



Treaty Claims and the Form W-8BEN-E

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With August quickly approaching, it's never too early to start thinking about Form W-8 resolicitation efforts. A significant number of institutions begin this process in early September to ensure as many updated Forms as possible are collected and validated by the time the clock strikes midnight on New Year's Eve.

One of the most frequent questions we see is what makes for a valid claim of treaty benefits on the Form W-8BEN-E. The answer will vary depending upon the type of income.

Let's first look at a claim for treaty benefits on actively traded dividends or interest. To be valid, the beneficial owner must:

- Tick box 14a
- Write in the country for which treaty benefits are being claimed on Line 14a
- Tick box 14b
- Select the appropriate limitation on benefits (LOB) provision. For those few treaties in which there is no LOB provision, the beneficial owner should tick the "Other" box and indicate N/A; this field should not be left blank.

We often receive questions on how withholding agents should validate the claimed LOB provision. The IRS actually included the requirement to identify the relied-upon LOB provision as an effort to ensure the beneficial owner completing the form was reviewing the treaty to help ensure it qualified under one of the provisions, not as a "gotcha" for weary withholding agents. Therefore, as per the regulations, withholding agents would only invalidate a form based on the claimed LOB provision if they have actual knowledge the claim is incorrect.

Withholding agents are also responsible for validating that there is no address either on the Form or in the related books and records that is not in the claimed treaty jurisdiction and that there are no standing instructions to pay amounts to an account in a country other than the claimed treaty jurisdiction.

Now, if you think that was challenging, let's look at a claim for treaty benefits on services income earned by a non-U.S. entity, e.g., business profits. To be valid, the beneficial owner must do all of the above PLUS:

- Provide either a U.S. or foreign taxpayer identification number on the Form W-8BEN-E
- Complete Line 15 and indicate that the income is not attributable to a permanent establishment in the United States. Line 15 must be completed when the beneficial owner is claiming treaty benefits that require it to meet conditions not covered by the representations otherwise included on the Form. As the business profits treaty clauses require that the income for which the treaty claim is made is not attributable to a permanent establishment in the United States, the beneficial owner must certify to this on Line 15. While some may argue that this is not required, it has consistently been our experience—both on audit and in discussions with IRS examination teams—that Line 15 should be completed.

These rules are complex. That is why withholding agents should not leave the validation process to chance and should either create a robust validation checklist that is reviewed periodically to ensure it reflects the most current validation standards or choose an electronic form validation system that automates these requirements.

Now let's start resoliciting and validating those Forms W-8! What are some other form validation challenges you would like to see discussed in future posts? Email us your ideas at kwooten@kpmg.com.

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