



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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The Honorable Kathy Manning  
Member, U.S House of Representatives  
100 South Elm Street, Suite 301  
Greensboro, NC 27401

Attention:

Dear Representative Manning:

I am responding to your September 14, 2023, inquiry on behalf of your constituent, . I apologize for the delay.

wrote about difficulties with obtaining refunds of excess foreign tax withheld on dividends paid on American Depositary Receipts (ADRs). He expressed concerns that the U.S. economy is losing money because U.S. investors are often unable to reclaim these excess amounts from countries that have agreed to provide for a reduced rate of tax on dividends paid to U.S. residents under an income tax treaty.

I can provide general information on the subject of ADRs. They are negotiable certificates that evidence ownership in shares of foreign companies and are intended to make it easier for U.S. investors to buy and sell interests in foreign stocks. When the foreign company pays a dividend to the U.S. depository institution that holds foreign stock, it will generally withhold tax and pay the withheld tax to the foreign government as required by the government's tax laws. Tax treaty rates may apply to reduce the amount of withholding tax, but at times a foreign country may instead require the beneficial owner of the dividend to file for a refund of excess withholding.

Your constituent has expressed concern with difficulties associated with obtaining a

refund of excess withholding. These difficulties may arise for various reasons. For example, a foreign government may require the investor claiming the refund to provide a certification from the United States to establish that U.S. tax was paid on the dividend. In other cases, a foreign government may view the depositary institution as the beneficial owner of the income and therefore deny a refund claim to the underlying investor. Your constituent has requested requiring depositary institutions (or their custodians) to reclaim excess withholding taxes from foreign governments on behalf of U.S. investors by making the requisite treaty claims. While certain depositary institutions may currently provide services to assist investors with obtaining refunds of excess withholding on ADRs, the IRS has no authority under current U.S. tax laws to require a depositary institution to do so.

However, there are certain measures that a U.S. investor may take to obtain relief under current law from double taxation. A U.S. investor may generally request relief under a U.S. treaty by the U.S. competent authority through the Mutual Agreement Procedure when taxation has occurred that is not in accordance with the provisions of the applicable treaty. For more information on requesting competent authority assistance under tax treaties, please refer to Revenue Procedure 2015-40, Section 3. Further, subject to certain limitations, Section 901 provides a foreign tax credit for tax withheld by the foreign company that can be used to offset the amount of tax owed to the United States – this may be appropriate where a refund cannot be obtained through effective and practical remedies.

I hope this information is helpful. If you have any questions, please contact me at \_\_\_\_\_, or \_\_\_\_\_

Sincerely,

Richard Owens  
Chief, Branch 1  
Office of Associate Chief Counsel  
(International)