Swiss Pension MAP Agreement Announcement 2005–3

Following is a copy of the News Release issued by the Director, International (U.S. Competent Authority) on December 10, 2004 (IR–2004–146).

Agreement Identifies U.S. and Swiss Pension Plans for Tax Treaty Benefits

IR–2004–146, Dec. 10, 2004

WASHINGTON — The Competent Authorities of Switzerland and the United States have reached a mutual agreement on the qualification of certain Swiss and U.S. pensions for treaty benefits under paragraph 3 of Article 10 (Dividends) of the U.S.-Switzerland income tax treaty. The agreement also specifies the procedures for claiming treaty benefits in each country and the methods each country uses to grant treaty benefits.

The agreement constitutes a Mutual Agreement in accordance with the Convention Between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income signed at Washington, D.C., on October 2, 1996.

The text of the Agreement is as follows:

COMPETENT AUTHORITY AGREEMENT

The competent authorities of the United States and Switzerland hereby enter into the following agreement ("the Agreement") regarding the qualification of certain U.S. and Swiss pension or other retirement arrangements for benefits under paragraph 3 of Article 10 (Dividends) of the Convention Between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income signed at Washington on October 2, 1996 ("the Treaty"). The Agreement specifies the procedures for claiming Treaty benefits in each country and the methods each country will use to grant Treaty benefits. The Agreement is entered into under paragraph 3 of Article 25 (Mutual Agreement Procedure).

1) *Definitions*

It is understood that for the purposes of this Agreement:

"Article" refers to an Article of the Treaty;

"Code section" refers to a section of the U.S. Internal Revenue Code of 1986, as amended;

"IRS" refers to the U.S. Internal Revenue Service; and

"trust" includes a custodial account treated as a trust for U.S. federal income tax purposes.

2) *Qualification for benefits under Article 10(3)*

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.

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 benefits, provided the pension trust or other organization is established or sponsored by a person resident in that State under Article 4.

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.

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.

3) *Qualified U.S. pension or other retirement arrangements*

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 corporations and are considered to qualify for benefits under Article 10(3):

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

f) the Thrift Savings Fund (Code section 7701(j)).

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.

Above list is not exclusive. 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.

Verification. 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 may, if they consider it necessary, request information under Article 26 (Exchange of Information).

4) *Qualified Swiss pension or other retirement arrangements*

Subject to the conditions of Article 22(2), the following types of Swiss pension or other retirement arrangements are treated as the beneficial owners of dividends paid to them by U.S. corporations and are considered to qualify for benefits under Article 10(3):

a) a Swiss resident pension or other retirement arrangement that has been established in accordance with the Swiss Federal Act on Professional Old-Age, Survivors' and Disabled Persons' Pension Plans (Bundesgesetz über die berufliche Alters-, Hinterlassenen- und Invalidenvorsorge), but not including any form of contributory private savings plans or other individual savings plans; and

b) a Swiss resident investment foundation for pension funds ("Anlagestiftung"), if all of the participants in the investment foundation are pension or other retirement arrangements mentioned under subparagraph (a) above.

Above list is not exclusive. The listing of pension or other retirement arrangements described in subparagraphs (a) and (b) above is not intended to be exclusive. Any type of Swiss 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 U.S. competent authority under Article 28(4)(b) or seek a bilateral mutual agreement between the U.S. and Swiss competent authorities.

Verification. The status of any Swiss pension or other retirement arrangement claiming benefits under Article 10(3) is subject to verification by the U.S. tax authorities. The U.S. tax authorities may, if they consider it necessary, request information under Article 26.

5) *Appropriate procedure for filing a request with the United States for a grant of Treaty benefits by the United States*

The United States has two methods for granting benefits under Article 10(3) with respect to dividends paid by U.S. companies to Swiss pension or other retirement arrangements that qualify for benefits under this Agreement. These methods are the "at-source" method and the "refund" method.

a) *At-source method*. No tax will be withheld from a dividend paid by a U.S. company to a Swiss tax-exempt pension or other retirement arrangement described in this Agreement that provides any properly completed IRS Form W–8BEN to the withholding agent or payer of such dividend before the dividend is paid or credited to the Swiss pension or other retirement arrangement. A Swiss pension or other retirement arrangement filing Form W–8BEN must cite Articles 10(3) and 28(4) on line 10 thereof, and state that it is a Swiss pension or other retirement arrangement described in this Agreement that does not control the company paying the dividend and that satisfies the requirement of Article 22(2).

b) *Refund method.* If the Swiss pension or other retirement arrangement does not provide a properly completed Form W–8BEN before the dividend is paid or credited, the U.S. company withholds at the full U.S. statutory rate of withholding tax. Later, upon receiving a claim for refund from the Swiss pension or other retirement arrangement, the U.S. tax authorities refund the full amount of the tax that was withheld. The Swiss pension or other retirement arrangement must file its claim for refund on a Form 1120F U.S. income tax return. The Swiss pension or other retirement arrangement must include with that income tax return adequate proof of payment of the U.S. tax (*e.g.*, IRS Form 1042–S or any other appropriate income statement issued by a bank containing a reference to such payment), and attach to such return an IRS Form 8833 (Treaty Based Return Position) that:

i) cites Articles 10(3) and 28(4);

ii) states that it is a Swiss tax-exempt pension or other retirement arrangement covered under this Agreement; and

iii) states that it satisfies the requirements of Article 22(2).

A QI may act to recover over-withholding of payments on behalf of multiple Swiss pension or other retirement arrangements entitled to the benefits of this Agreement, by using the appropriate procedure under the terms of Section 9 of its Qualified Intermediary Withholding Agreement with the United States.

6) *Appropriate procedure for filing a request with Switzerland for a grant of Treaty benefits by Switzerland*

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.

The Swiss tax authority will grant benefits under Article 10(3) if the U.S. pension or other retirement arrangement provides:

a) a certification letter (Form 6166) issued by the IRS Philadelphia Service Center for the taxable year(s) in question (Example attached); and

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).

7) *Effective date*

Upon signature by both competent authorities, this Agreement is effective retroactive to February 1, 1998, the date the Treaty is effective for taxes withheld at source under Article 29(2)(a).

Agreed to by the undersigned competent authorities:

Robert H. Green U. S. competent authority	Robert Waldburge Swiss competent authority
________________ Date	________________ Date

Attachment: Example of U.S. Certification (Form 6166) for a pension or other retirement arrangement

CERTIFICATION
PROGRAM

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
PHILADELPHIA, PA 19255

Date 01/20/2004

Taxpayer: ABC Retirement Plan
TIN: 23-XXXXXXX
Tax Year: 2003

I certify that, to the best of our knowledge, the above-named entity is a trust forming part of a pension, profit sharing, or stock bonus plan qualified under section 401(a) of the U.S. Internal Revenue Code, which is exempt from U.S. taxation under section 501(a), and is a resident of the United States of America for purposes of U.S. taxation.

Certified for Switzerland

Daniel J. Nally

Daniel J. Nally
Director, Philadelphia Customer Service Center