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Limitation on Benefits: The U.S.-Croatia Tax Treaty and Potential Changes Ahead

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The tax treaty signed by the United States and Croatia (''Croatia Treaty'') in December 2022 is the first U.S. tax treaty signed since 2015 and the first to reflect the provisions of the 2016 U.S. Model Income Tax Convention (described by Treasury as the ''baseline text'' used to negotiate tax treaties[1] and referred to herein as the ''2016 Model'') and the 2017 Tax Cuts and Jobs Act (''TCJA''). In recent years, a number of interesting policy, technical, and procedural issues related to U.S. tax treaties have arisen, including the interaction of existing tax treaties with the TCJA, particularly the base erosion and anti-abuse tax (''BEAT''), and the final foreign tax credit regulations published in January 2022. At the same time, one senator's ''hold'' on pending tax treaties remains, raising a significant potential roadblock to ratification of bilateral tax treaties as well as any multilateral instruments that may be developed by the OECD in connection with Pillars One and Two.[2] Several treaties and protocols signed a decade ago still await consideration by the Senate.

Given the procedural impediments, one could fairly doubt that the Croatia Treaty will be ratified any time soon. However, the United States is continuing to negotiate tax treaties, and Treasury has stated that it intends to renegotiate the existing tax treaties with Switzerland (signed in 1996 and modified by a protocol signed in 2009) (''Switzerland Treaty'') and Israel (signed in 1975 and last modified in 1993) (''Israel Treaty'') in 2023.[3]

The Croatia Treaty closely follows the 2016 Model, which contains a number of new provisions to prevent use of the treaty to achieve double taxation, modifications to the limitation on benefits (LOB) article to reduce ''treaty shopping'' opportunities, and various other technical changes. One could question whether Switzerland and Israel will be as accepting of the 2016 Model provisions as Croatia. In any event, the United States will likely seek to ''modernize'' numerous provisions of the Switzerland and Israel Treaties, including with respect to LOB, and the 2016 Model provisions may serve as an opening offer. By comparing the LOB provisions relevant to companies seeking to qualify for treaty benefits in the Croatia Treaty/2016 Model to the Switzerland and Israel Treaties, this article highlights areas likely to be a target of the negotiations.

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[1] Preamble to 2016 U.S. Model Income Tax Convention (Feb. 17, 2016).

[2] A hold amounts to a statement of intention to object to any unanimous consent requests to consider any action with respect to the treaties. In the absence of a hold, the Senate is able to use a procedural mechanism called ''unanimous consent,'' which allows for a quick vote. As long as the hold remains, the Senate would be required to spend ''floor time'' (i.e., hours in the limited windows that the Senate is officially in session) to hold a debate on the treaties one by one. Due to the senator's hold, several treaties and protocols (with Chile, Hungary, and Poland) signed a decade ago still await consideration by the Senate.

[3] *See* Isabel Gottlieb, *Treasury Working on Moving Forward New*, Updated Tax Treaties, Bloomberg BNA Daily Tax Rpt. (Sept. 7, 2022).

GENERAL LOB APPROACH IN U.S. TAX TREATIES

In general, to apply a U.S. tax treaty, a foreign person must be a resident of a treaty country, be entitled to benefits under the LOB article of the treaty, and meet the substantive requirements of the provision being applied. LOB provisions are intended to prevent "treaty shopping," i.e., use of the treaty by residents of third countries. Under LOB provisions in U.S. tax treaties negotiated in the last two decades or so, a resident of a treaty country is allowed all of the benefits of the treaty if it satisfies the requirements to be treated as a "qualified person." A company is treated as a qualified person eligible for all of the benefits of the treaty if it satisfies the requirements of the publicly-traded company test, subsidiary of a publicly-traded company test, or ownership/base erosion test. If a treaty resident is not a qualified person, it may be allowed benefits with respect to certain income under other tests (most often the derivative benefits test or active trade or business test) or by receiving a discretionary determination from the competent authority of the source country.

The LOB article (article 22) in the Switzerland Treaty contains most of the objective tests for companies in more recent LOB articles but reflects an older technical and policy approach in several respects. The general structure of the LOB article (article 25) in the Israel Treaty differs from more recent treaties, although several of its provisions are conceptually similar.

Specifically, the Israel Treaty LOB article denies treaty benefits where certain conditions exist. In the case of a company, treaty benefits are denied where 50% or more of the voting power or value of the company's stock is owned directly or indirectly by any combination of one or more individuals who are not residents of the United States or Israel and who are not citizens of the United States or Israel taxable in that country on foreign-source income. Treaty benefits are also denied if 50% or more of the gross income of a company is "used in substantial part, directly or indirectly, to meet liabilities" to persons who are not residents of the United States or Israel and who are not citizens of the United States or Israel taxable on foreign-source income. These tests are similar to the ownership/base erosion tests in more recent tax treaties (discussed below) but are framed in the negative and have a narrower class of "bad" owners and payees that count toward the 50% thresholds. Another rule denies treaty benefits in certain cases where a company has a class of shares that entitles its holders to a disproportionately high share of income derived in the source country. There are exceptions to the denial of treaty benefits, including for entities engaged in an active trade or business in the residence country, certain publicly-traded companies, and persons that receive a discretionary determination. Thus, with respect to companies, the treaty can be broadly generalized as granting treaty benefits when ownership/base erosion test and disproportionate shares tests are not failed, when an active trade or business or publicly-traded company test is satisfied, or when the competent authority makes a discretionary determination.

The sections below further compare the LOB tests in the Croatia Treaty/2016 Model to those in the Switzerland Treaty and Israel Treaty, highlighting provisions relevant to corporate residents that may be targets for change.

PUBLICLY-TRADED COMPANY TEST AND SUBSIDIARY OF PUBLICLY-TRADED COMPANY TEST

The publicly-traded company test in the Croatia Treaty (article 22(2)(c)) follows the approach of the 2016 Model (which followed the approach of the 2006 U.S. Model). Under this test, a company is generally treated as a qualified person if the principal class of its shares is regularly traded on one or more recognized stock exchanges (identified in the treaty as any stock exchange registered with the SEC as a national securities exchange, the Zagreb Stock Exchange, and any other stock exchange agreed upon by the competent authorities) and either its principal class of shares is primarily traded on one or more recognized stock exchanges located in its country of residence or its primary place of management and control is in its country of residence.

Under the subsidiary of a publicly-traded company test in the Croatia Treaty (article 22(2)(d)), a company is generally treated as a qualified person if at least 50% of the aggregate vote and value of its shares is owned directly or indirectly by five or fewer companies satisfying the publicly-traded company test and a base erosion test is met. The base erosion test was a new addition to the subsidiary of a publicly-traded company test in the 2016 Model. It requires that, with respect to benefits other than a reduction in tax on dividends, less than 50% of the company's gross income, and less than 50% of the tested group's (generally, the treaty resident and any members joining in a tax consolidation or similar group regime) gross income, is paid in the form of deductible payments to persons that are not qualified persons, are connected persons (generally, persons connected by 50% ownership or under common control) that benefit from a special tax regime with respect to the deductible payment, or connected persons that benefit from a notional interest deduction. In addition, in the case of indirect ownership, each intermediate owner must be a "qualifying intermediate owner," which is defined as

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either a resident of (1) a country that has a comprehensive tax treaty with the source country and that does not benefit from a special tax regime or notional interest deduction, or (2) the same country as the person seeking benefits.

Under article 22(1)(e)(i) of the Switzerland Treaty, a company qualifies for benefits if its principal class of shares is primarily and regularly traded on a recognized stock exchange. The term ''recognized stock exchange'' is defined to mean any Swiss stock exchange on which registered dealings take place, the NASDAQ System and any stock exchange registered as a national securities exchange with the SEC, the stock exchanges of Amsterdam, Frankfurt, London, Milan, Madrid, Paris, Tokyo and Vienna, and any other stock exchange agreed upon by the competent authorities. Unlike more recent treaties, the treaty does not require that the company's primary place of management and control be in its country of residence if the company is not traded on an exchange in the residence country. Under article 22(1)(e)(ii), a company may qualify for benefits if its ''ultimate beneficial owners of a predominant interest'' are one or more U.S. or Swiss companies meeting the publicly-traded company test. The Treasury Department Technical Explanation to the Switzerland Treaty states that this ''predominant interest'' test should be interpreted as requiring a direct or indirect interest of more than 50% in every class of shares outstanding as well as debt and contractual interests. Unlike the Croatia Treaty/2016 Model, the subsidiary of a publicly-traded company test in the Switzerland Treaty does not contain a base erosion test or intermediate owner test.

The Israel Treaty contains a publicly-traded company test under which a company can qualify for benefits even if it fails the provisions that would otherwise deny treaty benefits (discussed above). Article 22(3)(d) states that the denial of benefits does not apply to ''a company in whose principal class of shares there is substantial and regular trading on a recognized stock exchange.'' The term ''recognized stock exchange'' is defined to mean, in the case of the United States, the NASDAQ System and any stock exchange that is registered as a national securities exchange with the SEC, the Tel Aviv Stock Exchange, and any other exchanges agreed to by the competent authorities. There is no base erosion test. The treaty also does not contain a subsidiary of a publicly-traded company test, but such a subsidiary could qualify for benefits if it does not fail the two provisions that would deny benefits.

OWNERSHIP/BASE EROSION TEST

The ownership component of the ownership/base erosion test in the Croatia Treaty (article 22(2)(f)) requires that, on at least half the days of the tax year, residents of either Croatia or the United States that are entitled to treaty benefits as individuals, governmental entities, publicly-traded companies, tax-exempt organizations, or pension funds own, directly or indirectly, shares or other beneficial interests representing at least 50% of the aggregate voting power and value of the shares or beneficial interests of such resident. In the case of indirect ownership, each intermediate owner must be a qualifying intermediate owner (as described above). The base erosion test is the same as in the subsidiary of a publicly-traded company test.

The analog to the ownership/base erosion test in the Switzerland Treaty is the ''predominant interest'' test of article 22(1)(f), which the Treasury Technical Explanation describes as ''blend[ing] certain principles found in Swiss domestic law with U.S. ownership/base erosion concepts.'' Under the predominant interest test, a company is entitled to benefits unless one or more persons who are not entitled to benefits as individuals, governmental entities, headquarters companies, publicly-traded companies or subsidiaries of publicly-traded companies, or family foundations are, in the aggregate, the ultimate beneficial owners of a ''predominant interest'' in the company. The Treasury Technical Explanation defines a ''predominant interest'' for this purpose as a direct, or indirect, interest of more than 50%. The Protocol (article 8) to the Switzerland Treaty incorporates base erosion concepts into the determination of ownership in the aggregate, stating that such determination shall take into account, in addition to equity interests that a person or persons may hold in the company, other contractual interests that the persons may have in the company and the extent to which such person or persons receive, or have the right to receive, directly or indirectly, payments from that company (including payments for interest or royalties, but not payments at arm's length for the purchase or use of or the right to use tangible property in the ordinary course of business or remuneration at arm's length for services) that reduce the amount of the taxable income of the company, in order to deny benefits to a person that would otherwise qualify for benefits under the predominant interest test.

As stated above, the Israel Treaty (article 25(1)) contains an ownership/base erosion test that is framed in the negative (i.e., it denies benefits where the relevant conditions are met). Specifically, treaty benefits are denied where (1) 50% or more of the voting power or value of the company's stock is owned directly or indirectly by one or more individuals who are not residents of the United States or Israel and who are not citizens of the United States or Israel taxable in that country on foreign-source income or (2) 50% or more of the gross income of a company is ''used in substantial part, directly or indirectly, to

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meet liabilities'' to persons who are not residents of the United States or Israel and who are not citizens of the United States or Israel taxable on foreign-source income.

ACTIVE TRADE OR BUSINESS

The active trade or business test in the Croatia Treaty (article 22(3)) is identical to the test in the 2016 U.S. Model. Under the test, a treaty resident is entitled to benefits with respect to an item of income if three conditions are met. First, the resident must be engaged in the ''active conduct of a trade or business'' (defined as excluding holding company operations, providing group supervision, providing group financing, or making or managing investments unless carried on by a bank, insurance company, or registered securities dealer in the ordinary course of its business) in the residence country. Second, the income derived from the source country must ''emanate[] from,'' or be incidental to, that trade or business. Third, if the resident derives the income from a trade or business conducted in the source country or derives the income from a connected person, the trade or business activity conducted in the residence country must be ''substantial in relation to the same or complementary trade or business activity'' carried on in the source country. The substantiality determination is based on all the facts and circumstances.

The active trade or business test (article 22(1)(c)) in the Switzerland Treaty also contains three main requirements. First, a company must be engaged in the active conduct of a trade or business in its country of residence (other than the business of making, managing or simply holding investments for the person's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance company or registered securities dealer). Second, the income derived from the source country must be derived in connection with, or is incidental to, that trade or business. Third, a payment between related parties (using a 10% direct or indirect ownership threshold) is treated as derived in connection with a trade or business only if the trade or business in the residence country is substantial in relation to the activity carried on in the source country, with substantiality determined based on all facts and circumstances, including comparative sizes of the trades or businesses, the nature of the activities, and the relative contributions to the trades or businesses in each country. Because these determinations are made separately for each item of income derived from the source country, the test may be satisfied with respect to one item of income but not another item.

Under article 25(3)(c) of the Israel Treaty, the provisions otherwise denying treaty benefits do not apply where a company meets an active trade or business test. The test is similar to that in the Switzerland Treaty—the company must be (1) engaged in the active conduct of a trade or business in the source country (other than the business of making or managing investments, unless these activities are banking or insurance activities carried on by a bank or insurance company), and (2) the income derived from the source country is derived in connection with, or is incidental to, that trade or business. The treaty itself does not contain a substantiality requirement, but the Treasury Technical Explanation cross-references a memorandum of understanding between the United States and Germany containing examples that require an (undefined) substantiality test to be met where the income at issue is paid by a related party.

A key difference between the active trade or business tests in the Croatia Treaty/2016 Model and the Switzerland and Israel Treaties is that the Croatia Treaty/2016 U.S. Model requires the income from the source country to ''emanate from'' (or be incidental to) the trade or business in the residence country, while the Switzerland and Israel Treaties requires such income to be ''derived in connection with'' (or be incidental to) such trade or business. The meaning of the phrase ''emanate from'' is not elaborated on in the text of the Croatia Treaty, but the preamble released with the 2016 Model explains that the ''emanate from'' concept is intended to require a factual connection between the active trade or business in the residence country and the item of income for which benefits are sought. The preamble states that Treasury was concerned that the ''derived in connection with'' standard could allow treaty shopping with respect to income, such as intragroup dividends and interest, that does not have a nexus to the activities in the residence country.

DERIVATIVE BENEFITS

A number of U.S. tax treaties, particularly those with European countries, contain ''derivative benefits'' LOB provisions that generally provide treaty benefits with respect to an item of income where the company is largely owned by persons that would be eligible for equivalent treaty benefits if they had earned the income at issue. The Croatia Treaty includes a derivative benefits test similar to that in the 2016 Model, which was the first U.S. model treaty to contain a derivative benefits test.

Specifically, article 22(4) of the Croatia Treaty grants benefits with respect to an item of income where two main requirements are met. First, shares representing at least 95% of the aggregate voting power and value of the company's shares must be owned, directly or indirectly, by seven or fewer per-

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sons that are ''equivalent beneficiaries.'' In the case of indirect ownership, each intermediate owner must be a qualifying intermediate owner (discussed above).

An ''equivalent beneficiary'' is generally a resident of any country where (1) the resident is entitled to benefits under the treaty between its country of residence and the source country under provisions substantially similar to the publicly traded company test, subsidiary of a publicly traded company test, ownership/base erosion test, or LOB provision granting treaty benefits to pensions and charitable organizations, and (2) with respect to treaty benefits for dividends, interest, and royalties, the resident would have been entitled to a tax rate under such treaty, domestic law, or other international agreement that is less than or equal to the treaty rate sought by the company applying the derivative benefits test. The definition of equivalent beneficiary is thus broader than under existing treaties that generally require equivalent beneficiaries to be resident in a European Union (''EU''), European Economic Area (''EEA'') or North American Free Trade Agreement (''NAFTA'') country.[4] The Croatia Treaty also eliminates the ''cliff effect'' that can result in existing derivative benefits provisions where a third-country resident is entitled to a reduced withholding tax, but not as low as in the treaty being applied. Under the Croatia Treaty, the company applying the derivative benefits test may be entitled to a reduced rate equal to the highest rate of withholding to which its owners would be entitled.

The base erosion prong of the derivative benefits test in the Croatia Treaty is met if less than 50% of the company's gross income, and less than 50% of the tested group's gross income, is paid or accrued, directly or indirectly, in the form of payments (with exceptions for certain payments, including arm's length payments for services and tangible property) that are deductible for purposes of the taxes covered by the treaty in the company's residence state to certain categories of persons. These categories are: persons that (1) are not equivalent beneficiaries; (2) are equivalent beneficiaries solely by reason of the headquarters test or a substantially similar provision in another treaty; (3) are equivalent beneficiaries that are connected persons with respect to the company seeking treaty benefits and that benefit from an special tax regime with respect to the deductible payment; or (4) are equivalent beneficiaries that are connected persons with respect to the company seeking treaty benefits and that benefit from a notional interest deduction with respect to a payment of interest.

The derivative benefits test (article 22(3)) in the Switzerland Treaty is described in the Treasury Technical Explanation as a ''limited'' derivative benefits test. Under this test, a company is generally entitled to a reduced tax rate on dividends, interest, and royalties if three requirements, looking to ownership and base erosion, are satisfied. First, the ultimate beneficial owners of more than 30% of the aggregate vote and value of all shares must be persons that are resident in the same country as the company being tested and that would qualify for benefits as individuals, government entities, headquarters companies, publicly-traded companies, companies (or trusts or estates) satisfying the predominant interest test, or family foundations. Second, the ultimate beneficial owners of more than 70% of all shares must be residents described in the preceding requirement or residents of EU, EEA, or NAFTA countries and that meet a rate comparison test. The rate comparison test is satisfied by a person who (1) is a resident of a country with which the source country has a comprehensive income tax convention where that person is entitled to all of the benefits provided by the source country under that convention; (2) would qualify for benefits under article 22(1) of the Switzerland Treaty as an individual, government entity, company with active trade or business, recognized headquarters company, publicly-traded company or subsidiary of publicly-traded company, company (or trust or estate) meeting the predominant interest test, or family foundation, if that person were a resident of the residence country; and (3) would be entitled to a rate of tax in the source country under the convention between that person's country of residence and the source country in respect of the particular class of income for which benefits are being claimed that is ''at least as low'' as the rate applicable under the Switzerland treaty. Third, the amount of deductible expenses paid by the company for its preceding fiscal period to persons that would not qualify for benefits as individuals, government entities, headquarters companies, publicly-traded companies or subsidiaries of publicly-traded companies, or family foundations, must be less than 50% of the gross income of the company for that period.

As discussed below, a memorandum of understanding between the United States and Switzerland incorporates a derivative benefits test into provisions providing benefits where the competent authority makes a discretionary determination.

HEADQUARTERS COMPANY

The Croatia Treaty (article 22(5)) would grant a company that serves as the headquarters of a multina-

[4] NAFTA was an agreement signed by the United States, Mexico, and Canada. It has been superseded by the United States-Mexico-Canada Agreement (''UMSCA''). In Announcement 2020-6, Treasury and the IRS stated that any reference to NAFTA in a U.S. tax treaty should be interpreted as a reference to USMCA.

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tional corporate group treaty benefits for dividends and interest paid by group members where several conditions are met. The headquarters company provision is nearly identical to the provision in the 2016 Model. Only a few existing treaties have headquarters company LOB provisions, and the key differences between the Croatia Treaty/2016 Model and prior headquarters company LOB provision, including the provision in the Swiss treaty discussed below, are that the company's primary place of management and control must be in the residence country and the provision contains a base erosion test. Specifically, under the Croatia Treaty: (1) the company's primary place of management and control must be in the residence country; (2) the multinational corporate group must consist of companies resident in, and engaged in an active trade or business in, at least four countries, and the trades or businesses in the four countries must generate at least 10% of the gross income of the group; (3) the trades or businesses of the multinational corporate group that are carried on in any state other than the residence state must generate less than 50% of the gross income of the group; (4) no more than 25% of the headquarter company's gross income may be derived from the source country; (5) the headquarters company must be subject to tax in the same manner as companies engaged in an active trade or business in its residence state; and (6) a base erosion test (generally similar to the subsidiary of a publicly-traded company test) must be satisfied. Where the gross income requirements are not satisfied for the relevant tax year, they are deemed satisfied if the required ratios are met when averaging the gross income of the preceding four taxable years.

Under the Switzerland Treaty, a recognized headquarters company for a multinational corporate group is entitled to all of the benefits of the treaty under article 22(d). A company is treated as a recognized headquarters company if: (1) it provides in the residence country a substantial portion of the overall supervision and administration of a group of companies (which may include, but cannot be principally, group financing); (2) the group of companies consists of corporations resident in, and engaged in an active business in, at least five countries, and the business activities carried on in each of the five countries generate at least 10% of the gross income of the group; (3) the business activities carried on in any one country other than the residence country of the headquarters company generate less than 50% of the gross income of the group; (4) no more than 25% of its gross income is derived from the source country; (5) the headquarters company has, and exercises, independent discretionary authority to carry out the overall supervision and administration of the group; (6) the company is subject to generally applicable rules of taxation in its country of residence; and (7) the income derived in the source country either is derived in connection with, or is incidental to, the active business of the group members. The gross income ratios are deemed satisfied where the criteria are met when averaging the gross income of the preceding four years.

DISCRETIONARY BENEFITS

Article 22(6) of the Croatia Treaty provides that the competent authority of the source country may grant all or some of the benefits of the treaty, taking into account the object and purpose of the treaty, but only if the treaty resident demonstrates to the satisfaction of the competent authority "a substantial nontax nexus to [the residence country] and that neither its establishment, acquisition, or maintenance, nor the conduct of its operations had as one of its principal purposes the obtaining of benefits under the treaty." The "substantial nontax nexus" standard is not contained in the text of any U.S. tax treaties currently in effect, but the IRS requires an applicant to demonstrate such a nexus under the revenue procedure (Revenue Procedure 2015-40) governing discretionary LOB requests. The Croatia Treaty provision further states that the competent authority of the source country shall consult with the competent authority of the residence country before granting or denying the request.

The discretionary benefits provision of the Switzerland Treaty (article 22(6)) provides that a person otherwise not entitled to treaty benefits may be granted benefits by the source country after consultation with the competent authority of the residence country. As is the case in many current U.S. tax treaties, the treaty text itself does not provide the standard to be applied by the competent authority. However, the Treasury Technical Explanation states that the competent authority will base a determination on whether the establishment, acquisition, or maintenance of the person seeking benefit under the Convention, or the conduct of such person's operations, has or had as one of its principal purposes the obtaining of treaty benefits.[5] A 1997 memorandum of understanding also incorporates a derivative benefits test into the discretionary determination, stating that "it is understood" that a

[5] The U.S. competent authority's refusal to provide discretionary relief under the discretionary LOB provision in the Switzerland Treaty was challenged in litigation, with key issues being whether the taxpayer could seek judicial review of the denial and the proper procedure for any such review. After years of proceedings in district and appeals court, the parties ultimately stipulated to the dismissal of all claims with prejudice. *See Starr Int'l Co. v. United States*, 139 F. Supp. 3d 214 (D.D.C. 2015); *Starr Int'l Co. v. United States*, 275 F. Supp. 3d 228 (D.D.C. 2017); *Starr Int'l Co. v. United States*, 302 F. Supp. 3d 411 (D.D.C. 2018).

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treaty resident company will generally be granted discretionary benefits by the source country if: (1) the ultimate beneficial owners of 95% or more of the aggregate vote and value of all of its shares are seven or fewer persons that are residents of a member state of the EU or of the European Economic Area or a party to the NAFTA that meet the rate comparison test of the limited derivative benefits test in the text of the treaty (article 22(3)(b), discussed above) (subject to an exception for certain ownership of a ''disproportionate'' class of shares), and (2) a base erosion test is met.

The discretionary determination provision in the Israel Treaty (article 25(4)) states that a person not otherwise entitled to benefits may be granted benefits if the source country competent authority so determines. Like the Switzerland Treaty, the treaty text does not contain a specific test to be applied, but the Treasury Technical Explanation states that ''[t]he factual criteria that the competent authorities are expected to take into account include the existence of a clear business purpose for the structure and location of the income earning entity in question; the conduct of an active trade or business (as opposed to a mere investment activity) by such entity; and a valid business nexus between that entity and the activity giving rise to the income.''

CONCLUSION

As the discussion above highlights, the LOB articles in the Switzerland and Israel Treaties reflect older approaches in numerous respects and are likely to be an area of focus in the anticipated upcoming treaty renegotiations. Of course, the future of the Croatia Treaty, and any renegotiated Switzerland or Israel Treaty, is uncertain. This article leaves commentary on the procedural implements to treaty ratification, and the future of the U.S. tax treaty program and treaty policy more generally, for another day.[6]

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[6] *See* H. David Rosenbloom, *Time for a Tax Treaty Timeout*, 109 Tax Notes Int'l 25 (Jan. 2, 2023).

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