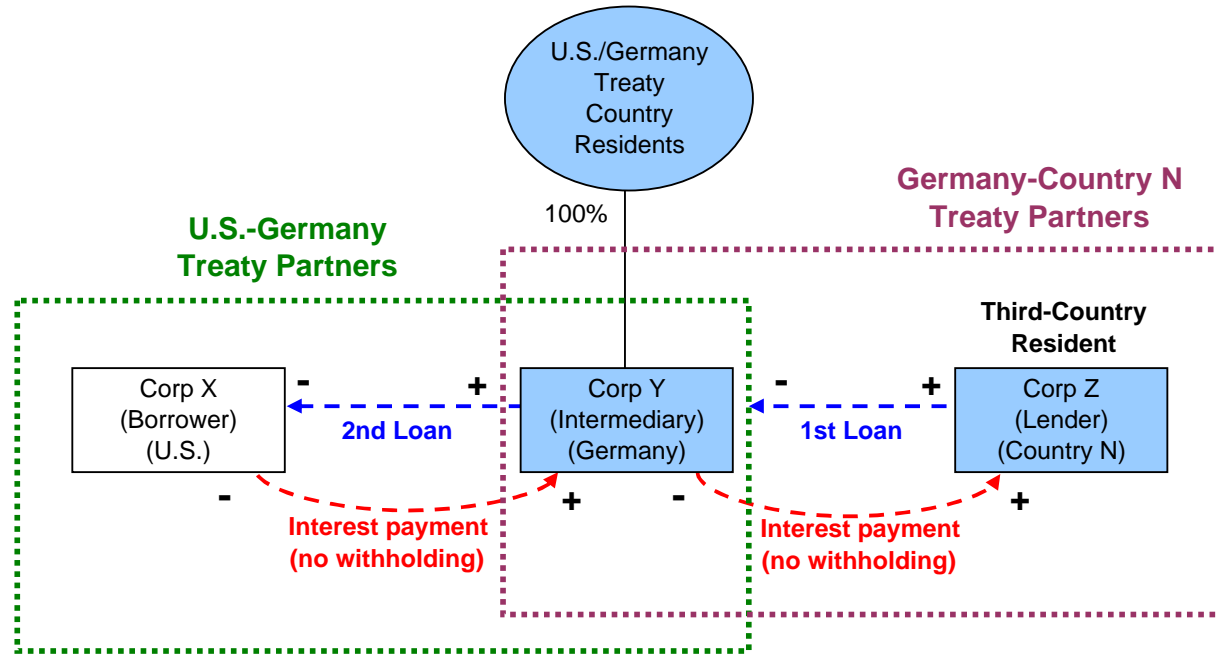


Limitation on Benefits: Example of the Need for the Ownership/Base Erosion Test

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The tax treaties between the U.S. and Germany, and between Germany and Country N, exempt interest payments from withholding tax. There is no tax treaty between the U.S. and Country N. Payment of interest directly from Corp X to Corp Z would be subject to a 30% withholding tax (unless the interest qualifies for one of the exceptions, such as the portfolio interest exception).

Excerpt from the Technical Explanation to the U.S.-German Income Tax Treaty:

The rationale for [the Ownership/Base Erosion] two-part test is that since treaty benefits can be indirectly enjoyed not only by equity holders of an entity, but also by that entity's various classes of obligees, such as lenders, licensors, service providers, insurers and reinsurers, and others, it is not enough, in order to prevent such benefits from inuring substantially to third-country residents, merely to require substantial ownership of the entity by treaty country residents or their equivalent. It is also necessary to require that the entity's deductible payments be made in substantial part to such treaty country residents or their equivalents. For example, a third-country resident could lend funds to a German-owned German corporation to be reloaned to the United States. The U.S. source interest income of the German corporation would be exempt from U.S. withholding tax under Article 11 (Interest) of the Convention. While the German corporation would be subject to German corporation income tax, its taxable income could be reduced to near zero by the deductible interest paid to the third-country resident. If, under a Convention between Germany and the third country, that interest is exempt from German tax, the U.S. treaty benefit with respect to the U.S. source interest income will have flowed to the third-country resident.

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