

**"Ultimately Owned" Under
Derivative Benefits Test**

Taxpayer requested a ruling concerning two factors under Article 24 (Limitation on Benefits) of the United States-Luxembourg income tax treaty ("Treaty"). X Corp is incorporated under the laws of Country A, which is a member state of the European Union. The X Corp shares are listed and traded on Stock Exchange 1. Taxpayer, incorporated under the laws of Country B [presumably Luxembourg], is a wholly-owned subsidiary of X Corp. Taxpayer acts solely as a holding company for X Corp's U.S. and worldwide investments, and has no active trade or business activities in Country B. Y Corp is a wholly-owned U.S. subsidiary of Taxpayer.

Generally, benefits of the Treaty will be extended to a resident of a Contracting State only if the resident meets the specific criteria to be a "qualified resident," as listed in paragraph 2 of Article 24. Because Taxpayer is wholly-owned by a non-Luxembourg company, it fails to meet the specific criteria to be a "qualified resident" of paragraph 2 of Article 24.

Paragraph 4 of Article 24 of the Treaty provides that, except as provided in Article 24(4)(c), a person that is not a qualified resident may nonetheless be entitled to benefits of the Treaty with respect to certain items of income if (in pertinent part):

- a) 95 percent of the company's shares is ultimately owned by seven or fewer residents of a state that is a party to NAFTA or that is a member State of the European Union and with which the other State has a comprehensive income tax convention; and . . .

Based on the use of the term "ultimately owned" elsewhere in the Treaty, it is concluded that for purposes of Article 24(4)(a), X Corp is the ultimate owner of Taxpayer without reference to the residence of the shareholders of X Corp.

Further, Notice 2003-69, sets forth a list of U.S. income tax treaties that are recognized as "comprehensive income tax treat[ies]" for purposes of Code Section 1(h)(11)(C)(i)(II). Country A is included on this list. Based on the use of the term "comprehensive income tax convention" in the Treaty and the comparable usage in the Netherlands treaty and in Notice 2003-69, it is held that the income tax treaty between the United States and Country A is a "comprehensive income tax convention" for purposes of Article 24(4)(a) of the Treaty.

