



AUTHOR / KEY CONTACT

Bill & W-8BEN – the withholding tax men



Lucy Wadley
Associate

✉ lucy.wadley@la-law.com
☎ 01202 786208

When attending to US shareholdings, you may find yourself having to satisfy requirements quite unlike those experienced in your home country, such as W-8BEN forms, affidavits of domicile, and Medallion Signature Guarantees. What can sometimes make meeting these requirements particularly challenging is the lack of guidance available from the asset holders.

One element which has often caused concern for those attending to US shares, especially during estate administration, is trying to comply with the tax form requirements. If done incorrectly, any dividends or sale proceeds could be subject to withholding tax. The rate for this can be up to 30%. Claiming this back can sometimes be challenging, and if the mistake was your own, the claim may have to be made through the IRS which can be a very lengthy process.

At the start of this year, the IRS's new [W-8BEN](#) and W-8BEN-E forms became compulsory in the place of the old 2006 version of the W-8BEN form.

With the introduction of the new W-8BEN-E form, only individuals can now use the W-8BEN form, which has been simplified.

W-8BEN Forms

Going forward, anybody who is attending to a US shareholding, who is not an individual, will have to complete the new W-8BEN-E forms. This includes corporations and estates.

While this may be quite straightforward, what has caused a great deal of confusion is the various US share registrars' stance on these new forms, with many providing completely different guidance to each other. When pushed on this, one registrar's employee confessed to Lester Aldridge that not everyone at their office is sure what a correct W-8BEN-E should look like!

The confusion about the correct way to do one of these forms, especially in the case of a Corporation appointed as Executor, has meant that a few estates have had withholding tax deducted where the registrars have sold the US shares before the tax status has been certified.

Luckily, in all these instances where Lester Aldridge have been instructed to attend to the full death registration, due to their relationship with the registrars and the papers the firm have provided to date on the estates, the estates have been provided with full refunds from the registrars.

In most instances it has been a case of the registrar not fully appreciating the position of the estate, and upon this being pointed out to them, they have agreed that the error was on their part.

One registrar is known to Lester Aldridge to be more IRS savvy with their requirements than the others, and it is often the case that the others quickly follow suit. It is therefore hoped that in the not too distant future, there will be a more unified approach to these forms.

Until then, it is important to clarify with the registrars exactly which W-8 form they require from an estate, depending on who has been appointed as the Executor.

If you are attending to the administration of an estate with overseas assets, and think you may require assistance, please get in touch with Lester Aldridge on 0344 967 0793 with details about the estate and the assets involved so that they can provide you with a fee quote for your consideration.