White Paper

A view of potential consequences of recent US tax policy proposals on inward investment to the United States

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EXECUTIVE SUMMARY

In 2006, foreign investors paid over $8.4 billion in tax to the US Treasury on US-source investment income of which 76.2% represents tax on interest or dividends (see Appendix 2 & 3).

For many years, US tax policy has been consistent with the concept of the free flow of capital between markets. This policy is supported by Double Taxation Treaties (DTTs) with other jurisdictions on the one hand and controlled, on the other hand by the Committee on Foreign Investment in the United States ("CFIUS") and on occasion the Patriot Act.

Inbound cross border investment to the US increases GDP and is thus beneficial to the US and its citizens. Taxation of such investment at the point of distributions of dividends and interest, as well as capital gains, is natural. DTTs have, until now, helped to maintain a competitive balance for the US as the world's leading economy. There are concerns, however, that a "perfect storm" approaches that could significantly impact inward investment flows to the US.

- First, since 2001, the real cost of investment in the United States, for non-US investors, has increased significantly as financial firms struggle to comply with IRC Section 1441 NRA Regulations: complex rules regarding documentation, withholding tax assessments, deposits and tax information reporting, in addition to oversight and penalties.
- Second, due in part to compliance failures to these regulations between the years 2001 and 2008, non-US financial institutions are now faced with even greater costs brought about by a further tightening of control and oversight beginning in 2010: through Consultation Paper 2008-98 and the US Treasury Blue Book proposals.
- Third, from late 2008 into early 2009, the $787 billion fiscal stimulus package has created increased pressure on the US, as expressed in President Obama's Press Release of May 4th 2009, to maximise domestic investment and thus dis-incentivise Americans from investing abroad, the unintended consequence of which may be to dis-incentivise the rest of the world, in turn from investing in America.

Under normal circumstances, the size and wealth-producing capacity of the US would provide sufficient economic momentum to outweigh these factors. However, the expected continuing weakness of the US economy, in contrast to the strengthening of alternative developed and emerging economies, as destinations of investment capital means that there may be a "tipping point". Beyond this tipping point, foreign investors may begin to desert the US for more favourable markets due to their perception of aggressive tax policy. Equally, foreign financial firms already divesting from having US account-holders, may extend this policy to a reduction in, or elimination of custody of US assets, in an effort to reduce compliance and operating costs.

The concern of the financial services community, whose proactive support is pivotal, is that while of all the issues addressed by the IRS, Treasury and the current Administration are primarily targeted at US Persons, in order to achieve this, the US is creating an invasive administrative burden that applies to ***all*** recipients of US-source income, discouraging investment into the US. In practice, this translates into a system which is, overly expensive and is becoming increasingly unworkable.

The central question becomes: Is the perceived benefit to the US of pursuing a relatively small number of US Persons worth the potential medium term disruption to inward capital flows and long term competitive disadvantage, given a climate in which the US requires such flows to support current account, Government financial deficits and economic expansion while equally tempting alternative destinations of capital exist?

Since 2001, foreign financial firms have consistently made the point that the costs of supporting the US as an investment market for custody of investment assets are higher than any other. The issue is that, given the relative complexity, size and rate of change of the regulations, financial firms must invest considerable resources into developing systems and procedures to manage compliance. If regulation were stable, such changes could be managed, even with high costs. The current changes are being proposed at a time when all financial institutions have severe limitations on expenditure. In 1996-2001, some or all of the additional cost could be (and were) absorbed without passing those costs, and

consequences, on to investors. The result of doing so now, may have a series of unintended consequences for the US.

INTRODUCTION

The United States represents the world's largest market for inbound portfolio investment. As such, the current mechanism to encourage cross border investment, i.e. investment in US companies by non-US investors, is the existence of Double Tax Treaties ("DTTs") between the US and its major partner jurisdictions.

The US has 57 such DTTs in place. The DTTs' purpose is to allow foreign investors, based on their legal form and tax residency, an entitlement to a more favourable, "treaty" rate of tax, typically around 15% for dividend payments and 0% for most interest payments, versus the US statutory tax rate of 30%. In other words, US policy, to engage in DTTs with partner jurisdictions, has at its core, the concept that the US wishes to encourage inward investment and recognises that in such matters, it competes with other jurisdictions for investor funds.

Many investors and their financial intermediaries however, find that ***having*** an entitlement is different to ***realising*** that entitlement. The US is technically termed a "combination" jurisdiction. This means that investors into the US can realise their entitlement to a treaty rate of withholding by providing compliant documentary evidence prior to payment being made. This is known as "Relief at Source" or "RAS". If however, for any reason the investor is taxed at the higher rate and the financial intermediary chain fails to use the available corrective mechanisms within IRC Section 1441 NRA regulations, there remains a remedial mechanism, that allows investors to assert and claim their entitlement to the treaty rate "after the fact" by filing a US tax return, on which a claim for refund can be made (usually Form 1040-NR or 1120-F). Within the withholding tax industry this is commonly known as a "Long Form" process.

In 2001, the US promulgated the IRC Section 1441 NRA regulations, commonly referred to as the "QI" Regulations. These regulations, together with their ancillary processes are complex and apply different compliance restrictions and penalties on non-US financial firms and their customers, down to the level of "ultimate beneficial owners." All these regulations are dependent upon whether the financial firm acting between the Issuer and the ultimate beneficial owner have signed an agreement with the IRS to become a Qualified Intermediary ("QI"). The regulations also represented a significant departure from both the relief at source and long form models used elsewhere in the world. Notably, the requirements include higher tests of reliability in the documentation of ultimate beneficial owners, annual tax information reporting ("TIR"), compliance oversight – through audits of financial firms every two years, and enforcement through the application of a wide range of substantive penalties.

The target for these regulations was, and remains, the identification of US residents investing in US firms who have opened accounts with foreign financial institutions. In so doing, they may have represented themselves as residents of a treaty jurisdiction, under which they can benefit from a lower rate of tax than they would have otherwise been entitled to, had they invested from the US ("treaty shopping"). It is understandable that the IRS wants to ensure that US Persons are not evading US tax. In order to do this, the regulations require all recipients of US sourced income to meet the higher regulatory standards to ensure that the smaller number of US persons is properly identified. The secondary objective also ensures that those non-US persons receiving US sourced income are properly entitled to the treaty rates they are claiming. However, the level of additional cost and work that the proposed changes will impose on financial institutions, in order to catch this relatively low number of such tax evaders, may be counterproductive. The consequence, given the imposition of this cost and work may well be to discourage inbound investment into US corporations during what has been widely described as the worst economic climate in 70 years. The ultimate result might make the US a far less attractive market for investment, thereby limiting US corporations' abilities to recover from the current recession as quickly as they otherwise might, impacting a variety of issues including job creation and corporate tax revenues flowing to the IRS. The new regulations, and the cost of compliance, may also lead to decisions by non-US financial intermediaries to cease making available the facility for clients to invest in the US market, or if those costs can be passed on, totally or in part, they may reach a point at which investors choose to avoid investing in the American market.

The Perfect Storm

From the perspective of the non-US financial services community, the US has imposed, or proposes to impose, a series of changes. Both individually and in concert these changes represent an increased cost of "doing business" for both financial firms and inter alia, their customers. These are outlined below.

1. **IRS Proposals ("2008-98")**
    a. *QI Contract Changes*
        i. Controls to prevent, deter, detect & correct
        ii. Authority of Specific Employees
        iii. Notice of Material Failure of Controls
    b. *Audit Changes*
        i. Phase I Auditor Evaluation of Risk of Material Failure
        ii. US Auditor oversight of non-US QI Audit
        iii. Joint & Several liability of auditors
2. **US Treasury Changes**
    a. *Tax Information Reporting Penalties*
        i. Tier 1 penalty doubled and cap raised to $250,000
        ii. Tier 2 penalty doubled and cap raised to $500,000
        iii. Tier 3 penalty doubled and cap raised to $1.5m
        iv. Intentional Disregard raised from $100 to $250 per tax form not issued, no cap
3. **President Obama's Fiscal Stimulus Plan**
    a. *QIs*
        i. Restriction on QIs to have all commonly controlled firms also be QIs
        ii. Equivalence in reporting by US and non-US financial institutions
        iii. Reporting of money transfers to or from NQI accounts, to or from US sources
    b. *NQIs*
        i. Presumption of "facilitating tax evasion"
        ii. 20%-30% tax on all "US Persons" income with accounts at NQIs
        iii. NQI requirement to undertake FBAR reporting

IRS Proposals 2008-98

At the macro level, these changes focus on developing controls and upstream reporting obligations to mitigate the potential for compliance failure. The source of concern driving these changes is clearly the result of previous failed reporting initiatives. To an outsider these changes seem to have been extracted in part, from Sarbanes Oxley and are likely to have some similar unintended effects. Since 2003, I have run an average of ten training courses a year across the UK, Europe and the Nordic markets. Each course was attended by representatives from a minimum of six or seven financial institutions. In addition, I have travelled extensively in the Asia Pacific region discussing these issues.

My general findings have been:

1. The average QI department has between a one and five person staff.
2. Staff turnover is high and most have been in their positions for less than six months.
3. The level of knowledge of the staff is ranked between 1 and 4 where 1 is no knowledge and 10 is extremely high knowledge.

It's clear, then, that the IRS's concerns over compliance are well-founded. In most institutions, there is a high probability of compliance failure, and in many others there is no real knowledge that the penalties for such failure even exist.

The two main concerns in this area are to (i) how non-US institutions can, in a fragile global environment, respond to the need for greater controls than are currently in place and (ii) respond to the expected extra cost incurred from the highly burdensome proposed requirement for US audit oversight

of non-US auditors. Non-US firms are not covered by Sarbanes Oxley and therefore have little understanding of the strictures that a clone of such a system would impose. All of these firms do have controls in place, under their own domestic regulators. The IRS already implicitly recognises and leverages the role of domestic regulation (an institution can only be a QI in a jurisdiction in which the IRS has approved domestic Know Your Customer (KYC) rules) as a quality control system. However, the 2008-98 proposals represent a weakening of that premise, replaced by more invasive extraterritorial regulation.

Because much of the cost of complying with 2008-98 cannot be allocated at the beneficial owner level, it's likely that the cost of compliance will be borne by a general increase in the level of fees applied at the market level by financial intermediaries. We are already aware of specific instances where intermediaries have calculated the costs of the tax information reporting burden, tried to pass these on to clients and met with a refusal to pay for a burden which is perceived to be held at the intermediary level. The net result for QI's is an unwillingness to invest in further administrative compliance work when their profit margins are being eroded. For NQIs the result is ultimately a refusal to participate in reporting, combined with an increasing refusal to disclose to upstream QIs. Ironically, these responses take advantage of the historic under-investment by the IRS in enforcement. President Obama's announcement of a further 800+ IRS staff focused on enforcement should, in principle, identify non-compliance more efficiently. One of the key points of this paper however is that an increase in controls and penalties for a program which relies on the voluntary participation of the financial services community, needs to have some further positive benefits than those espoused in the original QI regulations. In the absence of a balanced "carrot and stick" approach we see clear evidence of an increasingly widely held view, that there is insufficient participation from the global financial services community to create the support for the changes the IRS seeks to impose and that alternative destinations for investment will be more seriously reviewed for cost-benefit. This then is the first wave of the potential "perfect storm".

US Treasury Changes

In the FY 2009 Blue Book released in 2008, the Department of the Treasury sets out wide ranging increases in penalties for non-compliance applicable to non-US financial firms. This issue needs to be viewed from the practical as well as the strategic level in order to understand how non-US firms would view this move in conjunction with the other measures that have been proposed.

In general, the changes affect QIs and NQIs at the end-of-year reporting level. The changes impose increased fines both at the transactional level, i.e. the fine per form, and at the enterprise level, i.e. the level of any particular cap and a failure to file in the appropriate format or method. In addition, the IRS also has the concept of "Intentional Disregard" in which even the higher level transactional fine rises and caps are removed. So, the compliance risk will increase markedly. While Intentional Disregard may be mitigated by the concept of "Voluntary Compliance", the IRS has provided no guidance to the community about whether some form of amnesty might be offered to encourage firms to fall in line that would otherwise continue to fail to comply, specifically because they are concerned about historic compliance failure. In other words, even with 800+ more enforcement staff, some firms, particularly NQIs, calculate that the risk of being found is lower than the financial penalties associated with meeting the regulations and being "visible" or being forced to join the QI program.

Also in the Blue Book, Treasury estimates income from the application of these penalties out to 2018. In any control structure the expectation would be that, if the objective is to increase compliance and that the "stick" to this compliance is a financial penalty, the level of income from such fines would rise in the short term (as firms struggle to comply), but then drop sharply as compliance improves. It's therefore surprising to many that the Treasury sees income from fines in the period to 2011 - 2018 rising to $300 million. The conclusion that can be more easily drawn from such data is that the Treasury does not expect compliance to improve, but is in fact looking to generate revenue through fines in addition to the tax already being collected, often in excess of the favourable treaty rate. Either way, the financial services community sees increasing costs of compliance and an ever increasing level of penalty for failure. The combination of these factors also drives firms to re-consider their support strategies for *any* customers investing in the US.

Overall, if taken individually, and to some extent if taken together, these changes show a determination by the US to tighten up on compliance. In 2001, when the original QI regime was implemented, the "carrot" which was offered to QIs was the ability to protect the identity of their non-US clients and report income on a pooled basis. Clearly the result has been disappointing to the IRS. Of an estimated 25,000 financial firms in receipt of US-source income globally, only about 6,500 have signed with the IRS to be QIs. The fact is that most firms are NQIs and therefore at the highest risk of non compliance. One possibility to mitigate this could be the principle of an amnesty for non-US firms, during which, prior compliance failures would be dealt with on the basis of voluntary compliance and with minimal penalties, given that the firm establishes proper procedures going forward. In a tight financial environment, the application of ever higher fines only removes cash from the institution that could otherwise be spent in improving compliance. This represents the second wave of the potential storm.

President Obama's Fiscal Stimulus Plan

Finally, with 2008-98 and Treasury changes already in the pipeline, President Obama issued a press release on May 4th 2009 which has been repeated on several occasions including by IRS Commissioner Douglas Shulman at the OECD Conference on Global Tax Policy held in Washington, DC in June 2009.

At the political level, the perception outside of the US is that these measures have clear elements of protectionism and extra-territoriality. While, this is neither entirely surprising, nor unique amongst the G20, that does not mean that it is the right thing to do and there is much historical precedent to argue the contrary. However, this paper is not intended to deliver political dialogue on this issue, merely to voice the perception of the issue from the perspective of non-US financial intermediaries. In the President's speech, as well as in speeches given by others, the stimulus plan is targeted at US persons investing in foreign enterprises as going concerns, or as a method of investing in the US via a non-US account in order to gain treaty benefits to which the US taxpayer would not otherwise be entitled. Both are valid concerns. However, the mechanism put in place in 2001 to manage the way in which these investors could be identified and handled (IRC Section 1441 NRA) currently:

- (i) is fragmented across a number of different stress points;
- (ii) creates the "walnut and sledgehammer" scenario of penalties disproportionate to the level of non-compliance for most financial firms;
- (iii) does not have a sufficiently large proportion of the community in the program to have the necessary momentum for change; and
- (iv) is potentially subject to the most radical overhaul in eight years.

President Obama's speeches and subsequent clarifications do focus on US persons investing abroad. However, from the perspective of non-US firms, the issue of US persons cannot be separated from the more wide reaching consequences of the IRC Section 1441 NRA regulations since these also apply to non-US persons.

There is some doubt as to whether Mr. Obama's plan is actually "doable" from a practical perspective. In particular, the issue of reporting of *all*, not just US sourced income, of US account holders, as well as wire transfers into and out of NQI accounts. While perhaps desirable at the political level, the expression of intent shows a lack of understanding of the way in which the financial services industry operates, and the industry's ability to react to such announcements in a time frame that is commensurate with the US government's expectation, in the current economic environment.

The focus of recent US comments does, however, seem to be aimed at NQIs, those firms in receipt of US sourced income but who have not signed a QI agreement with the IRS. Anecdotally, to highlight just how low the level of understanding is, many NQIs we have met are of the opinion that they are not "covered" by the regulations because they have not signed a QI agreement. Others refuse to disclose information to upstream QIs and many have subsequently not filed tax information reporting to the IRS. The perception of those in the NQI community is that increasing enforcement and tightening regulation should be one half of a "carrot and stick" approach. NQIs struggle to see the carrot in the current proposals and are in a much better position to disengage from US investments than their QI counterparts. At this point, we should remember that there are more than 25,000 NQIs compared to

approximately 6,500 QIs. It is in the interests of the US to find a motivational way to encourage these firms to join the QI program rather than what is perceived by many as the dangerous rhetoric of branding all such financial institutions, some of which do not have the ability to join the QI program, as "facilitating tax evasion". This is likely not to have the intended effect of encouraging further uptake in the program or constructive compliance for those who do. This is the third wave in the perfect storm.

Context

All of the foregoing must be taken in context in relation to the global economic position which differentiates positions the US has taken in the past. Fast growing economies external to the US like India and China, are seen increasingly as the rising economic global powers and have been affected less than the western nations by the banking crisis of late 2008 and subsequent global recession. These emerging economies were, at the time of the banking crisis, still in the ascendant with large populations, developing economies and a need to attract inward investment. None of this has changed. It is therefore in their interests to engender a friendly inbound investor approach. In such times, while strengthening regulation from the US may be a natural immediate response, both to try to avoid a similar situation in the future, and to fill the fiscal gap created by the borrowing necessary to mitigate the current crisis, it may not be the most prudent course when all the factors are fully considered.

Part of the difficulty with macro scale effects is that they are difficult to measure internally and the potential result may not be visible except in hindsight. The US needs to invest in its benefactors in a positive way, while clearly addressing its legitimate concerns. Those benefactors are represented by two communities – the investors themselves and also by the financial institutions that act on their behalf. Dis-incentivising either community has the effect of dis-incentivising both. While the US is perceived to be tightening its grip, it is possible that America's competitors in the global market will not just stay with the status quo, but make efforts to further differentiate their jurisdictions and thus make them even more attractive than the US. To a limited extent, this is already taking place. The 30 OECD markets and 27 EU markets are already of similar mind to the US in terms of broad tax policy. Both trade groupings have reviewed the IRC Section 1441 NRA regulations and have proposals in place to clone the US model. The important differences are that these mature markets have identified the weaknesses in the complex US model and favour a simpler implementation. The net effect in the mature markets is that they will ultimately have a similar tax policy model, but which is, in contrast to the US model, much easier for QIs to manage, less costly and thus these markets may be favoured all else being equal. The emerging markets already have much simpler tax policies and are thus in an even stronger position to react to increasing complexity and compliance burdens by attracting inward investment from the non-US markets through positive fiscal and regulatory incentives. This represents the fourth wave in the perfect storm.

SUMMARY

US tax policy with respect to inward investment has developed in such a way that foreign financial institutions responsible for servicing client assets, are negatively impacted directly at the expense line, with no benefit to their top lines, nor substantive mitigating benefit for investors, *irrespective of whether or not they have US persons in their account base*. The mere fact that they have account holders, *of any kind*, in receipt of US sourced income, creates the cost burden for them. The absorption of such costs may be prohibitive from a business standpoint, prompting a shut-down of US investment product offerings, or if such costs are passed on to investors, in whole or in part, the burden of those costs may well discourage investors from placing their funds into the US market.

The proposed changes will create administrative burden land create a cost of compliance that could easily be an order of magnitude higher than that which is currently being felt by foreign financial institutions, at a time when they are unable to invest efficiently in compliance without passing the cost on to investors in a more direct fashion.

No-one to whom we have spoken seems to have a problem with a tax system that uses foreign financial institutions to document and withhold, nor with that system's controls and oversight concepts including tax information reporting, independent audit and penalties. What is felt to be unrealistic, and which causes much negative feeling by foreign institutions towards the US, is the level of complexity required

to administer the system, as well as the way in which the proposed changes to the system and policy are extensive yet do not reflect the way in which the financial firms interact with each other and their customers. There is also the issue of the level of proportionality of taxation of US taxpayers.

In short, the tax policy tool of IRC Section 1441NRA regulations originally set out to provide an investor-friendly environment for non-US persons through a relief at source tax system, thus placing the US at a positive competitive advantage versus other markets. At the same time, the regulations sought to identify and control treaty-shopping by US persons. For the foreign financial institutions, the trigger for cost is not the type of recipient but receipt of US-sourced income. While the balance between the two objectives was maintained, the cost associated with complying - in order to obtain relief at source for their non-US account holders - was containable. That balance now seems to be changing to focus more on US persons' investment behaviour which creates a tension for foreign financial institutions. The costs are predicted to increase and the administrative burden of achieving relief at source for their non-US account holders may no longer be containable.

In addition, the US now faces a direct competitive threat to inward investment flows created from the need for all other nations to maximise inward investment and the very real opportunities represented by the emerging markets in which returns are likely to be higher and more swiftly realised than in the more mature western markets that have more fiscal inertia to battle in addressing the recession.

So, the argument of this white paper is that US tax policy has many facets when viewed by its recipients and by agents-in-fact, the foreign financial institutions. Viewing any one of these facets can lead to the presumption of an efficient system and relatively easy achievement of objectives. However, when viewed more holistically, it can be seen that many of these facets may interact and potentially cause unintended consequences. We are already seeing the beginnings of these effects in the market. We have described four "waves" in our hypothetical "perfect storm" which may, if left unaddressed, have the unintended effect of damaging the US's position in the global markets, the effectiveness of its tax policy and ultimately its ability to meet its fiscal targets.

The view that the US was the de-facto market in which every financial intermediary had to have a product offering and every investor needed to place a portion of his or her investment capital may no longer be the case. The US will have to compete more aggressively and effectively for international investment capital. In those circumstances, creating a compliance burden of the scale envisaged may defeat the purpose of stimulating investment in American industry and the financing of the Government at reasonable rates.

The views expressed in this paper are confidential and, as such, are offered with respect, as practical observations on possible consequences of US tax policy.

Ross McGill

Appendix 1 US Tax Treaties

USA Treaties in force June 2009			
Treaty Partner Country	Type of Treaty	Signed	Effective
Armenia, Union of Soviet Socialist Republics	INCOME TAX TREATY	Wednesday, June 20, 1973	Thursday, January 01, 1976
Australia	INCOME TAX TREATY	Friday, August 06, 1982	Thursday, December 01, 1983
Austria	INCOME TAX TREATY	Friday, May 31, 1996	Friday, January 01, 1999
Azerbaijan, Union of Soviet Socialist Republics	INCOME TAX TREATY	Wednesday, June 20, 1973	Thursday, January 01, 1976
Bangladesh	INCOME TAX TREATY	Sunday, September 26, 2004	Sunday, October 01, 2006
Barbados	INCOME TAX TREATY	Monday, December 31, 1984	Sunday, January 01, 1984
Belarus, Union of Soviet Socialist Republics	INCOME TAX TREATY	Wednesday, June 20, 1973	Thursday, January 01, 1976
Belgium	INCOME TAX TREATY	Monday, November 27, 2006	Tuesday, January 01, 2008
Bulgaria	INCOME TAX TREATY	Friday, February 23, 2007	Thursday, January 01, 2009
Canada	INCOME AND CAPITAL TAX TREATY	Friday, September 26, 1980	Tuesday, January 01, 1985
China (People's Rep.)	INCOME TAX TREATY	Monday, April 30, 1984	Thursday, January 01, 1987
Cyprus	INCOME TAX TREATY	Monday, March 19, 1984	Wednesday, January 01, 1986
Czech Republic	INCOME AND CAPITAL TAX TREATY	Thursday, September 16, 1993	Friday, January 01, 1993
Denmark	INCOME TAX TREATY	Thursday, August 19, 1999	Monday, January 01, 2001
Egypt	INCOME TAX TREATY	Sunday, August 24, 1980	Friday, January 01, 1982
Estonia	INCOME TAX TREATY	Thursday, January 15, 1998	Saturday, January 01, 2000
Finland	INCOME AND CAPITAL TAX TREATY	Thursday, September 21, 1989	Tuesday, January 01, 1991
France	INCOME AND CAPITAL TAX TREATY	Wednesday, August 31, 1994	Monday, January 01, 1996
Georgia, Union of Soviet Socialist Republics	INCOME TAX TREATY	Wednesday, June 20, 1973	Thursday, January 01, 1976
Germany	INCOME AND CAPITAL TAX TREATY	Tuesday, August 29, 1989	Monday, January 01, 1990
Greece	INCOME TAX TREATY	Monday, February 20, 1950	Thursday, January 01, 1953
Hungary	INCOME TAX TREATY	Monday, February 12, 1979	Tuesday, January 01, 1980
Iceland	INCOME TAX TREATY	Tuesday, October 23, 2007	Thursday, January 01, 2009
India	INCOME TAX TREATY	Tuesday, September 12, 1989	Tuesday, January 01, 1991
Indonesia	INCOME TAX TREATY	Monday, July 11, 1988	Monday, January 01, 1990
Ireland	INCOME TAX TREATY	Monday, July 28, 1997	Thursday, January 01, 1998
Israel	INCOME TAX TREATY	Thursday, November 20, 1975	Sunday, January 01, 1995
Italy	INCOME TAX TREATY	Tuesday, April 17, 1984	Tuesday, January 01, 1985
Jamaica	INCOME TAX TREATY	Wednesday, May 21, 1980	Friday, January 01, 1982
Japan	INCOME TAX TREATY	Thursday, November 06, 2003	Saturday, January 01, 2005
Kazakhstan	INCOME AND CAPITAL TAX TREATY	Sunday, October 24, 1993	Monday, January 01, 1996
Korea (Rep.)	INCOME TAX TREATY	Friday, June 04, 1976	Tuesday, January 01, 1980
Kyrgyzstan, Union of Soviet Socialist Republics	INCOME TAX TREATY	Wednesday, June 20, 1973	Thursday, January 01, 1976
Latvia	INCOME TAX TREATY	Thursday, January 15, 1998	Saturday, January 01, 2000
Lithuania	INCOME TAX TREATY	Thursday, January 15, 1998	Saturday, January 01, 2000
Luxembourg	INCOME AND CAPITAL TAX TREATY	Wednesday, April 03, 1996	Monday, January 01, 2001
Mexico	INCOME TAX TREATY	Friday, September 18, 1992	Saturday, January 01, 1994
Moldova, Union of Soviet Socialist Republics	INCOME TAX TREATY	Wednesday, June 20, 1973	Thursday, January 01, 1976
Morocco	INCOME TAX TREATY	Monday, August 01, 1977	Thursday, January 01, 1981
Netherlands	INCOME TAX TREATY	Friday, December 18, 1992	Saturday, January 01, 1994
New Zealand	INCOME TAX TREATY	Friday, July 23, 1982	Sunday, April 01, 1984
Norway	INCOME AND CAPITAL TAX TREATY	Friday, December 03, 1971	Friday, January 01, 1971
Pakistan	INCOME TAX TREATY	Monday, July 01, 1957	Thursday, January 01, 1959
Philippines	INCOME TAX TREATY	Friday, October 01, 1976	Saturday, January 01, 1983
Poland	INCOME TAX TREATY	Tuesday, October 08, 1974	Tuesday, January 01, 1974
Portugal	INCOME TAX TREATY	Tuesday, September 06, 1994	Monday, January 01, 1996
Romania	INCOME TAX TREATY	Tuesday, December 04, 1973	Tuesday, January 01, 1974
Russia	INCOME AND CAPITAL TAX TREATY	Wednesday, June 17, 1992	Saturday, January 01, 1994
Slovak Republic	INCOME AND CAPITAL TAX TREATY	Friday, October 08, 1993	Friday, January 01, 1993
Slovenia	INCOME AND CAPITAL TAX TREATY	Monday, June 21, 1999	Tuesday, January 01, 2002
South Africa	INCOME TAX TREATY	Monday, February 17, 1997	Thursday, January 01, 1998
Spain	INCOME TAX TREATY	Thursday, February 22, 1990	Tuesday, January 01, 1991
Sri Lanka	INCOME TAX TREATY	Thursday, March 14, 1985	Thursday, January 01, 2004
Sweden	INCOME TAX TREATY	Thursday, September 01, 1994	Monday, January 01, 1996
Switzerland	INCOME TAX TREATY	Wednesday, October 02, 1996	Thursday, January 01, 1998
Tajikistan, Union of Soviet Socialist Republics	INCOME TAX TREATY	Wednesday, June 20, 1973	Thursday, January 01, 1976
Thailand	INCOME TAX TREATY	Tuesday, November 26, 1996	Thursday, January 01, 1998
Trinidad and Tobago	INCOME TAX TREATY	Friday, January 09, 1970	Thursday, January 01, 1970
Tunisia	INCOME TAX TREATY	Monday, June 17, 1985	Monday, January 01, 1990
Turkey	INCOME TAX TREATY	Thursday, March 28, 1996	Thursday, January 01, 1998
Turkmenistan, Union of Soviet Socialist Republics	INCOME TAX TREATY	Wednesday, June 20, 1973	Thursday, January 01, 1976
Ukraine	INCOME AND CAPITAL TAX TREATY	Friday, March 04, 1994	Monday, January 01, 2001
United Kingdom	INCOME TAX TREATY	Tuesday, July 24, 2001	Tuesday, April 01, 2003
Union of Soviet Socialist Republics, Uzbekistan	INCOME TAX TREATY	Wednesday, June 20, 1973	Thursday, January 01, 1976
Venezuela	INCOME AND CAPITAL TAX TREATY	Monday, January 25, 1999	Saturday, January 01, 2000

Appendix 2 Tax paid by Non-US residents on US sourced investment income by source jurisdiction 2006. Source: www.irs.gov

Foreign Recipients of U.S. Income
Table 1. Forms 1042S: Number, Total U.S.-Source Income, and U.S. Tax Withheld, Tax Treaty Countries and Total Non-Tax Treaty Countries, 2006
[Money amounts in thousands of dollars]

Treaty status, country or geographic area	Number of Forms 1042S	U.S.-source income			U.S. tax withheld
		Total	Exempt from withholding	Subject to withholding	
	(1)	(2)	(3)	(4)	(5)
Total	**3,675,082**	**544,777,885**	**475,742,264**	**69,035,621**	**8,423,730**
Treaty countries, total	**2,927,937**	**419,634,560**	**362,998,204**	**56,636,356**	**5,261,964**
Armenia	605	3,646	2,789	858	188
Australia [1]	146,719	7,865,073	5,134,571	2,730,502	347,607
Austria	49,370	1,208,408	948,552	259,855	49,432
Azerbaijan	616	16,091	15,658	433	59
Barbados	2,717	382,443	329,019	53,424	11,116
Belarus	536	3,414	1,945	1,469	386
Belgium	22,996	25,421,699	8,542,535	16,879,164	348,962
Canada	478,859	19,500,846	13,478,219	6,022,627	721,629
China	82,031	5,024,562	4,871,409	153,153	15,805
Cyprus	2,029	38,492	30,356	8,136	1,358
Czech Republic	4,842	274,938	263,670	11,268	2,486
Denmark	8,666	2,445,185	2,065,405	379,780	55,926
Egypt	4,335	69,799	54,362	15,437	2,722
Estonia	919	4,411	2,320	2,091	515
Finland	4,711	1,715,544	1,625,637	89,907	9,574
France [2]	56,892	19,351,758	13,090,807	6,260,950	459,814
Georgia	652	4,187	3,000	1,187	243
Germany	949,696	51,168,060	49,333,448	1,834,612	217,565
Greece	17,482	118,910	58,278	60,632	15,949
Hungary	4,019	4,438,136	3,658,999	779,137	45,187
Iceland	2,598	1,267,228	1,245,641	21,587	3,048
India	27,538	473,890	360,946	112,944	19,043
Indonesia	7,763	30,428	21,832	8,596	1,669
Ireland	40,380	13,922,812	12,791,198	1,131,614	241,130
Israel	34,879	1,285,796	835,814	449,982	75,165
Italy	52,133	6,125,155	4,909,048	1,216,108	141,570
Jamaica	5,052	82,461	66,513	15,948	3,541
Japan	99,784	56,883,525	53,205,896	3,677,629	263,943
Kazakhstan	542	102,921	101,928	994	213
Korea, Republic of (South)	28,304	3,543,960	2,722,816	821,144	73,893
Kyrgyzstan	336	4,325	3,818	507	103
Latvia	1,056	14,276	8,189	6,087	1,203
Lithuania	815	5,081	3,464	1,618	465
Luxembourg	7,080	14,824,951	12,558,411	2,266,541	563,265
Mexico	155,863	4,278,287	3,080,726	1,197,561	173,771
Moldova	305	1,900	1,369	531	102
Morocco	880	9,242	8,017	1,226	228
Netherlands	41,794	32,591,809	31,616,717	975,092	147,152
New Zealand	15,777	620,367	473,551	146,816	21,403
Norway	7,452	3,732,868	3,617,404	115,464	18,720
Pakistan	4,589	50,971	43,454	7,517	1,445
Philippines	24,129	530,158	435,241	94,917	19,336
Poland	8,255	131,386	91,706	39,680	8,074
Portugal	10,357	326,756	237,704	89,053	14,180
Romania	2,516	19,077	8,764	10,313	1,632
Russia	9,540	430,052	412,358	17,694	3,684
Slovak Republic	1,558	17,437	11,676	5,761	1,172
Slovenia	2,983	22,924	13,803	9,122	2,066
South Africa	8,440	119,712	70,004	49,708	9,596
Spain	33,146	1,518,357	885,451	632,906	75,810
Sri Lanka	744	2,903	949	1,954	299
Sweden	19,986	5,208,286	4,586,818	621,468	79,980
Switzerland	49,724	32,133,159	29,675,650	2,457,509	373,834
Tajikistan	255	1,088	931	157	20
Thailand	7,472	321,640	289,012	32,629	4,903
Trinidad and Tobago	4,337	117,760	105,692	12,068	3,329
Tunisia	486	37,194	36,483	711	106
Turkey	5,105	31,986	17,972	14,014	2,363
Turkmenistan	176	677	607	70	8
Ukraine	2,100	10,533	5,876	4,657	1,088
United Kingdom	319,953	97,588,865	94,696,265	2,892,600	497,482
Uzbekistan	406	2,542	1,973	569	99
Venezuela	42,657	2,154,208	225,539	1,928,669	105,309
Nontreaty countries, total [3]	**747,145**	**125,143,325**	**112,744,060**	**12,399,266**	**3,161,766**

[1] Includes Ashmore and Cartier Islands/Christmas Island/Cocos (Keeling) Islands/Coral Sea Islands Territory/Norfolk Island.
[2] Includes Guadeloupe/French Guiana/Martinique/Reunion.
[3] Includes Puerto Rico and U.S. possessions. The U.S. and Bermuda have had a tax treaty in effect since 1986, however, this treaty provides no reduction of withholding rates.
NOTES: Detail may not add to totals because of rounding. Form 1042S is entitled "Foreign Person's U.S. Source Income Subject to Withholding."
Source: IRS, Statistics of Income Division, March 2009.

Appendix 3 Tax paid by Non-US residents on US sourced investment income by income type – 2006. Source www.irs.gov

Foreign Recipients of U. S. Income
Table 2. Forms 1042S: Number, U.S. Tax Withheld, and U.S.-Source Income, by Principal Type of Income, Selected Recipient Type, and Selected Country of Recipient, 2006
[Money amounts are in thousands of dollars]

Selected country or geographic area and selected recipient type	Number of Forms 1042S	U.S. tax withheld	Total U.S. - source income	Principal types of U.S.-source income					
				Interest	Dividends	Rents and royalties	Social Security and railroad retirement payments	Personal services income	Notional principal contract income
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Total	**3,675,082**	**8,423,730**	**544,777,885**	**316,825,930**	**98,457,821**	**24,322,359**	**1,411,649**	**2,758,275**	**74,450,407**
RECIPIENT TYPES									
Individuals, total	3,154,092	892,475	12,305,996	4,732,243	2,195,762	561,800	1,411,649	884,617	437
Corporations, total	355,066	4,267,717	375,527,586	216,824,159	61,782,174	18,623,263	0	1,238,315	64,939,728
Partnerships/trusts, total	70,837	425,731	15,005,783	7,261,690	4,761,646	174,048	0	67,139	606,695
U.S. branch treated as U.S. person, total	570	486	5,011,387	4,031,530	119,820	11	0	0	831,207
Governments and international organizations, total	5,479	11,938	29,425,710	20,209,803	5,028,122	8,979	0	206	43,701
Tax-exempt organizations, total [1]	6,164	12,910	5,364,341	3,236,525	1,530,644	513,259	0	406	0
Private foundations, total	946	4,520	185,760	89,522	75,316	7,329	0	114	3,092
Artists and athletes, total	10,205	92,403	425,995	0	0	0	0	0	0
Qualified intermediary pools, total	21,668	1,999,180	59,379,559	41,440,575	16,138,742	80,110	0	772	0
Other/unknown, total	50,055	716,370	42,145,768	18,999,883	6,825,595	4,353,560	0	566,706	8,025,548

About the Author

Ross K. McGill has been active in the financial services sector for over thirteen years. He is currently Managing Director of GlobeTax, a US firm providing outsourced withholding tax reclamation services to investors and financial firms in over 40 markets and represents the firm's interests outside the US. Mr. McGill is also CEO of TConsult Ltd; a UK based firm providing withholding tax and regulatory support services as well as training on Section 1441NRA regulations to financial institutions in the European, Nordic and Asia/Pacific regions.

Mr. McGill is a member of the International Capital Markets Services Association (ICMSA), a member expert on the ISO 20022 Securities Evaluation Group, a member of the Market Data Provider's User Group (MDPUG) and author of six reference works on withholding tax, associated regulatory compliance and technology management, published by Euromoney plc and Palgrave Macmillan.