

MARKET BULLETIN

From Senior Tax Manager Taxation (extn 6839)

Date 23 November 2005

Reference Y3677

Subject US Tax: Scottish Limited Partnerships' Eligibility for Treaty Benefits

Subject areas US Tax: Scottish Limited Partnerships - Documentation Required

Attachments Appendices 1-7

Action points MSU will issue documentation to Scottish Limited Partnerships to complete and return.

Deadlines 23 December 2005

1. Purpose

- 1.1 The US tax treatment of Lloyd's members depends on their residence and their eligibility for benefits under tax treaties. This bulletin concerns Scottish Limited Partnerships ("SLPs") only. The purpose of the bulletin is to set out:
- a) the benefits available under the US-UK double taxation treaty and how they affect Lloyd's SLPs; and
 - b) the steps an SLP (and the partners of an SLP) have to take to demonstrate eligibility for benefits under the US-UK Treaty or to indicate which other tax treaty, if any, may apply.
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- 1.2 Lloyd's MSU will write to the general partner of each SLP shortly asking that several US tax forms are completed and returned. It is important that all of these forms are returned by the deadline to the address given by MSU. If no response is received by MSU in respect of an SLP or any partner in an SLP, US tax returns will have to be filed on the basis that the member concerned is not eligible in full for any treaty benefits, which may well increase the amount of US tax that the SLP has to pay.
- 1.3 A separate bulletin (Y3668 of 10 November 2005) was issued for corporate members other than SLPs, and MSU will carry out a separate documentation exercise for these. So far as individual members are concerned, this bulletin is for information only as MSU has already performed an exercise to obtain the necessary documentation.
- 1.4 This Market Bulletin is meant only as a guideline and therefore members may need to take external advice where appropriate.

2 Background

- 2.1 A new US-UK double tax treaty (the US-UK Treaty) was ratified in March 2003 and is effective for all Lloyd's members from 1 January 2005. Article 23 of the US-UK Treaty introduced a complicated set of Limitation on Benefits (LOB) rules that a UK resident (other than an individual) must satisfy in order to establish eligibility for benefits under the treaty.
- 2.2 On 30 June 2005, new US Closing Agreements were entered into between Lloyd's, Lloyd's members and the IRS. These set out new tax arrangements with effect from 1 January 2005 that apply to all Lloyd's members regardless of residence for tax purposes, with respect to both US federal income tax and US federal excise tax.
- 2.3 The application of the US-UK treaty and the Closing Agreements depends on the particular circumstances of each of the partners of the SLP concerned and further details are provided below.

3. Tax Treaty Benefits

- 3.1 Lloyd's members will, where possible, wish to prove eligibility under a US tax treaty in order to obtain four specific treaty benefits. These are the permanent establishment (PE) provision; the rate of withholding tax; the rate of branch profits tax; and the Federal Excise Tax (FET) exemption. They are described in more detail in Appendix 1.
- 3.2 Perhaps the most significant of these treaty benefits for Lloyd's members is the restriction of the US taxing rights to profits which are attributable to a PE in the US. This is the treaty provision which, under the terms of the new Closing Agreements, allows a reduction in the US PE tax base to 70% of the profit from Illinois and Kentucky licensed business and 35% of the profits from US binding authority business (excluding Illinois and Kentucky licensed business).
- 3.3 Scottish Limited Partnerships ("SLPs") are subject to US tax as if they were a corporation. However, as they are transparent entities under UK tax law, the SLP will be eligible for the benefits of a US Treaty on a particular item of income, profit or

gain to the extent that such entity's partners are eligible for benefits under that particular Treaty. Where SLPs have partners which are eligible for different treaty benefits, the SLP's US taxable profits will be apportioned in accordance with each partner's share of the profits and the portions will be subject to US tax based on the eligibility of each partner. For example, if there are two partners who share equally the profits and one qualifies for treaty benefits and one does not, the income of the SLP will be split for the purposes of calculating US tax. Half will be subject to US tax with treaty benefits and half without.

- 3.4 US resident partners need not establish eligibility under any tax treaty, as the portion of the SLPs results attributable to them will be taxed in full under US domestic law.
- 3.5 An SLP can qualify for treaty benefits in respect of the shares of partners who are resident neither in the US nor in the UK if they can demonstrate eligibility under a treaty between the US and their country of residence. The benefits depend on the treaty in question. A list of current US treaties is at Appendix 3, showing which treaties restrict US taxing rights to profits attributable to a PE, and which include some form of FET exemption.
- 3.6 Any SLP partners who are not US resident and cannot prove eligibility under a treaty with the US will not get treaty benefits. Among other things, the income attributable to them will continue to be subject to US tax on a tax base which is largely unchanged from before 2005.

4. Steps to Take to Show Tax Residence and Treaty Status

- 4.1 The partnership will be required to provide documentation giving details of each partner's eligibility for treaty benefits and also information relating to each partner's share of the partnership profits, under the terms of the Partnership Agreement, for each applicable year of account.
- 4.2 The following action should be taken in respect of each category of partner.

- i Individual partners

The SLP must provide a completed W-8BEN (Appendix 4) and attachment (see Appendix 5) for each individual partner providing details including their country of residence for tax purposes at Part II line 9(a) of the W-8BEN. Section A of the attachment to the W-8BEN need not be completed in respect of individual partners. Section B of the attachment should be completed.

Individual partners who are resident in the US are not required to complete a W-8BEN but should instead complete a W9 and return it to MSU. You can obtain a blank W9 from the IRS website (www.irs.gov) or alternatively contact MSU.

ii Corporate Partners

If the corporate partner is UK resident then the SLP must provide a completed W-8BEN (see Appendix 4) including attachment (Appendix 5) detailing which limitation on benefit (LOB) test in the US-UK Treaty is met. In determining which LOB test is met the rules as set out in Article 23 of the Treaty must be applied without applying the specific safe harbour provisions for Lloyd's members that are contained within the Closing Agreement. Appendix 2 will assist in the completion of the W-8BEN and attachment.

If the corporate partner is resident in the US a W-8BEN need not be completed, but a W9 will need to be completed and returned to MSU. You can obtain a blank W9 from the IRS website (www.irs.gov) or alternatively contact MSU.

If a corporate partner is neither UK or US resident, it may be eligible for the benefits of a tax treaty between its country of residence and the US. If this is the case, Part I of the W-8BEN should be completed and the country of residence inserted in Part II line 9(a). Lloyd's Tax Department will then contact you for further information.

iii General Partner

The general partner will need to complete a W-8IMY for the partnership. The W-8IMY sent out by MSU will be partially completed as shown in the example in Appendix 6 and therefore Part I needs to be completed only and the form signed by an authorised signatory. Instructions for completion of the W-8IMY can be found on the IRS website (www.irs.gov).

The general partner will also be required to complete a form detailing each partner's share of the profits for each year of account and what treaty, if any, the partner is entitled to the benefits of (See example in Appendix 7). The schedule in the example shows the withholding tax rates applicable to each partner on the assumption that all of the partners of the SLP are UK resident and qualify for benefits under the US-UK Treaty.

As the withholding tax rates vary according to the residence of the partner, any SLPs with any partner that is neither US resident nor entitled to the benefits of the US-UK treaty are requested to contact Juliet Phillips in Lloyd's Tax Department before completing the documentation.

5. Readership and Contact Details

5.1 This bulletin is being issued to members' agents and recognised auditors.

5.2 If you have any questions regarding the content of the bulletin, please contact:

Juliet Phillips
David Clissitt

tel: 0207 327 6839
tel: 0207 327 5228

email: juliet.phillips@lloyds.com or
email: david.clissitt@lloyds.com.

5.3 If you have any questions regarding the issue of documentation from, and its return to, MSU, please contact:

Mita Johnson

tel: 01634 392960

email: mita.johnson@lloyds.com

Juliet Phillips
Senior Tax Manager
Taxation

Appendix 1

Scottish Limited Partnerships

Summary of Benefits under the US-UK Treaty

Certain benefits under the US-UK Treaty and the reason why they are of particular relevance to Lloyd's members are detailed below. Reference is made in the discussion below to specific LOB tests, and the table indicates which test has to be met in order to obtain particular benefits under the US-UK treaty. Further information on these tests is given in Appendix 2.

Scottish Limited Partnerships ("SLPs") are subject to US tax as if they were a corporation. However, as they are transparent entities for UK tax law, the SLP will be eligible for the benefits of a US treaty on a particular item of income, profit or gain to the extent that such entity's partners are eligible for benefits under that particular treaty. For example, if there are two partners in an SLP who are each entitled to 50% of the profits under the terms of the partnership agreement and one is eligible for treaty benefits under the US-UK treaty and one is not eligible for benefits under any US treaty, then half of the partnership income will be subject to US tax taking into account treaty benefits and the other half will be subject to US tax without treaty benefits.

All references below to a "partner" are to a partner in an SLP.

1. Permanent Establishment

The US domestic legislation subjects all profits of a business carried out in the US to US federal income tax.

Under the terms of the US-UK Treaty, the US can only tax profits of a US trade or business where the UK resident carries on a business through a US permanent establishment ("PE"). Only business profits that are attributable to this US permanent establishment can be taxed in the US.

The US has also entered into treaties with other countries with a similar provision limiting the US tax base to that of profits attributable to a US permanent establishment. This is of relevance to partners who are not resident in either the UK or the US but is outside the scope of the Market Bulletin. Therefore partners who wish to claim the benefits under a treaty with the US other than the US-UK treaty will need to refer to the specific treaty in order to determine that they are eligible for benefits.

It is the operation of the PE article of treaties which has resulted in a reduced tax base under the new Closing Agreement. In the case of an SLP it is the partners who must establish eligibility under a treaty in order for the SLP to obtain treaty benefits. Where a partner can establish eligibility under the UK Treaty (or another relevant Treaty), the portion of the SLP's income to which that partner is entitled under the terms of the

partnership agreement will be subject to tax only to the extent that it is attributable to a US PE. The profits attributable to a PE under the terms of the Closing Agreements consist of 70% of the profits from Illinois and Kentucky licensed business and 35% of the profit from the US binding authority business other than Illinois and Kentucky licensed business. Where a partner cannot establish eligibility under an applicable Treaty, then the portion of the SLPs profits to which that partner is entitled to under the terms of the partnership agreement will be subject to US tax on a basis which is largely unchanged from that to which it was subject tax prior to 2005.

2. Withholding Tax on dividends and interest

Under US domestic legislation, investment income, e.g. interest, dividends etc. from US sources that is not otherwise subject to US federal income tax, is subject to a 30% withholding tax. This rate is reduced for certain types of income under many US double tax treaties.

As described above, the investment income of the SLP will be subject to US tax based on the treaty benefits to which the partners are entitled.

Certain types of US source non effectively connected investment income, i.e. income and dividends which do not fall to be taxed as part of a US PE, will be subject to a reduced withholding tax rate, to the extent that the partners qualify for benefits under the US-UK treaty.

Under the US-UK Treaty, the withholding tax on interest and certain capital gains is eliminated and the withholding tax on dividends is reduced to 15%*.

The remainder of this income will suffer rates of withholding as applicable under US domestic law, or as applicable under any Treaty with the US for which they are eligible depending on the status of the partners.

3. Branch Profits Tax

Where a taxpayer has a PE[†] in the US, the US domestic legislation imposes a further tax, “branch profits tax” (“BPT”), at a rate of 30% on the “dividend equivalent amount” of the profits of the PE. This BPT is intended to replicate the situation where a non-resident company sets up a subsidiary in the US the profits of which are subject to US tax and a US withholding tax is payable in respect of any dividend paid out of the US company to the foreign parent.

The US-UK Treaty reduces the BPT to 5%, and if additional conditions are met exempts the UK resident from the BPT entirely.

The SLP will be subject to the nil rate BPT under the UK treaty to the extent that the partners are UK resident and meet one of the tests below:

* There are further provisions in the treaty which reduces the withholding tax on dividends to 5% and nil. However, due to the restriction of activities of Lloyd’s members it is unlikely that any member would hold a large enough shareholding in the company paying this dividend to qualify for either of these reduced rates.

† or taxable branch

- (i) the Quoted Company or Subsidiary of a Quoted Company test; OR
- (ii) the Derivative Benefits test; OR
- (iii) gets approval from the Competent Authority.

It is currently not clear whether, under the US treaty and the Closing Agreement, an SLP will also qualify for nil rate BPT if the SLP participated on a 1998 or earlier year of account or to the extent that the individual partners participated as individuals on a 1998 or earlier year of account. We will clarify this in due course.

If the partner is not entitled to the benefits of the US-UK treaty then it will need to consider its eligibility under any other Treaty with the US to which it may be entitled to determine whether it is eligible for any reduction in the rate of BPT given under that Treaty.

Where the SLP is not entitled to an exemption from branch profits tax (or is only partly exempted from it), the 2005 Closing Agreement contains a safe harbour provision for calculating the BPT "dividend equivalent amount" on the basis of the federal income tax profits. If a member elects not to apply this safe harbour then the amount will need to be determined in accordance with the generally applicable US tax law.

4. US Federal Excise Tax (FET)

The US-UK Treaty provides an exemption from US FET on insurance or reinsurance premiums which are the receipts of a business of insurance carried on by an enterprise of the United Kingdom provided the underlying policies were not entered into as part of a "conduit arrangement" as defined in the Treaty. Under the Closing Agreement, the FET is not applied to insurance or reinsurance premiums that are effectively connected to UK resident Lloyd's members' US trade or business and is only applied to other insurance premiums paid to such members if a conduit arrangement is determined to exist. A conduit arrangement is one where all or substantially all of the income from such premiums is paid on to another territory and one of the main purposes of the arrangement was to get the benefit of the US-UK Treaty.

As above, the FET treatment of an SLP will depend on the treaty entitlements of the partners.

Further information on this will be given in a subsequent Market Bulletin.

5. Summary Table

The table below summarises the benefits that are obtained when each UK treaty LOB test is met. Details of how to pass each test are contained in Appendix 2.

LOB Test	Reduced Tax Base	Nil Rate Branch Profits Tax	Withholding Tax	Federal Excise Tax
Individual	Yes	5% (to be clarified)	Yes	Yes
Quoted Company	Yes	Yes	Yes	Yes
Subsidiary of a quoted company	Yes	Yes	Yes	Yes
Derivative Benefits Test	Yes	Yes	Yes	Yes
Active Trade or Business Test	Yes	5%	Yes	Yes
Base Erosion Test	Yes	5%	Yes	Yes
Partner qualifies under one of the above tests and either the partner or the SLP participated on a 1998 or earlier YOA	Yes	5% (to be clarified)	Yes	Yes

APPENDIX 2

Scottish Limited Partnerships

LOB Tests under the US-UK Treaty.

These instructions apply to corporate partners of SLPs only. Individual partners should refer to the main body of the market bulletin. Corporate members other than SLPs should refer to Market Bulletin Y3668 of 10 November 2005.

This document is intended to assist corporate partners when completing W-8BENs (and the attachment). It also provides further details of the LOB tests provided under the US-UK Treaty, taking into account the safe harbours within the US Closing Agreements and provides guidelines on how UK resident corporate members should complete Part II of the Form. Corporate partners who are not resident in the UK will need to determine whether they are eligible for the benefits of any other treaty with the US by reference to the specific treaty when completing the W-8BEN, as this is outside the scope of this bulletin.

The descriptions and explanations given below apply only to UK resident corporate partners of Lloyd's SLPs in relation to their Lloyd's business. Non UK resident corporate partners should refer to the main body of the bulletin for further guidance.

This document is meant only as a guideline and therefore members may need to take advice where appropriate.

W-8BEN – Part I

Part I should be completed with reference to the IRS W-8BEN instructions. However, corporate partners should check the 'corporation' box at line 4.

W-8BEN – Part II – Claim of Treaty Benefits

If the corporate partner is resident in the UK, "United Kingdom" should be inserted into the space in 9(a). If the corporate partner is resident in a country other than the US or UK this country should be entered in the space in line 9(a).

Partners who are not resident in the UK should refer to the Market Bulletin for further guidance.

Line 9(c) must also be completed, and Section A of the attachment to the W-8BEN should also be completed indicating which LOB test is passed. Depending on the test passed, line 10 may also need to be completed.

The guidance notes below will assist UK resident corporate partners complete the attachment and line 10. The order in which the LOB tests are described below is the order in which we suggest a UK resident corporate partner should examine its eligibility under the US-UK Treaty.

The LOB tests as set out in the attachment to the W-8BEN have been classified as either Category A or Category B tests. If you meet the conditions of a Category A test, you are

eligible under the US-UK Treaty for a 0% branch profits tax, and therefore you should also complete line 10 as follows:

“ the beneficial owner is claiming the provisions of Article 10 (7) of the treaty identified on line 9a above to claim a 0% rate of branch profits tax withholding on such owner’s dividend equivalent amount, if any”

Lines 9(c) and 10 - LOB Test

Category A Tests

1. Quoted Companies

In order to meet this test the corporate partner must be resident in the UK for tax purposes and also a quoted company. A quoted company for this purposes means that the principal class of the company’s shares must be:

- a) listed or admitted to dealings on a “recognised stock exchange”, AND
- b) the shares must be regularly traded on a recognised stock exchange.

To be quoted on a recognised stock exchange for this purpose the company must be quoted on one of the following: NASDAQ; any stock exchange registered with the SEC as a national securities exchange; the London Stock Exchange; and any other recognised investment exchange within Financial Services Act 1986 (and Financial Services and Markets Act 2000).

However, the company need not be regularly traded on one of the above stock exchanges provided it is regularly traded on one of the other “recognised stock exchanges”[‡] under the Treaty. Regularly traded means that at least 6% of the average number of outstanding shares are traded in the taxable period.

W-8BEN instructions

If the corporate partner meets the conditions of this test, the “Quoted company” box may be on the attachment to the W-8BEN and lines 9(c) and 10 ticked on the W-8BEN. Line 10 should be completed as described above.

2. Subsidiary of a quoted company

A company will qualify for treaty benefits if it is a UK tax resident and 50% of the shares (by vote and value) are owned either directly or indirectly by 5 or fewer companies which would qualify for benefits under the new Treaty under 1 above, i.e. as quoted companies.

In the case of indirect ownership all of the intermediate companies between the corporate member and the quoted company parent must be either UK or US resident for tax purposes.

[‡] Irish, Swiss, Amsterdam, Brussels, Frankfurt, Hamburg, Johannesburg, Madrid, Milan, Paris, Stockholm, Sydney, Tokyo, Toronto and Vienna Stock Exchanges are recognised under the Treaty. The Competent Authorities can also specify others.

W-8BEN instructions

If the corporate partner meets the conditions of this test, the “Subsidiary of a Quoted company” box may be ticked on the attachment to the W-8BEN and lines 9(c) and 10 ticked on the W-8BEN. Line 10 should be completed as described above.

3. Derivative Benefits Test

One of the LOB tests in the Treaty is the Derivative Benefits Test. This test is complex and therefore it has been divided into two. In applying either of these tests the corporate partner must be resident in the UK.

3.1 UK Derivative Benefits Test

The test will be met if 95% (vote and value) of the corporate partner is owned, either directly or indirectly, by 7 or fewer shareholders who are resident in the UK, and are either individuals; quoted companies; subsidiaries of a quoted company; meets the base erosion test (see 4 below) or a mixture of these.

If the above is true then the UK Derivative Benefits test is met provided that less than 50% of the corporate partner’s gross income for the particular year is paid or accrued, directly or indirectly, in the form of tax deductible payments for UK tax purposes, to persons who are not residents in the EC, EEA[§] or NAFTA^{**} territories, other than as arm’s length payments made in the ordinary course of business for services or tangible property.

W-8BEN instructions

If the corporate partner meets the conditions of this test, the “UK Derivative Benefits Test” box may be ticked on the attachment to the W-8 BEN and lines 9(c) and 10 ticked on the W-8BEN. Line 10 should be completed as described above.

3.2 Other Derivative Benefits Test

If the test at 3.1 above is not met then it may be possible to apply the wider Derivative Benefits test as set out in the US-UK treaty. This is set out below.

In order to meet the test as set out in Article 23(3) of the treaty, 95% (vote and value) of the corporate partner must be owned, either directly or indirectly, by seven or fewer shareholder who are resident in the EC, EEA or NAFTA. However, two further conditions will need to be passed:

First Condition

[§] Iceland, Liechtenstein and Norway

^{**} US, Canada, Mexico

The shareholders must qualify for the benefits of a treaty between their country of residence and the US^{††}, and if that treaty does not contain a Limitation on Benefits provision then the shareholder must establish that it would have been a “qualified person” under the US-UK treaty if they were either US or UK resident. A “qualified person” is an individual, a quoted company, a subsidiary of a quoted company or someone who passes the base erosion test (see below).

Second Condition

Having successfully applied the first condition the partner must meet the second condition.

Less than 50% of the corporate partner’s gross income for the particular year is paid or accrued, directly or indirectly, in the form of tax deductible payments for UK tax purposes, to persons who are not residents in the EC, EEA or NAFTA territories, other than as arm’s length payments made in the ordinary course of business for services or tangible property.

W-8BEN instructions

If the corporate partner meets the conditions of this test, the “Other Derivative Benefits Test” box may be ticked on the attachment to the W-8 BEN, and lines 9(c) and 10 ticked on the W-8BEN. However, the rate inserted into Line 10 will depend on which treaty you are applying in order to meet the first condition and therefore you should contact Lloyd’s Tax Department before returning the documentation.

You may also need to amend the rate of withholding applied to dividends as detailed in Appendix 7, depending on the dividend rate given in the treaty which you relying upon in order to meet the first condition given above.

You should also indicate, in the space provided on the attachment to W-8BEN, the treaty upon which you are relying in applying the first condition as described above.

Category B Tests

4. Active Trade or Business Test

The corporate partner must be a UK resident engaged in the active conduct of a trade or business in the UK,(other than the business of making or managing investments for the members own account), AND the income, profit or gain derived from the US must be derived in connection with, or be incidental to, the UK trade or business. The UK trade or business must be substantial compared to the activities in the US.

^{††} The treaty must also contain equivalent benefits in relation to the rates of tax applied on interest and dividends, as applicable.

The Active Trade or Business test alone does not give access to all the benefits of the US-UK treaty. In particular, whilst passing this test will allow the member to apply the reduced US branch profits tax of 5%, it will not allow the member to eliminate the US Branch profits tax altogether. Therefore, a partner who only passes this test will need to go on and consider the question in Section B of the attachment to the W-8BEN (see below).

W-8BEN instructions

If the corporate member meets the conditions of this test, the “Active Trade or Business Test” box may be ticked on the attachment to the W-8BEN and lines 9(c) on the W-8BEN. You must not tick or insert any text at line 10 but consideration should be given to the questions raised at Section B of the attachment.

5. Base Erosion Test

To satisfy the "ownership and base erosion" portion of this test, there are two conditions:

First Condition

For at least half of the relevant year, at least 50% (vote and value) of the corporate partner must be owned, either directly or indirectly, by either UK or US resident individuals, “quoted companies” as described at 1 above, or subsidiaries of quoted companies.

Second Condition

Less than 50% of the income of the corporate partner’s gross income for the particular year is paid or accrued, directly or indirectly, in the form of tax deductible payments for UK tax purposes, to persons who are not residents of either the United States or the United Kingdom, other than as arm's length payments made in the ordinary course of business for services or tangible property.

W-8BEN instructions

If the corporate partner meets the conditions of this test, the “Base Erosion Test” box may be ticked on the attachments to the W-8BEN and line 9(c) on the W-8 BEN.

You must not tick any of the boxes or insert any text at line 10.

6. Section B of the Attachment to the W-8BEN (Appendix 5)

If a corporate partner only passes a category B test, the SLP can not normally apply the 0% branch profits tax to the applicable portion of income. However, the US treaty and the Closing Agreement may enable a claim for a nil rate branch profits tax if one of the following conditions is met:

- the SLP participated on a 1998 or earlier year of account, or
- the partner participated on a 1998 or earlier year of account as an individual

Whether this applies or not still requires clarification. Therefore a corporate partner who only passes a category B test should complete Section B of the attachment to the W-8BEN indicating whether either of the above tests would be passed.

All individual partners should also complete Section B of the attachment to the W-8BEN answering the same question.

7. Competent Authority

Where a partner does not meet any of the tests above, the SLP may make an application to the Competent Authority (the Secretary to the US Treasury or his delegate) who can grant it benefits under the Treaty in relation to certain items of income, profit or gain. The Competent Authority will need to satisfy itself that the “establishment, acquisition or maintenance of [the member] and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under this convention”.

The Competent Authority route may also be used by SLPs whose partners only meet either the Base Erosion Test or the Active Trade or Business Test in order to get further treaty benefits. Neither of these tests is sufficient on its own to get an exemption from the Branch Profits Tax, but the Competent Authority can still grant this benefit

The procedures for making Competent Authority claims have not yet been determined, but Lloyd’s Taxation Department will co-ordinate any applications as necessary.

If you want to make an application to the Competent Authority, the “Competent Authority” box on the attachment to the W-8BEN should be ticked. Lloyd’s Taxation Department will then contact you regarding the making of the competent Authority claim.

Appendix 3

List of Countries with a US Treaty with a PE Article or FET Exemption

(position as at 1 November 2005)

Country	PE Article	FET Exemption
Australia	Yes	No
Austria	Yes	No
Barbados	Yes	No
Belgium	Yes	No
Bermuda	Limited*	No
Canada	Yes	No
China	Yes	No
Cyprus	Yes	Qualified
Czech Republic	Yes	No
Denmark	Yes	No
Egypt	Yes	No
Estonia	Yes	No
Finland	Yes	Qualified
France	Yes	Qualified
Germany	Yes	Qualified
Greece	Yes	No
Hungary	Yes	Unqualified
Iceland	Yes	No
India	Yes	Qualified
Indonesia	Yes	No
Ireland	Yes	Qualified
Israel	Yes	Qualified
Italy	Yes	Qualified
Jamaica	Yes	No
Japan	Yes	Qualified
Kazakhstan	Yes	No
Korea	Yes	No
Latvia	Yes	No

* The PE article of the US-Bermuda treaty applies only in limited circumstances. Eligibility under the PE article of the treaty must be established

Country	PE Article	FET Exemption
Lithuania	Yes	No
Luxembourg	Yes	Qualified
Mexico	Yes	Qualified
Morocco	Yes	No
Netherlands	Yes	Qualified
New Zealand	Yes	No
Norway	Yes	No
Pakistan	Yes	No
Philippines	Yes	No
Poland	Yes	No
Portugal	Yes	No
Romania	Yes	Unqualified
Russia	Yes	No
Slovakia	Yes	No
Slovenia	Yes	No
South Africa	Yes	No
Spain	Yes	Qualified
Sri Lanka	Yes	No
Sweden	Yes	Qualified
Switzerland	Yes	Qualified
Thailand	Yes	No
Trinidad and Tobago	Yes	No
Tunisia	Yes	No
Turkey	Yes	No
Ukraine	Yes	No
United Kingdom	Yes	Conduit
USSR/CIS	Yes	Qualified
Venezuela	Yes	No

Form **W-8BEN**
(Rev. December 2000)

**Certificate of Foreign Status of Beneficial Owner
For United States Tax Withholding**

OMB No. 1545-1621

Department of the Treasury
Internal Revenue Service

▶ Section references are to the Internal Revenue Code. ▶ See separate instructions.
▶ Give this form to the withholding agent or payer. Do not send to the IRS.

Do not use this form for:

- A U.S. citizen or other U.S. person, including a resident alien individual. **W-9**
- A person claiming an exemption from U.S. withholding on income effectively connected with the conduct of a trade or business in the United States **W-8ECI**
- A foreign partnership, a foreign simple trust, or a foreign grantor trust (see instructions for exceptions) **W-8ECI or W-8IMY**
- A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession that received effectively connected income or that is claiming the applicability of section(s) 115(2), 501(c), 892, 895, or 1443(b) (see instructions) **W-8ECI or W-8EXP**

Instead, use Form:

Note: These entities should use Form W-8BEN if they are claiming treaty benefits or are providing the form only to claim they are a foreign person exempt from backup withholding.

- A person acting as an intermediary **W-8IMY**

Note: See instructions for additional exceptions.

Part I

1 Name of individual or organization that is the beneficial owner		2 Country of incorporation or organization	
3 Type of beneficial owner: <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Disregarded entity <input type="checkbox"/> Partnership <input type="checkbox"/> Simple trust <input type="checkbox"/> Grantor trust <input type="checkbox"/> Complex trust <input type="checkbox"/> Estate <input type="checkbox"/> Government <input type="checkbox"/> International organization <input type="checkbox"/> Central bank of issue <input type="checkbox"/> Tax-exempt organization <input type="checkbox"/> Private foundation			
4 Permanent residence address (street, apt. or suite no., or rural route). Do not use a P.O. box or in-care-of address.			
City or town, state or province. Include postal code where appropriate.		Country (do not abbreviate)	
5 Mailing address (if different from above)			
City or town, state or province. Include postal code where appropriate.		Country (do not abbreviate)	
6 U.S. taxpayer identification number, if required (see instructions) <input type="checkbox"/> SSN or ITIN <input type="checkbox"/> EIN		7 Foreign tax identifying number, if any (optional)	
8 Reference number(s) (see instructions)			

Part II Claim of Tax Treaty Benefits (if applicable)

9 I certify that (check all that apply):

- a The beneficial owner is a resident of within the meaning of the income tax treaty between the United States and that country.
- b If required, the U.S. taxpayer identification number is stated on line 6 (see instructions).
- c The beneficial owner is not an individual, derives the item (or items) of income for which the treaty benefits are claimed, and, if applicable, meets the requirements of the treaty provision dealing with limitation on benefits (see instructions).
- d The beneficial owner is not an individual, is claiming treaty benefits for dividends received from a foreign corporation or interest from a U.S. trade or business of a foreign corporation, and meets qualified resident status (see instructions).
- e The beneficial owner is related to the person obligated to pay the income within the meaning of section 267(b) or 707(b), and will file Form 8833 if the amount subject to withholding received during a calendar year exceeds, in the aggregate, \$500,000.

10 Special rates and conditions (if applicable – see instructions): The beneficial owner is claiming the provisions of Article of the treaty identified on line 9a above to claim a% rate of withholding on (specify type of income):
 Explain the reasons the beneficial owner meets the terms of the treaty article:

Part III Notional Principal Contracts

11 I have provided or will provide a statement that identifies those notional principal contracts from which the income is **not** effectively connected with the conduct of a trade or business in the United States. I agree to update this statement as required.

Part IV Certification

Under penalties of perjury, I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct, and complete. I further certify under penalties of perjury that:

- I am the beneficial owner (or am authorized to sign for the beneficial owner) of all the income to which this form relates.
- The beneficial owner is not a U.S. person,
- The income to which this form relates is not effectively connected with the conduct of a trade or business in the United States or is effectively connected but is not subject to tax under an income tax treaty, and
- For broker transactions or barter exchanges, the beneficial owner is an exempt foreign person as defined in the instructions.

Furthermore, I authorize this form to be provided to any withholding agent that has control, receipt, or custody of the income of which I am the beneficial owner or any withholding agent that can disburse or make payments of the income of which I am the beneficial owner.

Sign Here ▶

Signature of beneficial owner (or individual authorized to sign for beneficial owner) _____ Date (MM-DD-YYYY) _____ Capacity in which acting _____

Scottish Limited Partnerships
Attachment to W-8BEN

The form should be included as an attachment to the W-8BEN submitted to MSU by all individual partners (wherever resident) and by all UK resident corporate partners of SLPs. Individual partners are only required to complete Section B. Guidance for completing this form is given at Appendix 2.

Non UK resident corporate partners should refer to the market bulletin for further guidance.

Name of SLP:

Member number of SLP:.....

Name of partner:

Section A (Corporate Partners only)

Please indicate which LOB test you pass, if any, by ticking the relevant box. Appendix 2 to the market bulletin detailed above may assist you.

Category A Tests:

Quoted Company Test

Subsidiary of a Quoted Company

UK Derivative Benefits Test

Other Derivative Benefits Test (see Note below)

If the corporate partner meets any of the tests above then the box at line 9(c) on the W-8BEN should be checked. The box at Line 10 on the W8-BEN should also be checked, and text should be inserted to read as follows:

“ the beneficial owner is claiming the provisions of Article 10 (7) of the treaty identified on line 9a above to claim a 0% rate of branch profits tax withholding on such owner’s dividend equivalent amount, if any”

Note: Please contact Juliet Phillips of Lloyd’s Tax Department before completing Line 10, if you only pass the “Other Derivative Benefit Test” as this may affect the rate of branch profits tax available. Please also indicate in the space below which treaty you are relying on to meet the first condition as described in section 3.2 of Appendix 2.

US Treaty applied (if not the US-UK treaty)

--

Category B Tests:

If the corporate partner does not meet a category A test, please indicate which category B test is met, if any, by ticking the relevant box below:

Active Trade or Business Test

--

Base Erosion Test

--

If the corporate partner meets any of the tests above but does not meet any of the Category A tests then the box at line 9(c) on the W-8BEN should be checked. However, the box at line 10 must not be checked and no text should be inserted.

Section B - Additional Information (Applies to all individual partners and all UK resident corporate partners)

If the partner is an individual or is a corporate partner that passes a category B test, then the question below should be answered with respect to that partner.

Did the SLP participate on a 1998 or earlier year of account?

--

Did the partner participate as an individual on a 1998 or earlier year of account?

--

Please also tick the appropriate box below if the SLP wants to make a Competent Authority claim either because it does not meet any of the LOB tests or to obtain a nil rate branch profits tax.

The corporate partner does not meet any of the tests above and wants to make a claim to the Competent Authority for treaty benefits

--

The partner only meets a category B test or is an individual and wants to make a claim to the Competent Authority for 0% branch profits tax

--

If you have ticked either of the boxes above Lloyd's Tax Department will contact you shortly to request further details that will be necessary in order to make such a claim.

Signed

Date.....

Form **W-8IMY**
(Rev. December 2003)

**Certificate of Foreign Intermediary,
Foreign Flow-Through Entity, or Certain U.S.
Branches for United States Tax Withholding**

OMB No. 1545-1621

Department of the Treasury
Internal Revenue Service

▶ Section references are to the Internal Revenue Code. ▶ See separate instructions.
▶ Give this form to the withholding agent or payer. Do not send to the IRS.

Do not use this form for:

- A beneficial owner solely claiming foreign status or treaty benefits **W-8BEN**
- A hybrid entity claiming treaty benefits on its own behalf **W-8BEN**
- A person claiming an exemption from U.S. withholding on income effectively connected with the conduct of a trade or business in the United States **W-8ECI**
- A disregarded entity. Instead, the single foreign owner should use **W-8BEN or W-8ECI**
- A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession claiming the applicability of section(s) 115(2), 501(c), 892, 895, or 1443(b) **W-8EXP**

Instead, use Form:

Part I Identification of Entity

1 Name of individual or organization that is acting as intermediary	2 Country of incorporation or organization
3 Type of entity—check the appropriate box:	
<input type="checkbox"/> Qualified intermediary. Complete Part II. <input type="checkbox"/> Nonqualified intermediary. Complete Part III. <input type="checkbox"/> U.S. branch. Complete Part IV. <input type="checkbox"/> Withholding foreign partnership. Complete Part V.	<input type="checkbox"/> Withholding foreign trust. Complete Part V. <input checked="" type="checkbox"/> Nonwithholding foreign partnership. Complete Part VI. <input type="checkbox"/> Nonwithholding foreign simple trust. Complete Part VI. <input type="checkbox"/> Nonwithholding foreign grantor trust. Complete Part VI.
4 Permanent residence address (street, apt. or suite no., or rural route). Do not use P.O. box.	
City or town, state or province. Include postal code where appropriate.	Country (do not abbreviate)
5 Mailing address (if different from above)	
City or town, state or province. Include postal code where appropriate.	Country (do not abbreviate)
6 U.S. taxpayer identification number (if required, see instructions) ▶ <input type="checkbox"/> SSN or ITIN <input type="checkbox"/> EIN <input type="checkbox"/> CI-EIN	7 Foreign tax identifying number, if any (optional)
8 Reference number(s) (see instructions)	

Part II Qualified Intermediary

9a (All qualified intermediaries check here) I certify that the entity identified in Part I:

- Is a qualified intermediary and is not acting for its own account with respect to the account(s) identified on line 8 or in a withholding statement associated with this form and
- Has provided or will provide a withholding statement, as required.

b (If applicable) I certify that the entity identified in Part I has assumed primary withholding responsibility under Chapter 3 of the Code with respect to the account(s) identified on this line 9b or in a withholding statement associated with this form ▶

c (If applicable) I certify that the entity identified in Part I has assumed primary Form 1099 reporting and backup withholding responsibility as authorized in its withholding agreement with the IRS with respect to the account(s) identified on this line 9c or in a withholding statement associated with this form ▶

Part III Nonqualified Intermediary

10a (All nonqualified intermediaries check here) I certify that the entity identified in Part I is not a qualified intermediary and is not acting for its own account.

b (If applicable) I certify that the entity identified in Part I is using this form to transmit withholding certificates and/or other documentary evidence and has provided or will provide a withholding statement, as required.

Part IV Certain United States Branches

Note: You may use this Part if the entity identified in Part I is a U.S. branch of a foreign bank or insurance company and is subject to certain regulatory requirements (see Instructions).

- 11 I certify that the entity identified in Part I is a U.S. branch and that the payments are not effectively connected with the conduct of a trade or business in the United States.

Check box 12 or box 13, whichever applies:

- 12 I certify that the entity identified in Part I is using this form as evidence of its agreement with the withholding agent to be treated as a U.S. person with respect to any payments associated with this certificate.
- 13 I certify that the entity identified in Part I:
- Is using this form to transmit withholding certificates or other documentary evidence for the persons for whom the branch receives a payment and
 - Has provided or will provide a withholding statement, as required.

Part V Withholding Foreign Partnership or Withholding Foreign Trust

- 14 I certify that the entity identified in Part I:
- Is a withholding foreign partnership or a withholding foreign trust and
 - Has provided or will provide a withholding statement, as required.

Part VI Nonwithholding Foreign Partnership, Simple Trust, or Grantor Trust

- 15 I certify that the entity identified in Part I:
- Is a nonwithholding foreign partnership, a nonwithholding foreign simple trust, or a nonwithholding foreign grantor trust and that the payments to which this certificate relates are not effectively connected, or are not treated as effectively connected, with the conduct of a trade or business in the United States and
 - Is using this form to transmit withholding certificates and/or other documentary evidence and has provided or will provide a withholding statement, as required.

Part VII Certification

Under penalties of perjury, I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct, and complete. Furthermore, I authorize this form to be provided to any withholding agent that has control, receipt, or custody of the income for which I am providing this form or any withholding agent that can disburse or make payments of the income for which I am providing this form.

Sign Here 

Signature of authorized official

Date (MM-DD-YYYY)

Scottish Limited Partnerships - Details of each partners entitlement to profits of the SLP

Name of SLP.....

Member Number.....

Name of Partner	US treaty applied	% share of profits in applicable YOA			Withholding Tax Rates	
		2003	2004	2005	Interest	Dividends
	UK	%	%	%	0%	15%
	UK	%	%	%	0%	15%
	UK	%	%	%	0%	15%
	UK	%	%	%	0%	15%
Total						

If the partner is not eligible for the US-UK treaty, the treaty country will need to be changed to the indicate which treaty the partner qualifies for the benefits of.
 If the partner is a US resident you should insert "US" in the treaty column and if the partner is not a resident of a treaty country please enter "none" in the treaty column.
 Different withholding tax rates may therefore apply, and you should contact Juliet Phillips in Lloyd's Taxation Department before completing for any non UK partners.