REQUIREMENT TO PROVIDE TAXPAYER IDENTIFICATION NUMBER ON TAX TREATY CLAIMS

Under Treasury Regulation 1.1441-1(e)(4)(vii), which becomes effective for all payments made on or after January 1, 2001, a withholding certificate filed by the beneficial owner of income which is subject to a reduced rate of withholding under an income tax treaty must contain the U.S. Taxpayer Identification Number (TIN) of the beneficial owner of the income in order for the tax treaty claim to be valid. The failure to supply a TIN on the withholding certificate (Form 8233 or Form W-8BEN) will render the withholding certificate invalid for the purposes of the tax treaty claim. A tax treaty claim involving certain types of dividend and interest income listed at Treasury Regulation 1.441-6(b)(2)(ii) is exempt from this requirement for a TIN on the withholding certificate. A TIN is defined by Treasury Regulation 301.6109-1(a)(1)(i) as being (1) a Social Security Number (SSN); (2) an Individual Taxpayer Identification Number (ITIN); (3) an Adoption Taxpayer Identification Number (ATIN); or (4) an Employer Identification Number (EIN). An ATIN is a temporary identification number assigned to a minor child who is in the process of being legally adopted. Treasury Regulation 301.6109-3(a)(1) does not allow the assignment of an ATIN to an alien individual; and thus, an ATIN should not be used on a withholding certificate.

In the case of a tax treaty claim made on Form 8233 (involving income from personal services), Treasury Regulation 1.1441-4(b)(2)(ii)(A) allows the beneficial owner of the income who does not have a SSN or an ITIN, but who has applied for one, to attach a copy of either Form SS-5 (used for applying for a SSN) or Form W-7 (used for applying for an ITIN) to Form 8233, and allows that such Form 8233 to which is attached a copy of either Form SS-5 or Form W-7 shall be accounted to have a TIN for the purposes of claiming a tax treaty benefit. In lieu of a copy of Form SS-5, a beneficial owner could instead attach a copy of the receipt issued upon request by the Social Security Administration to anyone who has applied for a SSN on Form SS-5.

In the case of a tax treaty claim made on Form W-8BEN (involving income other than income from personal services), the absence of a TIN on the withholding certificate will render the certificate completely invalid for the purpose of claiming a tax treaty exemption, except in the case of certain kinds of dividends and interest listed at Treasury Regulation 1.1441-6(b)(2)(ii). The new regulations under Chapter 3 of the Internal Revenue Code do not allow a procedure whereby a Form W-8BEN without a TIN could still be valid if accompanied by a copy of Form SS-5 or Form W-7.
Verbatim Text of Treasury Regulation 1.1441-1(e)(4)(vii):

(vii) Requirement of taxpayer identifying number. A TIN must be stated on a withholding certificate when required by this paragraph (e)(4)(vii). A TIN is required to be stated on a beneficial owner certificate if the beneficial owner is claiming the benefit of a reduced rate under an income tax treaty (other than for amounts described in at 1.1441-6(b)(2)(ii)), an exemption from withholding because income is effectively connected with a U.S. trade or business, an exemption under Section 871(f) for certain annuities received under qualified plans, or an exemption solely based on a foreign organization’s claim of tax exempt status under Section 501(c) or private foundation status. Thus, a TIN is not required from a foreign private foundation that is subject to the 4 percent tax under Section 4948(a) on income if that income is otherwise exempt under the Code. In addition, a TIN is required to be stated on the withholding certificate from a person representing to be a qualified intermediary described in paragraph (e)(5)(ii) of this section, on the withholding certificate from a person representing to be a withholding foreign partnership described in at 1.1441-5(c)(2)(i), on the withholding certificate from a person representing to be a foreign trust or foreign estate, or from a fiduciary thereof, and on the withholding certificate from a person representing to be a U.S. branch described in paragraph (e)(3)(v) of this section. A TIN is an IRS individual taxpayer identification number, an employer identification number, or a social security number as described in Section 6109 and at 301.6109-1 of this chapter, or any other identifier that the Commissioner may designate.

Verbatim Text of Treasury Regulation 1.1441-4(b)(2)(ii)(A):

(ii) Withholding certificate claiming withholding exemption. The withholding certificate claiming an exemption from withholding shall be made on Form 8233 (or an acceptable substitute or such other form as the IRS may prescribe). Form 8233 shall be dated, signed by the beneficial owner under penalties of perjury, and contain the following information –
(A) The individual’s name, permanent residence address, taxpayer identifying number (or a copy of a completed Form W-7 or SS-5 showing that a number has been applied for), and the U.S. visa number, if any;