a **tax exempt United States not-for-profit organization**?
Indicate State of establishment
- Yes No
- b) If the answer is «Yes»:
Were more than 50 percent of the beneficiaries, members or participants residents of the United States or Switzerland?
- Yes No
5. Were you **another United States entity such as a partnership, estate, trust or S-Corporation** (give full details of claimant and of all persons concerned, including their residence, wherever situated, and their proportionate shares up to the final **beneficial owner** under «6. OBSERVATIONS»)?
6. **OBSERVATIONS:**

In order to fill in the claim correctly, consult the instructions at the end of this set of formulas.

The use of official forms to apply for reimbursement is mandatory and the reprint or reproduction of these forms – in whatever form – is prohibited. By using other than official forms the processing can not be ensured and the burden of processing costs remains expressly reserved.

QUESTIONS TO BE ANSWERED BY THE BENEFICIAL OWNER (In case the form is filled in by a representative, the term «you» means the beneficial owner)

1. On the date(s) set out in column 5 on the front page
- Yes No a) were you beneficially entitled to the income specified on the front page?
If not, please state the reasons under «6. OBSERVATIONS» on what base you are claiming the refund.
- Yes No b) did you draw this income for yourself?
If not, please state the reasons under «6. OBSERVATIONS» on what base you are claiming the refund.
- Yes No c) If the answer to question b) is «yes», are the shares part of your own shares position (Nostro/own portfolio, no underlying beneficiaries)?
- Yes No d) If the answer to question c) is «yes», were the securities specified on the front page part of «Securities Lending and Borrowing» transactions on the due date of the income? If the answer is «yes», please give full particulars under «6. OBSERVATIONS».
- Yes No e) Address of the competent Internal Revenue Service Center
- Yes No f) Claimant's last United States tax return, relating to the year _____ was filed with this office (if claimant is tax exempt, tick this box)
- Yes No g) Claimant's Taxpayer Identification Number
2. During any calendar year in which income specified on the front page became due (column 5):
 Yes No were you engaged in trade or business in Switzerland through a permanent establishment situated in Switzerland?
If the answer is «yes», give full particulars under «6. OBSERVATIONS».
- Yes No 3. a) Were you a tax exempt recognized United States pension trust?
Indicate State of establishment
- Yes No b) If the answer is «Yes»:
Were more than 50 percent of the beneficiaries, members or participants residents of the United States or Switzerland?
- Yes No 4. a) Were you a tax exempt United States not-for-profit organization?
Indicate State of establishment
- Yes No b) If the answer is «Yes»:
Were more than 50 percent of the beneficiaries, members or participants residents of the United States or Switzerland?
- Yes No 5. Were you another United States entity such as a partnership, estate, trust or S-Corporation (give full details of claimant and of all persons concerned, including their residence, wherever situated, and their proportionate shares up to the final beneficial owner under «6. OBSERVATIONS»)?

6. OBSERVATIONS:

[REDACTED] a trust company organized under the laws of the [REDACTED] (the "Trustee") hereby establishes the [REDACTED] for the collective investment of assets of participating tax qualified pension and profit sharing plans and related trusts, and governmental plans. The Trustee declares that it will hold and administer all money and property contributed to the Trust upon the conditions and terms set forth herein. The Trust is intended to be a tax-exempt group trust established under Revenue Ruling 81-100, 1981-1 C.B. 326 as modified by Revenue Ruling 2004-67, 2004-25 I.R.B. 28 and Revenue Ruling 2011-1, 2011-2 I.R.B. ("Rev. Rul. 81-100"). The Trust shall consist of such separate Funds as the Trustee may establish in accordance with this Declaration of Trust. Each Fund shall be administered and invested separately. [REDACTED]

[REDACTED]



Income Summary Statement of Swiss Withholding Tax
from 01.01.2016 to 31.12.2016

Swiss File No.: SR-
Local Tax I.D.: [REDACTED]
Domicile: UNITED STATES
Type of entity: Collective/Combined Invest. Fu
Client Number: [REDACTED]
UBS Number: [REDACTED]

ISIN	Description of Securities Name of Debtor	Acquisition Date	Nominal / Quantity	Due Date	Gross Rate CHF	Gross Income CHF	WHT Deducted 35 %	Refund Rate in %	Claimable Refund CHF
			128	02.05.2016	11.00	1,408.00	492.80	35%	492.80

The total amount of claimed refunds must be indicated on the official tax reclaim form with the remark "Carried over from the Income Summary Statement". The Income Summary Statement must be enclosed to the tax reclaim form and the individual income credit advices are therefore invalid as proof of claim and must not be lodged.

Total Gross Income	CHF	1,408.00
Total Swiss Withholding Tax	35% CHF	492.80
Total Claimable Refund	35% CHF	492.80

We hereby confirm

- that to the best of our knowledge the above stated information about the claimant is correct;
- that the above listed income items were executed after deduction of the 35% Swiss withholding tax and credited to the bank account of the above stated claimant or
- that, if the income was credited to the account of another person than the claimant, an explanation is attached why the claimant (beneficial owner) is another person than the creditor.

Tax Voucher

1. that the amount of income stated in all income statements or other documents that have been produced by our institution and are or could be used for reclaiming Swiss withholding tax does not exceed the amount of income confirmed by other banks/custodians (see point 2 for exceptions); and
2. we further confirm that, where all income statements and/or other documents that are produced by our institution and are used or could be used for reclaiming Swiss withholding tax exceed the amount confirmed by other banks/custodians, we have paid the Swiss Federal Tax Administration in Berne, Switzerland, an amount that is equivalent to withholding tax on the difference (withholding tax substitute).

Brown Brothers Harriman & Co.

Place/Date

Signature (no stamp)

First name, family name of the undersigned

POWER OF ATTORNEY

[REDACTED] our true and lawful

Attorney-in-Fact ("Agent"), for an in our name, place and stead to:

-prepare, sign and file tax reclaim/exemption request forms and to deal with the appropriate tax authorities for any acts and thing that have to be done with respect to such reclaim/exemption requests.

all in accordance with our instructions,

And generally to do all other acts and things, sign, deliver and endorse all instruments, document and other papers necessary and proper in the aforesaid as we could do if personally present with full power of substitution and revocation, and we hereby ratify and confirm all that the Agent and its substitutes shall lawfully do or cause to be done by virtue hereof.

This Power of Attorney shall remain in full force and effect until such time revoked by us in writing, and shall be governed by and construed under the laws of the State of New York.

STATE OF [REDACTED]

COUNTY OF [REDACTED]

The foregoing instrument was acknowledged before me this 15th day of April, 2009 by [REDACTED], who is personally known to me or who has produced [REDACTED] as identification.

Notarized by [REDACTED]

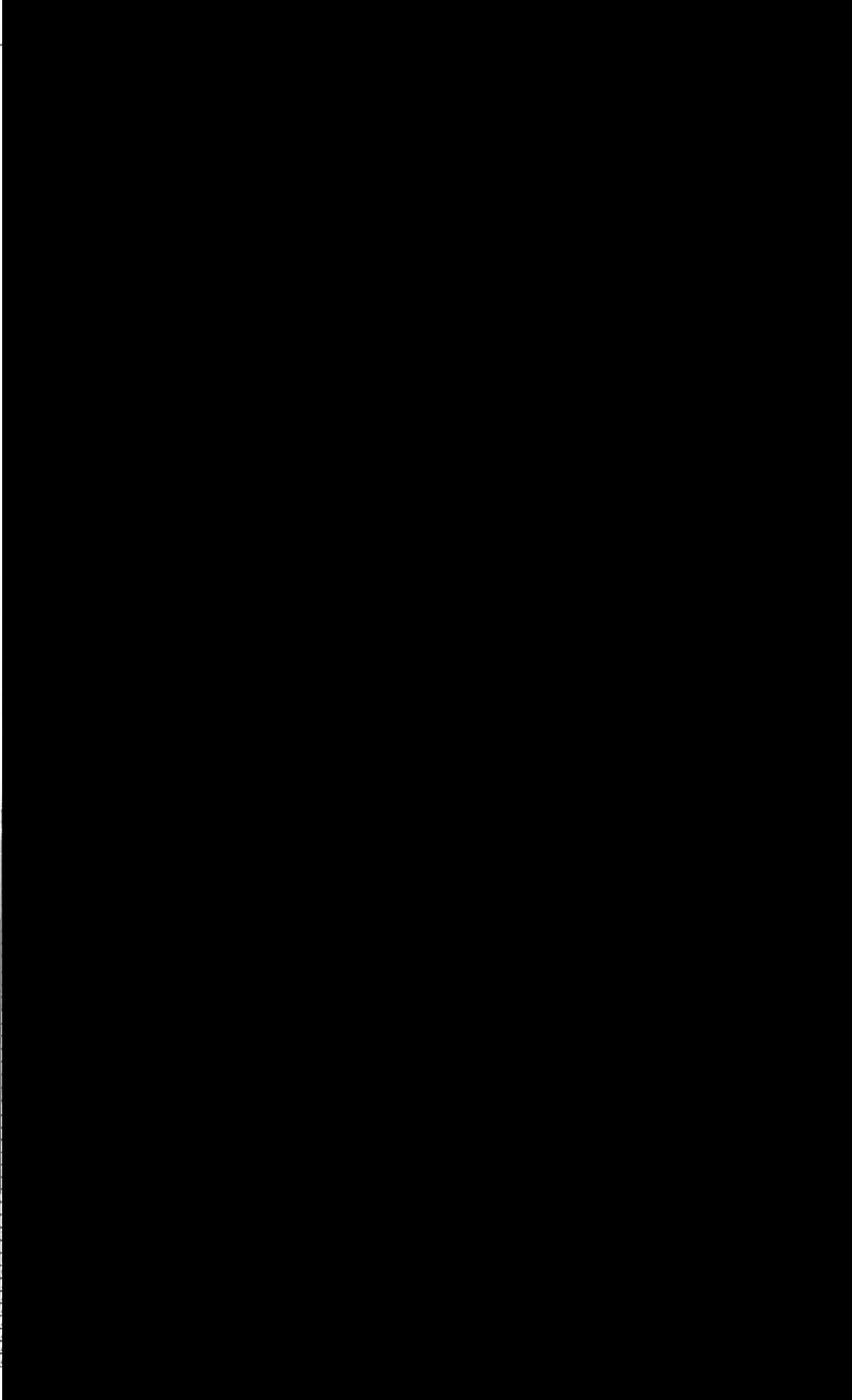
My Commission expires on Feb 7, 2012

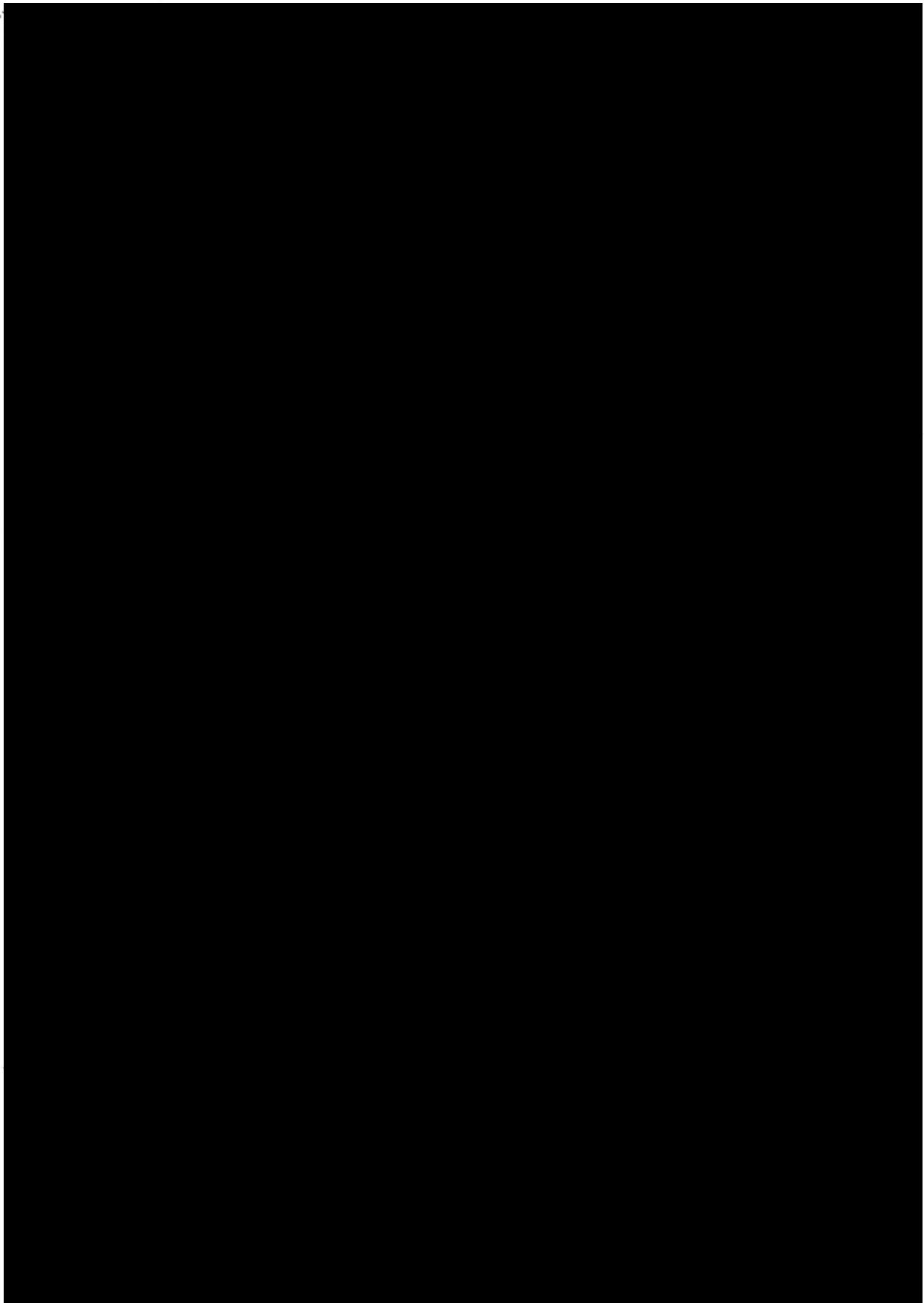


Account Name

BBH A/C# Trust Name

Tax ID







CERTIFICATION
PROGRAM

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
PHILADELPHIA, PA 19255

Date: September 19, 2017

Taxpayer:

TIN:

Tax Year:

I certify that the above-named fund is a group trust arrangement described in Revenue Ruling 81-100, and to the best of our knowledge, each participant is a resident of the United States.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Rückforderungsantrag der Schweizerischen Verrechnungssteuer

Sehr geehrte Damen und Herren

Beiliegend erhalten Sie das folgende [REDACTED] zur Rückerstattung der Schweizerischen Verrechnungssteuer mit der Bitte zur umgehenden Bearbeitung.

[REDACTED]

Für Fragen stehen wir Ihnen gerne zur Verfügung. Besten Dank für Ihre prompte Bearbeitung.

[REDACTED]





Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Federal Department of Finance FDF
Swiss Federal Tax Administration FTA
Main Division for Federal Direct Tax,
Anticipatory Tax and Stamp Duty

P.P. CH-3030 Bern, -8200-

Jan. 2014

United States of America

Your reference: 8'228'855
Your message of
Our reference: Ber

Berne, December 12, 2013

Claim for refund of Swiss anticipatory tax / Form 82 E

Dear Sir,

I refer to your letter of 27 November 2013. With reference to Claim no. CHF

Based on Article 48, paragraph 1 of the federal Law on Withholding Tax (WHTL; SR 642.21), we require the following documents and information to examine your application:

1. Client List, the proportionate share of each participant in the group trust is missing.
2. Please send us for each partner the IRS Form 6166 for the year 2012.

We wish to point out that our requests are currently not meant to be permanent filing requirements but rather a spot check.

If you take a closer look to the determination letter issued by the IRS for instance you will discover that the Group Trust may also include individual retirement accounts in the pooling of assets. On the other side the Competent Authority Agreement clearly provides that individual retirement accounts are not eligible for a 0 % rate under the treaty. That is the reason why we need an additional proof that all of the participants in the Group Trust are eligible for a full refund of Swiss anticipatory tax under the treaty. From our point of view Form 6166 is predestinated to provide such evidence.

Swiss Federal Tax Administration FTA
Berchtold Pia
Eigerstrasse 65
3003 Berne
Tel. 031 322 73 58, Fax 031 322 71 98
Pia.Berchtold@estv.admin.ch
www.estv.admin.ch

3. According question number 3 and 4, the detailed information are missing.

Any – substantiated and documented – information and the additionally requested documents must be submitted

New and last deadline 31 January 2014

to the following address: Swiss Federal Tax Administration FTA, Refund Division, Team 1 /Ber, Eigerstrasse 65, CH-3003 Bern.

Persons who request a withholding tax refund must, to the best of their knowledge and belief, provide the authorities responsible with information on all facts that could be relevant for the refund application; in particular, they must complete the application form and questionnaire accurately and in full, as well as supply tax deduction certificates and produce accounting records, receipts and other supporting documents upon request.

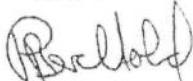
Within the scope of the authorities' examination obligation, applicants have to participate not only in the ascertainment of those facts for which the onus of proof is on them, but also in the establishment of facts for which the burden of proof lies with the refund authorities. This means that the applicant's general obligation to provide information in accordance with Article 48, paragraph 1 WHTL includes everything that is suitable for clarifying the refund application at hand. The said provision thus sets out a comprehensive obligation to provide information based on facts with which the applicant is generally the most familiar.

We wish to point out that should the Federal Tax Administration not receive a reply within the period indicated, the claim will be rejected (see Article 48, paragraph 2 WHTL).

Thank you for your cooperation.

Yours sincerely,

Refunding Division
Team 1



Pia Berchtold

Copy of the claim for refund

APPENDIX F

WITHHOLDING TAX

Collected by deduction on the income from certain stocks and shares
(as per Article 10 § 4 b convention Belgium/USA).

CERTIFICATE

The undersigned,

.....
(Name of an authorized representative of the beneficial owner)

Acting on behalf of :

(beneficial owner's full name and address)

.....+ address.....
+ tax number identification

- certifies that the dividends are derived from assets invested in the framework of the basic activity of a pension fund to provide retirement benefits

- undertakes to communicate immediately to the BTA any amendment affecting the correctness of this certificate.

Drawn up at (City) on,

Signature of authorized representative :
Title :

(NB : + form 6166 which mentioned that the beneficial owner is a US Group Trust under ruling "81-100")