

MEMO# 31251

June 19, 2018

Swiss Government Response to ICI Global Submission Proposing Procedures by Which US Funds Establish Treaty Eligibility

[31251]

June 19, 2018 TO: ICI Members

ICI Global Members

ICI Global Tax Committee

Tax Committee SUBJECTS: International/Global

Tax RE: Swiss Government Response to ICI Global Submission Proposing Procedures by Which US Funds Establish Treaty Eligibility

The Swiss Federal Tax Administration (FTA) has responded to the ICI Global proposal^[1] for additional methods by which US funds taxed as regulated investment companies (RICs) can establish that they are owned by US persons. RICs under the US-Swiss tax treaty are receiving a reduced Swiss withholding tax (from 35 percent to 15 percent) on dividends paid by Swiss companies only to the extent that the RICs establish to the FTA's satisfaction that their shares are owned by US residents.

The Swiss response addresses sources for information regarding investors' tax residences, methodologies for calculating treaty relief, and beneficial owner information. This Swiss response expands upon the clarifications provided to ICI Global last September^[2] and seeks to "structure and formalize the process" by which RICs claim treaty relief.

Sources for information regarding investors' tax residences

The response provides that acceptable information sources include the transfer agent's books for directly-held shares, broker/nominee information (such as Omni/SERV) available to funds, proxy firm information, and sales restrictions for different share classes or for the whole fund. Additional information beyond what was included in the ICI Global model letter will be required, according to the response, to confirm treaty eligibility. Among other things, the Swiss FTA "requests for each claim period the financial statements of the Fund and the current fund prospectus."

The response provides tables for explaining the treaty eligibility determination for each of the approaches described below; RICs may use one or more of these approaches to

establish their treaty eligibility percentage. The response also includes a “data summary table” to be used when a RIC uses more than one of the approaches.

Directly-held shares

The response reconfirms that RICs may extrapolate to claim treaty relief so long as at least 50 percent of a RIC’s shares are held directly.[\[3\]](#)

Broker/nominee information (such as Omni/SERV) available to funds

The response acknowledges that RICs may rely upon investor information maintained by nominees to determine the treaty eligibility of indirectly-held shares. A RIC is expected to “check the accuracy of the data provided.” This information also must be stored so that it can be provided to the Swiss FTA upon request. Although the Swiss FTA did not accept the ICI Global proposal that shares held by nominees in prescribed situations always be treated as directly-held, the response provides that “[i]n individual circumstances the Swiss FTA may conclude that the fund-units held by intermediaries and nominees do qualify as direct held fund-units but these situations are part of the individual case solution.”

Proxy firm information

Proxy firm information, as acknowledged in the 2017 correspondence, also may be used to determine the treaty eligibility of indirectly-held shares. The Swiss FTA reminds that they may request the information provided by proxy solicitation firms if they review a treaty claim. The response indicates that the proxy firm must disclose to the RIC, for possible subsequent disclosure to the Swiss FTA, the names of the nominees, intermediaries, trusts, partnerships and estates through which the US investors hold their shares.

Sales restrictions

Finally, the response provides guidance regarding a RIC’s ability to treat one or more share classes, such as a share class for retirement accounts, as held exclusively by US persons. Specifically, the share class must be sold exclusively to US residents; merely restricting distribution to within the US, as the Swiss has said previously, is insufficient to establish that all shareholders in the class are US residents. To utilize sales restrictions to establish investor residence, the RIC must provide a “current fund prospectus or any other document confirming the sale restriction.”

Beneficial owner information

The response, finally, describes the requirements under the US-Swiss tax treaty for treaty eligibility. To prove that an investor is a US resident, the response states that the Swiss FTA “may need at least an US mailing address (no P.O. Boxes/ no correspondence addresses) and in addition an US tax identification number (TIN) or an IRS Form 1099 (US person).” This information, as we have explained to the Swiss FTA, generally is maintained by third parties for indirectly held shares and is subject to extensive data privacy considerations.

Follow-Up

The Swiss response will be discussed this week with the Tax Committee. ICI Global thereafter will follow up with the Swiss FTA on a few points that are raised in their response.

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[Attachment](#)

endnotes

[1] See Institute [Memorandum No. 31148](#), dated March 29, 2018.

[2] See Institute [Memorandum No. 30865](#), dated September 7, 2017.

[3] This extrapolation methodology has been particularly useful, as the Swiss agreed in 2001 to provide full treaty relief so long as at least 95 percent of the RIC's directly held shares are held by US persons. See Institute [Memorandum No. 13720](#), dated July 12, 2001. In more recent practice, the Swiss have continued to allow this extrapolation, but only where more than 50 percent of a RIC's shares are held directly. The continuing validity of this full treaty benefit element, while not discussed in the response, has been acknowledged by Swiss FTA officials during two meetings in the Swiss capital (Bern).

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