

REQUIREMENTS FOR CERTAIN CLIENTS SUBJECT TO U.S. WITHHOLDING RULES

Under United States (“U.S.”) law, non-U.S. persons are generally subject to withholding on certain income derived from U.S. sources. Haywood clients may be relieved from U.S. withholding in certain circumstances, so long as requisite qualification and documentation requirements are and continue to be met.

Please note that this document/explanation is not intended for natural persons (individuals) resident in Canada; or the Federal, Provincial or Municipal Government or any agency of any such government. This explanation is meant to assist certain clients in obtaining a very general understanding of their requirements under the existing U.S. withholding 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 rules are subject to further changes which may not be reflected in this document. You are encouraged to consult your tax or legal advisor for further clarification, if required.

The existing U.S. withholding rules outline specific requirements for persons that wish to claim reduced rates of withholding on investment income earned on U.S. securities. In order to enjoy reduced rates of withholding, Haywood clients must certify that they are eligible for benefits under an applicable U.S. Income Tax Convention (hereafter referred to as a “Treaty”). For clients that are Canadian residents, the applicable Treaty is the Convention Between the United States of America and Canada with Respect to Taxes on Income and on Capital, signed on September 26, 1980, and as amended by the Protocols signed on June 14, 1983, March 28, 1984, March 17, 1995, July 29, 1997, and September 21, 2007 (the “CanadaU.S. Treaty”).

Clients can generally provide a Treaty certification to Haywood using either an IRS Form W-8BEN-E, or a document called the “Treaty Statement” which is set out in Haywood’s Account Application Form. Failure to provide Haywood with a valid Treaty certification will result in the application of non-treaty-rate withholding (generally 30%) on the client's U.S. source investment income, rather than the more beneficial withholding under the relevant Treaty. By way of an example, for clients that qualify under the Canada-U.S. Treaty, the reduced withholding rates are generally 15% on U.S. source dividends and 0% on U.S. source interest.

ACTION REQUIRED: a Treaty Statement or Form W-8BEN-E provided is generally valid for three years. At expiry, a new Treaty certification must be provided in order to continue to enjoy the application of Treaty-reduced rates. Haywood will contact you about renewing an expiring Treaty Statement or Form W-8BEN-E. Please ensure that you respond timely in order to avoid 30% withholding due to an expired Treaty certification.

The Treaty Statement makes reference to section 894 of the Code and the regulations thereunder. These refer to the Internal Revenue Code and the related U.S. Treasury Regulations. The Treaty Statement also makes reference to Limitation on Benefits (“LOB”) provisions. The LOB provisions are found in most U.S. Treaties, and outline additional requirements for obtaining benefits under a Treaty. As part of the Treaty Statement, each client must confirm the LOB provision applicable in their circumstances in order to be eligible for benefits under that Treaty.

The remainder of this document presumes that the recipient of U.S. source income seeks to qualify under the LOB provisions outlined in the Canada-U.S. Treaty.

In the Canada-U.S. Treaty, the LOB provisions can be found in Article XXIX-A. Valid completion of a Treaty Statement requires that the recipient of U.S. source income certify that it meets these LOB provisions. In addition, the recipient must indicate the specific LOB category under which it qualifies. For this purpose, a Canadian-resident person can typically satisfy the LOB requirements by meeting one of the definitions of a “qualifying person” provided in paragraph 2 of Article XXIX-A.

Qualifying Persons

Listed below are a sample of entities that could potentially meet the definition of a "qualifying person" under Article XXIX-A of the Canada-U.S. Treaty. These entities may enjoy reduced withholding rates if they appropriately complete the Treaty Statement. Please note that additional criteria may apply to some of the entities listed below. 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; and

(f) Registered Retirement Savings Plans, Registered Retirement Income Funds, Locked-In Retirement Accounts, and Pension Funds.

Non-Qualifying Persons

An entity that is a resident of Canada but does not meet the definition of a "qualifying person" may still be entitled to treaty benefits if certain other tests are met. Please consult your legal or tax advisor for further information.

WITHHOLDING TAXES SPECIFIC TO PUBLICLY TRADED PARTNERSHIPS (PTPs)

Effective January 1, 2023, the IRS will require Haywood (as a Qualified Intermediary with the IRS) to impose a 10% withholding tax on the sale of a PTP by a non-U.S. person unless an exemption applies. In addition, Haywood may be required to impose a separate withholding tax on certain PTP income allocations to non-U.S. persons (at the highest rate of tax, which, as of December 2022, is generally 21% for corporations, and 37% for non-corporations).

- Proceeds on the disposition of all PTPs, including non-U.S. PTPs, are generally subject to the 10% withholding tax unless: The PTP issues a Qualified Notice (QN) indicating that, it had sold its applicable U.S. assets at fair market value on the date of the QN, whereby less than 10% of the proceeds from the disposition of the PTP would be connected with a trade or business within the United States.
- The 10% withholding tax will be applied to sales and certain distributions associated with eligible PTPs. *(Please note: This withholding tax will be applied in addition to any existing withholding tax being applied to U.S. source income).*

- Canadian registered accounts which hold eligible PTPs are not exempt from this withholding tax in the same manner that they may be exempt from withholding on US source dividends and interest. Consult your legal or tax advisor whether another exemption may apply.

Haywood clients are exempt if:

- They have a valid IRS W-8 with a treaty claim (including a USTIN) or W-9 on file with Haywood or.
- If the PTP they hold posts a valid QN within a 92-day period (ending on the date of the transfer of their PTP interest), which indicates that the PTP meets the less than 10% ECI (estimated chargeable income) gain exception. *Note: If the PTP had failed to post a valid QN within this 92-day period, any non-US holder will be subject to the 10% withholding tax on a disposition of the PTP interest.*

Haywood has compiled an internal list of PTP's that may be affected by the IRS withholding tax rules. The list uses information compiled from reputable third parties, however Haywood is unable to verify the accuracy or currency of the list because the IRS does not currently publish a list of affected PTP's. Haywood is therefore unable to accept any responsibility for advising its clients on the US tax status of PTP's and disclaims any liability for the accuracy of its internal list or reliance on it.

Clients who are considering transacting in a PTP are cautioned to seek independent tax advice before doing so.