



## IMPACTS ON CERTAIN CLIENTS UNDER U.S. WITHHOLDING TAX RULES

The Internal Revenue Service of the United States of America has effected changes that impacted all clients investing in U.S. securities. The changes impacted U.S. withholding tax on U.S. source investment income and were effective January 1, 2001 with respect to Haywood clients. **Please note that this document/explanation is not intended for natural persons (individuals) resident in Canada, the Federal, Provincial or Municipal Government or any agency of any such government. This explanation is meant to assist certain clients in obtaining only a general understanding of their requirements under the existing U.S. withholding tax rules. It is not intended to be, nor should it be construed to be, legal or tax advice to any client, prospective or otherwise. The existing U.S. withholding tax rules are subject to further change. You are encouraged to consult tax or legal expertise for further clarification, if required.**

The existing U.S. withholding tax rules have specific requirements for certain clients that claim reduced rates of withholding tax on investment income earned on U.S. securities under the Canada-U.S. Income Tax Convention 1980, (herein after referred to as the "Treaty") as amended by the Protocols signed on June 14, 1983, March 28, 1984, March 17, 1995, July 29, 1997, and September 21, 2007. In order to enjoy the reduced Treaty rate of withholding tax on U.S. investment income received after January 1, 2001, certain clients must certify that they are eligible for Treaty Benefits. Failure to certify the Treaty Statement above or provide a correct Form W-8 would result in the application of non-treaty rate withholding (generally 30%) on the client's U.S. source investment income. This is in comparison to Treaty reduced rates of generally 15% on U.S. source dividends and 0% on U.S. source interest. As part of the certification process, affected clients are asked to certify the Treaty Statement set out in the Account Application Form or fill out an appropriate Form W-8.

The reference to section 894 of the Code and the regulations thereunder, refers to the Internal Revenue Code and the related Income Tax Regulations. The Limitation on Benefits ("LOB") provisions, found in Section XXIX-A of the Treaty list the criteria which a person must meet to be eligible for the Treaty benefits. Certification of the Treaty Statement indicates that the recipient of U.S. source income meets the LOB provisions as set forth in Article XXIX-A of the Treaty. Typically, a person can satisfy the LOB provisions by meeting the definition of a "qualifying person" defined in paragraph 2 of the LOB provisions. Please note that Treaty benefits may still be available to clients that are not qualifying persons, if that person satisfies other tests stipulated in the Treaty.

## **Qualifying Persons**

Listed below are various entities that could meet the definition of a "qualifying person" under Article XXIX-A of the Treaty. These entities may enjoy reduced withholding rates if they certify the Treaty statement. Please note that there may be various tests which must be met by each of the entities listed below in order to be classified as a "qualified person". The list is not intended to be comprehensive or exclusive:

- (a) Publicly Traded Companies or Trusts;
- (b) Subsidiaries of Publicly Traded Companies or Trusts;
- (c) Private Companies and Unlisted Trusts;
- (d) Estates resident in Canada;
- (e) Not-for-Profit Organizations;
- (f) Registered Retirement Savings Plans, Registered Retirement Income Funds, LIRAs, Pension Funds, etc.

## **Non-Qualifying Persons**

A person that is a resident of Canada but does not fit into one of the categories for "qualifying persons" listed above, may still be entitled to certain treaty benefits if either the Active Trade or Business Test or the Derivative Test (as defined in Article XXIX-A of the Treaty) are met.