

# DBA-USA n.F. aus Sicht deutscher Konzerne

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Deutsche Telekom, Leiter Steuerpolitik, Steuern USA, Exporte/Zölle  
Frankfurt, 30. Juni 2010



# Das neue DBA USA

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- IV. DBA USA-Sachverhalte in deutscher Konzernpraxis
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Überblick.

# Das neue DBA USA

Überblick.

Änderungsprotokoll zum DBA USA 1989 – schnell im Vergleich zu DBA USA 1989

- DBA USA 1989
  - 13 Jahre Verhandlungen (seit Anrechnungsverfahren 1977)
  
- Änderungsprotokoll DBA USA 1989
  - Anfang 2004: Aufnahme der Verhandlungen
  - 01.06.2006: Unterzeichnung
  - 07.12.2006: Verabschiedung im Bundestag
  - 14.12.2007: Ratifizierung in den USA
  - 28.12.2007: Austausch Ratifizierungsurkunden
  
- Ausreichende Beteiligung der Steuerpflichtigen?
  - Weit weniger als DBA 1989, aber gewisse informelle Konsultation BDI etc.



Art. 10 Abs. 3 DBA USA neu:  
Quellensteuerbefreiung für konzerninterne  
Dividenden.

# Das neue DBA USA

Art. 10 Abs. 3 DBA USA neu. Anlass.

Anlass der Neuregelung: Änderungen der abkommensrechtlichen Politik beider Staaten seit dem DBA USA 1989

- USA: Druck US-Wirtschaft (Anrechnungsüberhänge) sowie Pensionsfonds
  - daher Verzicht auf Quellenbesteuerung z.B. mit Mexiko, GB, Japan, NL, ...
    - Positiv für US-Fiskus (Anrechnungsland): Keine Minderung um Quellensteuern
  - aber gleichzeitig: Verschärfung DBA-Berechtigung (LOB)
- Deutschland: Druck Wirtschaft und rechtliche Gleichstellung USA mit EU-Ländern
  - Wegen Mutter-Tochter-Richtlinie keine Quellensteuern innerhalb EU
  - Abbau von Wettbewerbsnachteilen ggü. anderen Ländern, die mit den USA bereits einen Quellensteuerverzicht vereinbart hatten (UK, NL, Japan, ...)



# Das neue DBA USA

Art. 10 Abs. 3 DBA USA neu. Voraussetzungen.

**Alte Regelung: Begrenzung der Quellensteuer auf 5% (anstatt 15%)**

- unmittelbare Beteiligung in Höhe von mindestens 10% der Stimmrechte

**Neu: neben 5% Begrenzung gänzlicher Verzicht auf Quellensteuer (0% anstatt 15%)**

- unmittelbare Beteiligung in Höhe von mindestens 80% der Stimmrechte
  - für einen Zeitraum von 12 Monaten
- Einhaltung (verschärfter) LOB`s
  - active business test allein nicht ausreichend
  - ownership/base erosion test nur in Verbindung mit active business test ausreichend

**Abkommenspraxis der USA nicht ganz einheitlich**

- z.B. DBA USA Japan: lässt 50% Beteiligung für 0%-Steuersatz ausreichen



Die für die Quellensteuerfreiheit  
erforderlichen LOB-Tests im Einzelnen.

# Das neue DBA USA

Die LOB-Tests im Einzelnen. Übersicht.

## Quellensteuerbefreiung erfordert das Bestehen der (teilweise verschärften) LOB-Tests

- publicly traded test (LOB)
  - Börsennotierte Gesellschaft (in D oder USA) oder deren 50%-Töchter (in D oder USA)
- ownership / base erosion (LOB) + active business test (Art. 10 III)
  - 50% Beteiligung auch gewisser anderer (deutscher) Abkommensberechtigter und keine „Durchlaufgesellschaft“ sowie aktive gewerbliche Tätigkeit (zusätzlich und nur bei Dividenden)
- derivative benefit test + base erosion test (LOB)
  - 95% Beteiligung „gleichberechtigter Begünstigter“ (insb. EU) und keine Durchlaufgesellschaft
- „Gnadenklausel“ (LOB)
  - Quellensteuerbefreiung im Rahmen einer Ermessensentscheidung
- active business test (LOB)?
  - Nein, genügt für Nullsteuersatz nicht (zusätzlich *ownership/base erosion test* erforderlich)



# Das neue DBA USA

Die LOB-Tests im Einzelnen (Anteilseigner, Zahlungsempfänger, Aktivität). Vergleich.

publicly traded test	ownership test	derivative benefit test
selbst <u>börsennotiert</u> oder Mindestens 50%-Tochter von börsennotierten Gesellschaften	Mindestens 50%-Tochter einiger auch nicht börsennotierter Abkommensberechtigten (insb. natürliche Personen)	Mindestens <u>95%</u> -Tochter auch von „gleichberechtigten Begünstigten“ aus <u>anderen Staaten</u> (ähnliches US-DBA)
max. 5 Anteilseigner	Unbegrenzte Anteilseignerzahl	max. 7 Anteilseigner
Ansässigkeit der <u>Anteilseigner und Zwischengesellschaften</u> <b>in D oder USA</b>	Ansässigkeit der <u>Anteilseigner und Zwischengesellschaften</u> <b>im selben Vertragsstaat</b> wie Tochter	Ansässigkeit der <u>Anteilseigner</u> in <b>EU, EWR, NAFTA</b> (oder aber <b>D oder USA</b> , Art. 28(8)(e)(bb)) (Zwischengesellschaften unbeachtlich)
<b>kein base erosion test</b>	<b>+ base erosion test</b> berechtigte Empfänger: in D oder USA ansässige berechtigte Person (ohne Töchter von börsennotierten AG`s (!))	<b>+ base erosion test</b> berechtigte Empfänger: gleich- berechtigte Begünstigte (Ansässigkeit: EU, EWR, NAFTA, Vertragsstaaten)
	<b>+ active business test</b> (Art. 10 III) (Aber: bei 95%-Beteiligung wegen alt. derivative benefit best nicht zwingend)	



Publicly traded test.

# Das neue DBA USA

Die LOB-Tests im Einzelnen. Publicly traded test.

## Börsennotierte Gesellschaften und Töchter einer publicly traded corporation

- bisher nur börsennotierte Gesellschaften selbst
  - nunmehr: neuer Art. 28 Abs. 2(c)(bb) für Töchter von börsennotierten Gesellschaften
    - *„Eine in einem Vertragsstaat ansässige Person.... kann ... nur dann alle Vergünstigungen nach diesem Abkommen beanspruchen, wenn diese Person eine Gesellschaft ist, sofern
      - Aktien, die mindestens 50 v.H. der Stimmrechte und des Werts ... der Gesellschaft darstellen, unmittelbar oder mittelbar von fünf oder weniger Gesellschaften gehalten werden, die Anspruch auf Vergünstigungen gemäß Doppelbuchstabe aa haben [...]*
- in DBA 1989 Klausel für Töchter börsennotierter Gesellschaften wohl „vergessen“
  - eine der ersten LOB -Klauseln in US-DBAs überhaupt
- „shares“ = nur Aktien, d.h. ohne GmbH?
  - Nein, Übersetzungsfehler wegen Zeitdruck (z.B. Eimmermann DStR 2006, 837 (840))
    - Und: Für Reduzierung von US-Quellensteuer ohnehin englische Fassung maßgeblich



# Das neue DBA USA

Die LOB-Tests im Einzelnen. Beispiel.

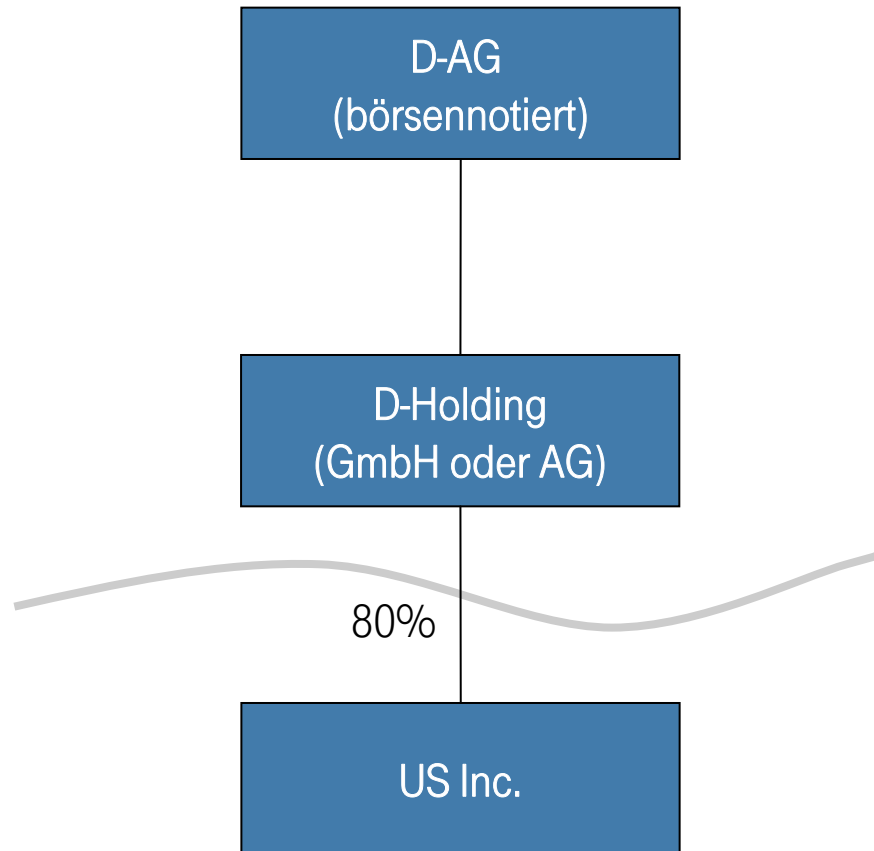
D-AG:

publicly traded test (aa) ✓

D-Holding („shares“, d.h. auch GmbH trotz Übersetzung „Aktien“)

publicly traded test (bb) ✓

selbst nicht börsennotiert, aber Tochter einer in einem Vertragsstaat ansässigen börsennotierten Gesellschaft



# Das neue DBA USA

Die LOB-Tests im Einzelnen. Beispiel.

US-Inc:

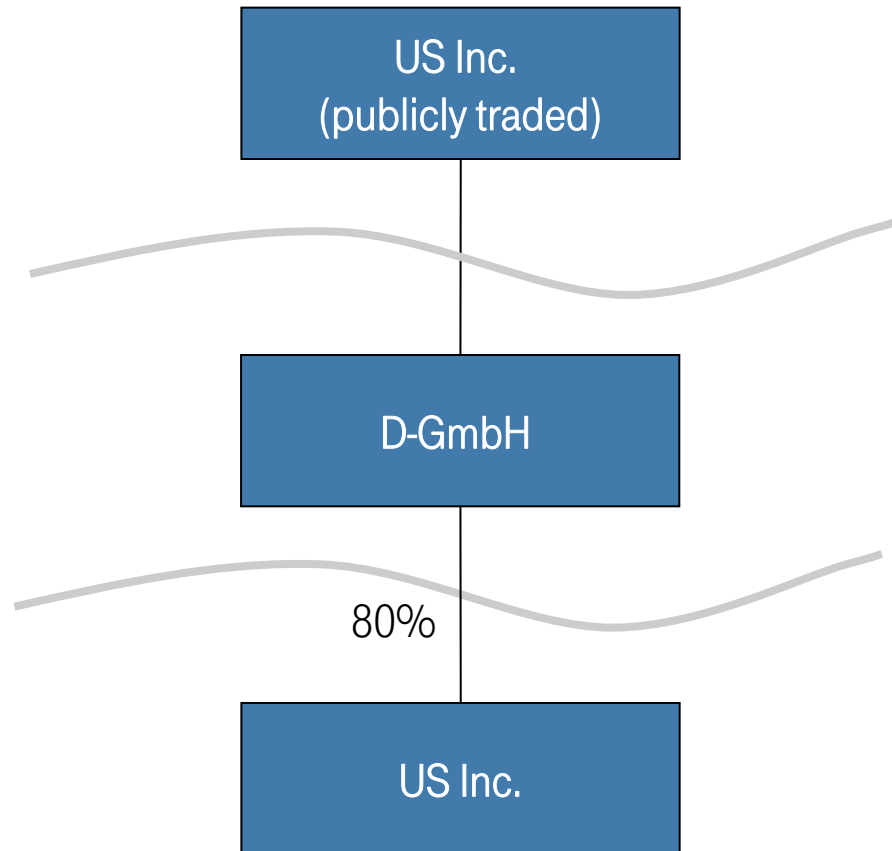
publicly traded test (aa) ✓

D-Holding („shares“)

publicly traded test (bb) ✓

selbst nicht börsennotiert, aber Tochter  
einer in einem Vertragsstaat  
ansässigen börsennotierten  
Gesellschaft

nicht notwendig: Ansässigkeit der  
Muttergesellschaft in D! (Wortlaut  
unergiebig, aber *Technical Explanation*  
zu US Model Treaty sowie  
entsprechende DBA USA-Regelung für  
Zwischengesellschaften)



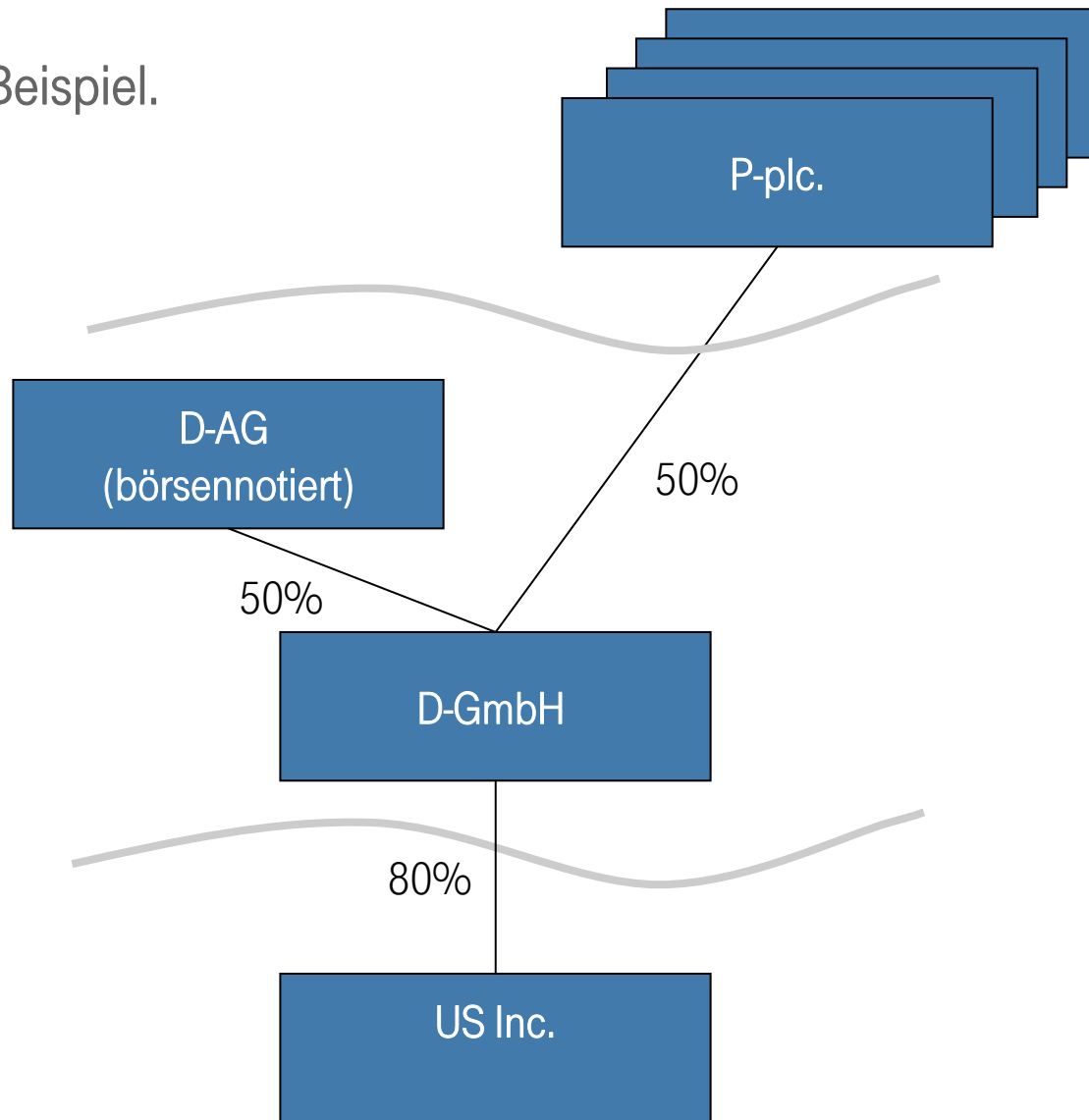
# Das neue DBA USA

Die LOB-Tests im Einzelnen. Beispiel.

D-AG:  
publicly traded test (aa) ✓

D-Holding  
publicly traded test (bb) ✓

selbst nicht börsennotiert, aber:  
mind. 50% Beteiligung einer (in einem  
Vertragsstaat) publicly traded  
corporation (abkommensrechtliche  
Qualität und Ansässigkeit der weiteren  
50% Anteilseigner unerheblich)



Ownership / base erosion test (LOB) +  
active business test (Art. 10 III).

# Das neue DBA USA

Die LOB-Tests im Einzelnen. Ownership/base erosion + active business test.

## Sonderregelung für ownership/base erosion test bei Dividenden

- Art. 10 Abs. 3 Buchst. a, Doppelbuchst. bb
  - Ownership/base erosion test reicht nur in Verbindung mit active business test

## Ownership test (Art. 28 Abs. 2(f) (aa))

- mindestens 50% der Anteile an der die Dividenden empfangenden Gesellschaft
  - werden unmittelbar oder mittelbar
  - an mindestens der Hälfte der Tage des Steuerjahres
  - von qualifizierten Personen gehalten, dh ua
    - natürliche Personen
    - publicly traded corporations (nicht Töchter dieser oder andere GmbH`s)
  - und: qualifizierte Personen sowie evtl. Zwischengesellschaften müssen in dem selben Vertragsstaat ansässig sein wie die empfangende Gesellschaft
    - Verschärfung gegenüber DBA 1989 (Ansässigkeit in einem Vertragsstaat ausreichend)



# Das neue DBA USA

Die LOB-Tests im Einzelnen. Ownership/base erosion + active business test.

## + Base erosion test (Art. 28 Abs. 2(f)(bb))

- Keine „Durchlaufgesellschaft“, durch die Abkommensvorteile „geschleust“ werden
  - Steuerlich abzugsfähige Zahlungen
    - die unmittelbar oder mittelbar an Personen erfolgen, die nicht qualifiziert sind,
  - dürfen den Rohgewinn der Gesellschaft nicht um mehr als 50% mindern.
    - keine Definition von Rohgewinn in DBA, daher nationales Recht maßgeblich
    - Rohgewinn = Umsatzerlöse ./. Materialaufwand (§ 276 HGB)
  - Sinnvoll bei (steuerfreien) Dividenden? Base erosion nicht denkbar (keine base).

## + Active Business Test (Art. 28 Abs. 4)

- Aktive gewerbliche Tätigkeit, die nicht unerheblich ist
  - Sollte regelmäßig erlässlich sein, zB bei 100% Beteiligung deutscher natürlichen Personen an einer Holding-GmbH mit US Inc. wegen derivative benefit test „2. Alternative“, Art. 28(8)(e)(bb)



Derivative benefit + base erosion test.

# Das neue DBA USA

Die LOB-Tests im Einzelnen. Derivative benefit + base erosion test.

Derivative benefit + base erosion test (Art. 28 Abs. 3)

- Hintergrund abgeleitete Abkommensberechtigung: 50% in D/USA überschießend,
  - wenn die Beteiligung in einem Staat mit vergleichbaren DBA-Vergünstigungen gehalten wird („gleichberechtigte Begünstigte“, *equivalent beneficiary*)
- Voraussetzungen
  - 95% von max. 7 gleichberechtigten Begünstigten (auch mittelbar)
    - Ansässigkeit EU/EWR/NAFTA (einschl. D und USA)
  - Einschließlich 0%-DBA für konzerninterne Dividenden
  - Zudem: *base erosion test* (s.o.)
    - Aber: Kein *active business test* erforderlich.



# Das neue DBA USA

Die LOB-Tests im Einzelnen. Beispiel. Derivative Test.

## D-Holding

publicly traded test ✘

selbst nicht börsennotiert

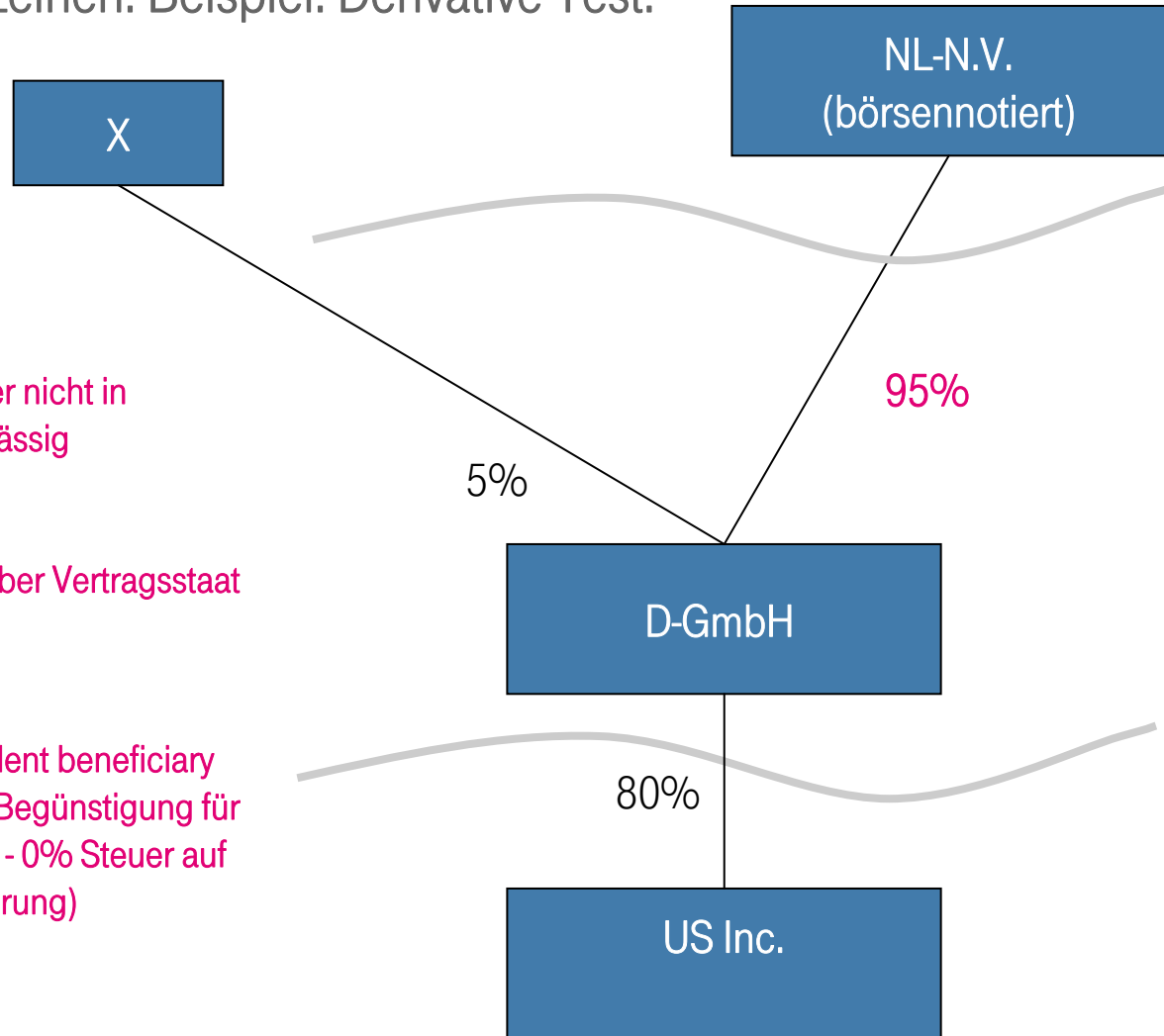
NL-N.V. zwar börsennotiert, aber nicht in Vertragsstaat (D oder USA) ansässig

ownership test ✘

NL-N.V. nicht in D ansässig (selber Vertragsstaat wie D-Holding notwendig)

derivative benefit test ✔

NL-B.V. hat 95% und ist equivalent beneficiary (DBA USA-NL gewährt gleiche Begünstigung für NL-B.V. im Hinblick auf US Inc. - 0% Steuer auf Dividenden wegen Börsennotierung)



# Das neue DBA USA

Die LOB-Tests im Einzelnen. Beispiel.

publicly traded test ✘

selbst nicht börsennotiert

NL-N.V. zwar börsennotiert, aber nicht in Vertragsstaat (D oder USA) ansässig

ownership test ✘

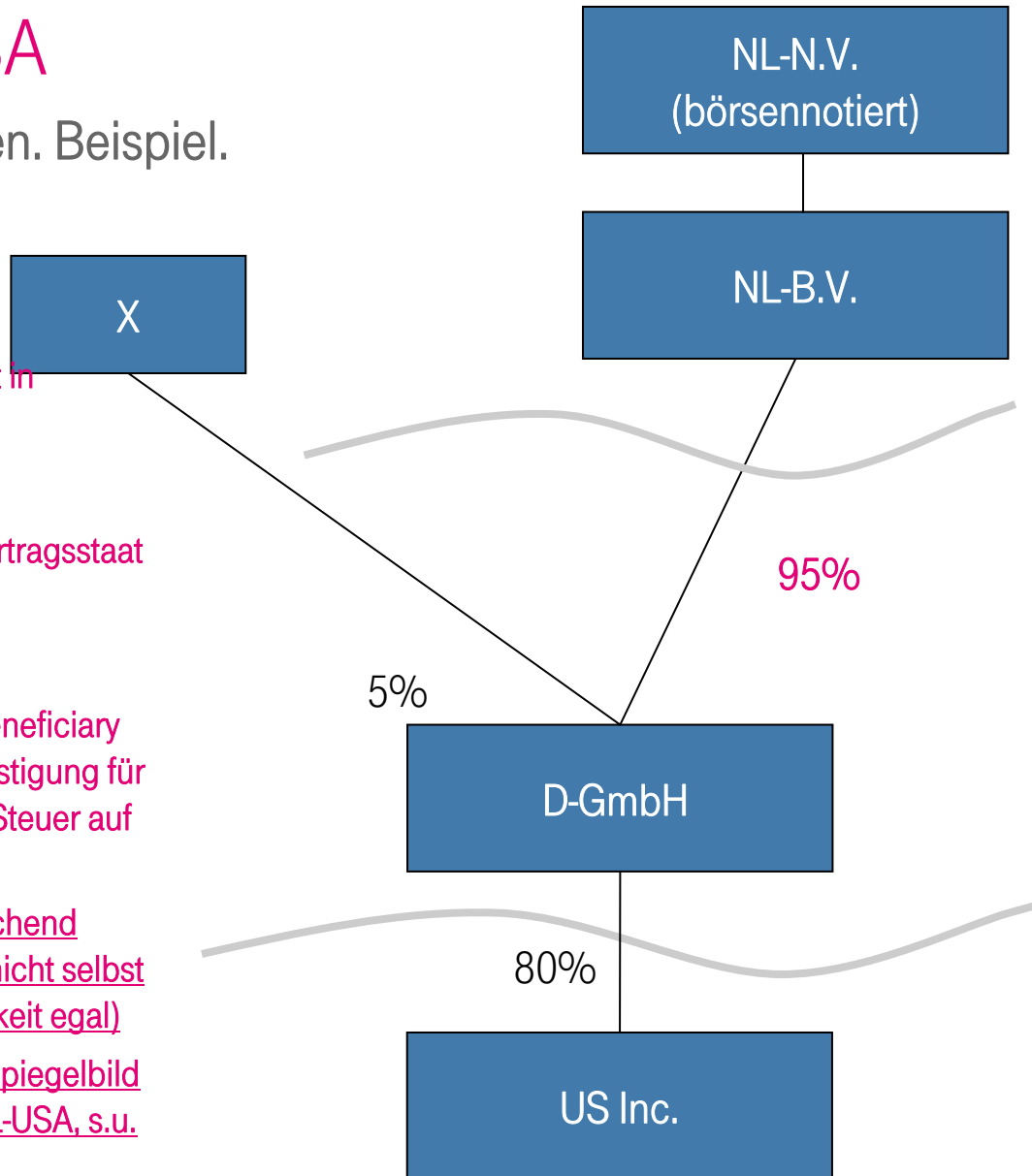
NL-N.V. nicht in D ansässig (selber Vertragsstaat wie D-Holding notwendig)

derivative benefit ✔

NL-B.V. hat 95% und ist equivalent beneficiary (DBA USA-NL gewährt gleiche Begünstigung für NL-B.V. im Hinblick auf US Inc. - 0% Steuer auf Dividenden wegen Börsennotierung)

mittelbare 95%-Beteiligung ist ausreichend (Zwischengesellschaft NL-B.V. muss nicht selbst equivalent beneficiary sein, Ansässigkeit egal)

Exkurs: NL-D-USA realitätsfern, aber Spiegelbild gilt für DBA USA/NL für Konzern D-NL-USA, s.u.



DBA USA-Sachverhalte in deutscher  
Konzernpraxis.

Holding-Standort für US-Beteiligungen.

# Das neue DBA USA

Holdingsstandort für US-Beteiligungen.

Besteuerung Holding in D und NL (DBA gleich, aber lokales Recht NL besser)

## ■ Deutschland

- keine Quellensteuer US-Dividende
- 1,5% § 8b V KStG-Steuer auf US-Dividende
- 1,5% § 8b III KStG-Steuer bei Veräußerung US-Beteiligung

## ■ Niederlande:

- keine Quellensteuer US-Dividende
- Keine NL-Besteuerung der US-Dividende (statt 1,5% D)
- Keine NL-Besteuerung bei Veräußerung US-Beteiligung (statt 1,5% D)
- keine Quellensteuer NL-Dividende an D-Mutter (Mutter-Tochter-Richtlinie)
  - Aber: Dann 1,5% Besteuerung in D. Allerdings Thesaurierung in NL möglich.

## ■ Und: Weg von D nach NL frei.

- z.B. Anteilstausch (Einbringung) auch bei Drittlandsbeteiligungen erfolgsneutral (SEStEG: nur Übernehmerin und Überträgerin EU-Gesellschaft, nicht Objekt)



# Das neue DBA USA

Holdingsstandort für US-Beteiligungen.

## NL-Holding (nach DBA NL-USA)

publicly traded test ✘

selbst nicht börsennotiert

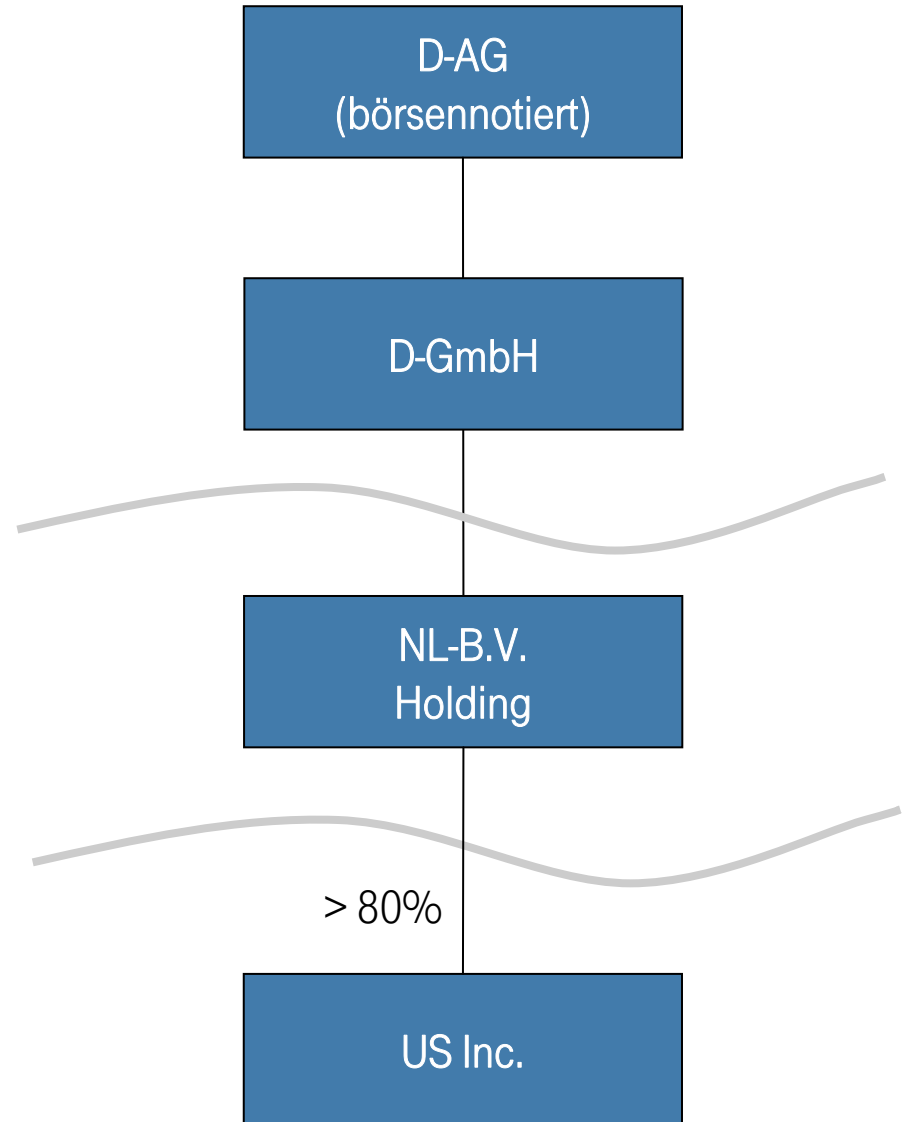
D-AG publicly traded, aber nicht in einem der Vertragsstaaten

ownership test ✘

D-AG zwar qualifizierte Person, aber nicht in selbem Vertragsstaat wie NL-B.V. (und: DBA NL/USA hat keinen ownership test für Dividenden)

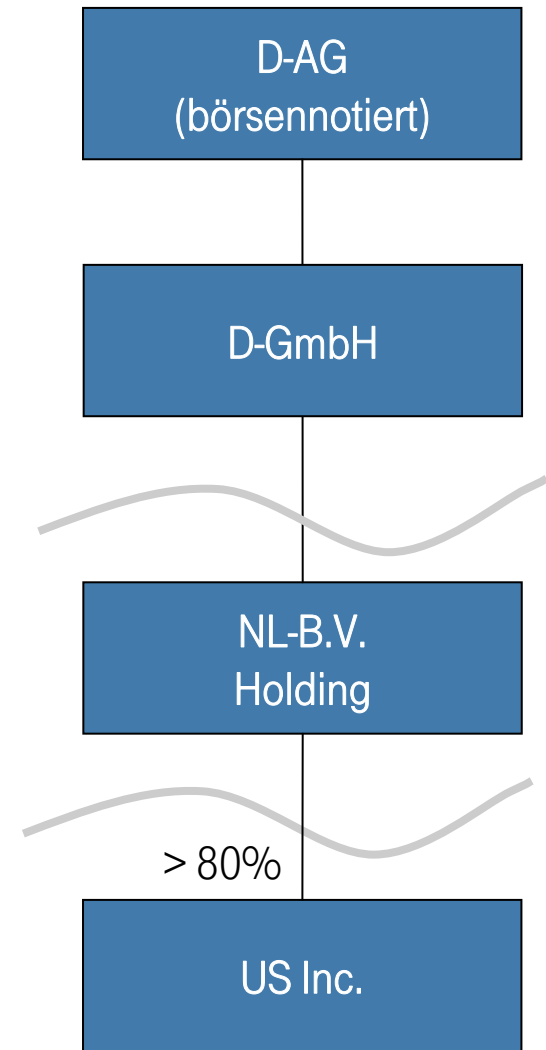
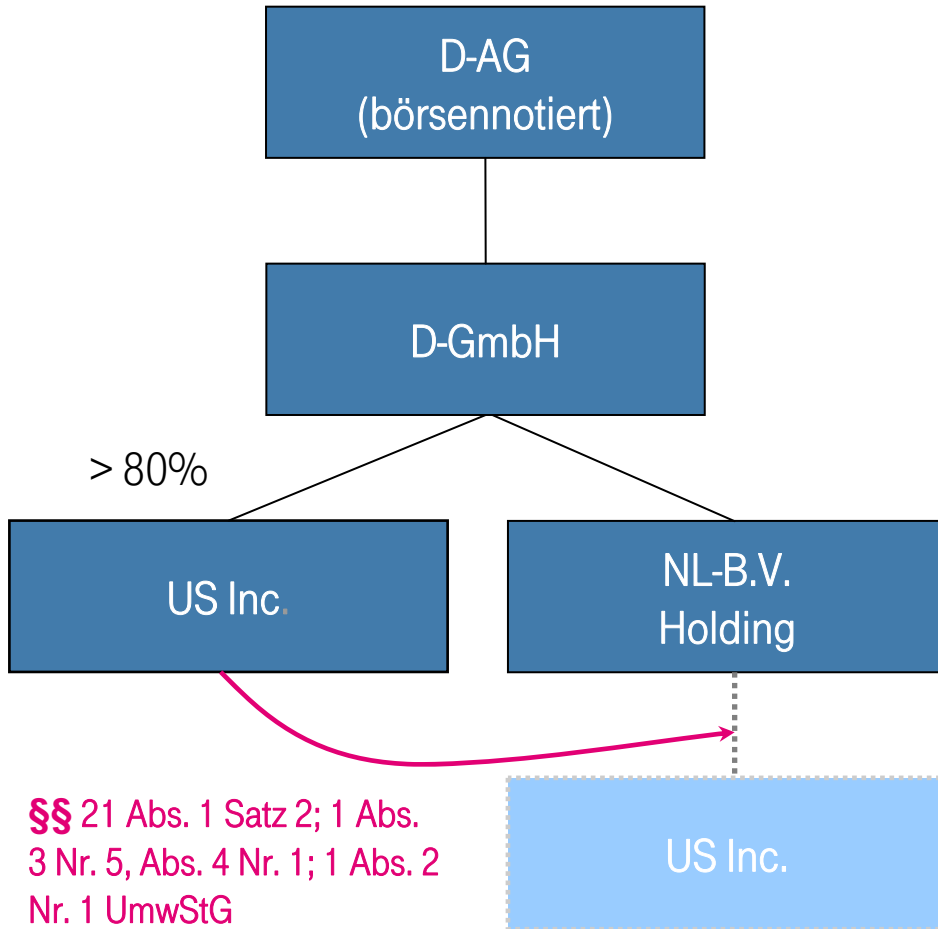
derivative benefit ✔

D-AG hat 95% und ist equivalent beneficiary (DBA USA/NL = DBA USA/D)



# Das neue DBA USA

Holdingsstandort für US-Beteiligungen.



Die administrative Seite des DBA USA.

# Das neue DBA USA

Die administrative Seite des DBA USA. 8W-BEN („Ansässigkeitsbescheinigung“).

Form <b>W-8BEN</b> (Rev. February 2006) Department of the Treasury Internal Revenue Service	<b>Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding</b>	OMB No. 1545-1621
▶ Section references are to the Internal Revenue Code. ▶ See separate instructions. ▶ Give this form to the withholding agent or payer. Do not send to the IRS.		
<b>Do not use this form for:</b>		<b>Instead, use Form:</b>
<ul style="list-style-type: none"> <li>• A U.S. citizen or other U.S. person, including a resident alien individual . . . . . W-9</li> <li>• A person claiming that income is effectively connected with the conduct of a trade or business in the United States . . . . . W-8ECI</li> <li>• A foreign partnership, a foreign simple trust, or a foreign grantor trust (see instructions for exceptions) . . . . . W-8ECI or W-8IMY</li> <li>• A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession that received effectively connected income or that is claiming the applicability of section(s) 115(2), 501(c), 892, 895, or 1443(b) (see instructions) . . . . . W-8ECI or W-8EXP</li> </ul>		
<p><b>Note:</b> These entities should use Form W-8BEN if they are claiming treaty benefits or are providing the form only to claim they are a foreign person exempt from backup withholding.</p> <ul style="list-style-type: none"> <li>• A person acting as an intermediary . . . . . W-8IMY</li> </ul> <p><b>Note:</b> See instructions for additional exceptions.</p>		
<b>Part I Identification of Beneficial Owner</b> (See instructions.)		
1 Name of individual or organization that is the beneficial owner		2 Country of incorporation or organization <b>Germany</b>
<b>3 Type of beneficial owner:</b> <input type="checkbox"/> Individual <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Disregarded entity <input type="checkbox"/> Partnership <input type="checkbox"/> Simple trust <input type="checkbox"/> Grantor trust <input type="checkbox"/> Complex trust <input type="checkbox"/> Estate <input type="checkbox"/> Government <input type="checkbox"/> International organization <input type="checkbox"/> Central bank of issue <input type="checkbox"/> Tax-exempt organization <input type="checkbox"/> Private foundation		
<del>4 Permanent residence address (street, apt. or suite no., or rural route). Do not use a P.O. box or in-care-of address.</del>		
City or town, state or province. Include postal code where appropriate.		Country (do not abbreviate) <b>Germany</b>
5 Mailing address (if different from above)		
City or town, state or province. Include postal code where appropriate.		Country (do not abbreviate)
6 U.S. taxpayer identification number, if required (see instructions) <input type="checkbox"/> SSN or ITIN <input checked="" type="checkbox"/> EIN		7 Foreign tax identifying number, if any (optional)
8 Reference number(s) (see instructions)		



# Das neue DBA USA

## Die administrative Seite des DBA USA. 8W-BEN („Ansässigkeitsbescheinigung“).

8 Reference number(s) (see instructions)

### Part II Claim of Tax Treaty Benefits (if applicable)

9 I certify that (check all that apply):

- a  The beneficial owner is a resident of Germany within the meaning of the income tax treaty between the United States and that country.
- b  If required, the U.S. taxpayer identification number is stated on line 6 (see instructions).
- c  The beneficial owner is not an individual, derives the item (or items) of income for which the treaty benefits are claimed, and, if applicable, meets the requirements of the treaty provision dealing with limitation on benefits (see instructions).
- d  The beneficial owner is not an individual, is claiming treaty benefits for dividends received from a foreign corporation or interest from a U.S. trade or business of a foreign corporation, and meets qualified resident status (see instructions).
- e  The beneficial owner is related to the person obligated to pay the income within the meaning of section 267(b) or 707(b), and will file Form 8833 if the amount subject to withholding received during a calendar year exceeds, in the aggregate, \$500,000.

10 Special rates and conditions (if applicable—see instructions): The beneficial owner is claiming the provisions of Article 10/III a aa of the treaty identified on line 9a above to claim a 0 % rate of withholding on (specify type of income): dividends. Explain the reasons the beneficial owner meets the terms of the treaty article: Beneficial owner owns 100% of the shares of the payor since 2003 and itself is owned by a German publicly traded company.

### Part III Notional Principal Contracts

- 11  I have provided or will provide a statement that identifies those notional principal contracts from which the income is not effectively connected with the conduct of a trade or business in the United States. I agree to update this statement as required.

### Part IV Certification

Under penalties of perjury, I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct, and complete. I further certify under penalties of perjury that:

- 1 I am the beneficial owner (or am authorized to sign for the beneficial owner) of all the income to which this form relates,
  - 2 The beneficial owner is not a U.S. person,
  - 3 The income to which this form relates is (a) not effectively connected with the conduct of a trade or business in the United States, (b) effectively connected but is not subject to tax under an income tax treaty, or (c) the partner's share of a partnership's effectively connected income, **and**
  - 4 For broker transactions or barter exchanges, the beneficial owner is an exempt foreign person as defined in the instructions.
- Furthermore, I authorize this form to be provided to any withholding agent that has control, receipt, or custody of the income of which I am the beneficial owner or any withholding agent that can disburse or make payments of the income of which I am the beneficial owner.

Sign Here



Signature of beneficial owner (or individual authorized to sign for beneficial owner)

Date (MM-DD-YYYY)

Capacity in which acting

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 25047Z

Form **W-8BEN** (Rev. 2-2006)



Printed on Recycled Paper



# Das neue DBA USA

Die administrative Seite des DBA USA. 1042-S (Erklärung US-Withholding Agent).

Form <b>1042-S</b>		<b>Foreign Person's U.S. Source Income</b>			<b>2010</b>		OMB No. 1545-0096	
Department of the Treasury Internal Revenue Service		<b>Subject to Withholding</b>					<b>Copy A</b> for Internal Revenue Service	
<input type="checkbox"/> AMENDED		<input type="checkbox"/> PRO-RATA BASIS REPORTING						
<b>1</b> Income code	<b>2</b> Gross income	<b>3</b> Withholding allowances	<b>4</b> Net income	<b>5</b> Tax rate	<b>7</b> Federal tax withheld			
				<b>6</b> Exemption code	<b>8</b> Withholding by other agents			
				<b>9</b> Total withholding credit				
<b>10</b> Amount repaid to recipient				<b>14</b> Recipient's U.S. TIN, if any ▶ <input type="checkbox"/> SSN or ITIN <input type="checkbox"/> EIN <input type="checkbox"/> QI-EIN				
<b>11</b> Withholding agent's EIN ▶ <input type="checkbox"/> EIN <input type="checkbox"/> QI-EIN				<b>15</b> Recipient's foreign tax identifying number, if any			<b>16</b> Country code	
<b>12a</b> WITHHOLDING AGENT'S name				<b>17</b> NQI's/FLOW-THROUGH ENTITY'S name			<b>18</b> Country code	
<b>12b</b> Address (number and street)				<b>19a</b> NQI's/Entity's address (number and street)				
<b>12c</b> Additional address line (room or suite no.)				<b>19b</b> Additional address line (room or suite no.)				
<b>12d</b> City or town, province or state, country, ZIP or foreign postal code				<b>19c</b> City or town, province or state, country, ZIP or foreign postal code				
<b>13a</b> RECIPIENT'S name			<b>13b</b> Recipient code	<b>20</b> NQI's/Entity's U.S. TIN, if any ▶				
<b>13c</b> Address (number and street)				<b>21</b> PAYER'S name and TIN (if different from withholding agent's)				
<b>13d</b> Additional address line (room or suite no.)				<b>22</b> Recipient account number (optional)				
<b>13e</b> City or town, province or state, country, ZIP or foreign postal code				<b>23</b> State income tax withheld	<b>24</b> Payer's state tax no.	<b>25</b> Name of state		

For Privacy Act and Paperwork Reduction Act Notice, see page 16 of the separate instructions.    Cat. No. 11386R    Form **1042-S** (2010)



# Das neue DBA USA

Die administrative Seite des DBA USA. 1120F (US-Einkommensteuererklärung).

**1120-F U.S. Income Tax Return of a Foreign Corporation** OMB No. 1545-0126  
For calendar year 2009, or tax year beginning 2009 and ending 2009  
Department of the Treasury Internal Revenue Service

**Additional Information (continued from page 1)**

**N** Is the corporation a controlled foreign corporation? (See section 957(a) for definition.) **Yes**  **No**

**O** Is the corporation a personal service corporation? (See instructions for definition.) **Yes**  **No**

**P** Enter tax-exempt interest received or accrued during the tax year (see instructions) **\$** \_\_\_\_\_

**Q** At the end of the tax year, did the corporation own, directly or indirectly, 50% or more of the voting stock of a U.S. corporation (see section 307(c) for rules of attribution)? **Yes**  **No**

**R** If the corporation has an NOL for the tax year and is electing to forgo the carryback period, check here

**S** Enter the available NOL carryover from prior tax years. Do not reduce it by any deduction on the 30a, page 31A-5 **\$** \_\_\_\_\_

**T** Is the corporation a subsidiary in a parent-subsidiary controlled group? **Yes**  **No**

If "Yes," enter the parent corporation:  
(1) EIN **\_\_\_\_\_**  
(2) Name **\_\_\_\_\_**

**U** Is the corporation a dealer under section 4757?  
(1) **Yes**  **No**   
(2) Did the corporation mark to market any securities or commodities other than in a dealer capacity? **Yes**  **No**

**SECTION 1—Income From U.S. Sources Not Effectively Connected With the Conduct of a Trade or Business in the United States—Do not report items properly withheld and reported on Form 1042-S. See instructions.**

Include below only income from U.S. sources that is not effectively connected with the conduct of a trade or business in the United States. Do not report items properly withheld and reported on Form 1042-S. Report only items that (a) are not correctly withheld at source or (b) are not correctly reported on Form 1042-S. The rate of tax on each item of gross income listed below is 30% (4% for the gross transportation tax or such lower rate specified by tax treaty. No deductions are allowed against these types of income. Enter treaty rates where applicable. If the corporation is claiming a lower treaty rate, also complete item W above. If multiple treaty rates apply to a type of income (e.g., subsidiary and portfolio dividends and discounts received by disregarded entities), attach a schedule showing the amounts, tax rates, and withholding for each.

(a) Class of income (see instructions)	(b) Gross amount	(c) Rate of tax (%)	(d) Amount of tax liability	(e) Amount of U.S. income tax paid or withheld at the source
1 Interest				
2 Dividends				
3 Rents				
4 Royalties				
5 Annuities				
6 Gains from disposal of timber, coal, or domestic iron ore with a retained economic interest (attach supporting schedule)				
7 Gains from sale or exchange of patents, copyrights, etc.				
8 Royalty distributions (attach supporting schedule)				
9 Gross transportation income (attach Schedule V)		4		
10 Other fixed or determinable annual or periodic gains, profits, and income				
11 Total. Enter here and on line 1, page 1				
12 Total. Enter here and include on line 5, page 1				
13 Is the corporation fiscally transparent under the laws of the foreign jurisdiction with respect to any item of income listed above? <b>Yes</b> <input type="checkbox"/> <b>No</b> <input checked="" type="checkbox"/>				

**W** Is the corporation taking a position on this return that a U.S. tax treaty overrides or modifies an Internal Revenue law of the United States, thereby causing a reduction of tax? **Yes**  **No**

If "Yes," the corporation is generally required to complete and attach Form 8833. See Form 8833 for exceptions.

**Note:** Failure to disclose a treaty-based return position may result in a \$10,000 penalty (see section 6712).

**X** During the tax year, did the corporation own any entity that was disregarded as an entity separate from the owner under Regulations sections 301.7701-2 and 301.7701-37? **Yes**  **No**

If "Yes," attach a statement listing the name, country under whose laws the entity was organized, and EIN (if any) of each such entity.

**Y** (1) Did a partnership allocate to the corporation a distributive share of income from a directly owned partnership interest, any of which is ECI or treated as ECI by the partnership or the partner? **Yes**  **No**

If "Yes," attach Schedule P. See instructions.

(2) During the tax year, did the corporation own at least a 10% interest, directly or indirectly, in any foreign partnership? **Yes**  **No**

If "Yes," see instructions for required attachment.

**Z** (1) Has the corporation made any allocation or reallocation of income based on section 482 and its regulations? **Yes**  **No**

(2) Has the corporation recognized any interbranch amounts? If "Yes," attach statement (see instructions).

**Part II—Additional Information**

1. A corporation that is a partner in a partnership that has elected to be treated as a partnership for U.S. tax purposes must file this form for each partner.

2. A corporation that is a partner in a partnership that has elected to be treated as a partnership for U.S. tax purposes must file this form for each partner.

3. A corporation that is a partner in a partnership that has elected to be treated as a partnership for U.S. tax purposes must file this form for each partner.

4. A corporation that is a partner in a partnership that has elected to be treated as a partnership for U.S. tax purposes must file this form for each partner.

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20. A corporation that is a partner in a partnership that has elected to be treated as a partnership for U.S. tax purposes must file this form for each partner.

**Part III—Computation of Tax Due or Overpayment**

1	2	3	4	5a	5b	5c	5d	5e	5f	5g	5h	5i	6	7	8	9
Tax from Section 1, line 1, page 2	1															
Tax from Section 11, Schedule J, line 8, page 4	2															
Tax from Section 18 (add lines 6 and 10 on page 5)	3															
<b>Total tax.</b> Add lines 1 through 3	4															
2009 estimated tax payments	5a															
Less 2009 refund applied for on Form 4465	5b															
Combine lines 5a through 5c	5c															
Tax deposited with Form 7004	5d															
Credit for tax paid on undistributed capital gains (attach Form 2439)	5e															
Credit for federal tax on base (attach Form 4139). See instructions	5f															
Refundable credits from Form 3800, line 19c, and Form 8827, line 8c	5g															
U.S. income tax paid or withheld at source (add line 12, page 2, and amounts from Forms 8298-A and 8905 (attach Forms 8298-A and 8905))	5h															
Total payments. Add lines 5d through 5i	5i															
Estimated tax penalty (see instructions). Check if Form 2220 is attached	6															
Amount owed. If line 5j is smaller than the total of lines 4 and 6, enter amount owed	7															
Overpayment. If line 5j is larger than the total of lines 4 and 6, enter amount overpaid	8															
Enter portion of tax you want credited to 2010 estimated tax	9															

**Sign Here**

Signature of officer \_\_\_\_\_ Date \_\_\_\_\_  
Preparer's signature \_\_\_\_\_ Date \_\_\_\_\_  
Check if self-employed  Preparer's SSN or PTIN \_\_\_\_\_  
EN \_\_\_\_\_  
Phone no. \_\_\_\_\_

For Privacy Act and Paperwork Reduction Act Notices, see instructions. Cat. No. 11412i Form 1120-F 2009



# Das neue DBA USA

Die administrative Seite des DBA USA. 1120F.(US-Einkommensteuererklärung).

<p>Form <b>1120-F</b> Department of the Treasury Internal Revenue Service</p>	<p><b>U.S. Income Tax Return of a Foreign Corporation</b> For calendar year 2008, or tax year beginning <u>01/01</u>, 2008, and ending <u>12/31</u>, 20<u>08</u> ▶ See separate instructions.</p>	<p>OMB No. 1545-0126 <b>2008</b></p>																		
<p><b>Use IRS label. Otherwise, print or type.</b></p>	<p>Name <b>Deutsche Telekom AG</b></p> <p>Number, street, and room or suite no. (see instructions) <b>Friedrich-Ebert-Allee 140</b></p> <p>City or town, state and ZIP code, or country (see instructions) <b>53113 Bonn, Germany</b></p>	<p><b>Employer identification number</b> <b>98-0366489</b></p> <p><b>Check box(es) if:</b></p> <p><input type="checkbox"/> Name or address change    <input type="checkbox"/> Initial return</p> <p><input type="checkbox"/> First post-merger return    <input type="checkbox"/> Final return</p> <p><input type="checkbox"/> Schedule M-3 attached    <input type="checkbox"/> Amended return</p> <p><input type="checkbox"/> Protective return</p>																		
<p><b>A</b> Country of incorporation <u>Germany</u></p> <p><b>B</b> Foreign country under whose laws the income reported on this return is also subject to tax <u>Germany</u></p> <p><b>C</b> Date incorporated _____</p> <p><b>D</b> (1) Location of corporation's primary books and records (city, province or state, and country) <u>Bonn, Germany</u></p> <p>(2) Principal location of worldwide business <u>Germany</u></p> <p>(3) If the corporation maintains an office or place of business in the United States, check here <input type="checkbox"/></p> <p><b>E</b> If the corporation had an agent in the United States at any time during the tax year, enter:</p> <p>(1) Type of agent _____</p> <p>(2) Name _____</p> <p>(3) Address _____</p> <p><b>F</b> See the instructions and enter the corporation's principal:</p> <p>(1) Business activity code number ▶ _____</p> <p>(2) Business activity ▶ _____</p> <p>(3) Product or service ▶ _____</p> <p><b>G</b> Check method of accounting: (1) <input type="checkbox"/> Cash (2) <input checked="" type="checkbox"/> Accrual</p> <p>(3) <input type="checkbox"/> Other (specify) ▶ _____</p>	<p><b>H</b> Did the corporation's method of accounting change from the preceding tax year? . . . . . If "Yes," attach an explanation.</p> <p><b>I</b> Did the corporation's method of determining income change from the preceding tax year? . . . . . If "Yes," attach an explanation.</p> <p><b>J</b> Did the corporation file a U.S. income tax return for the preceding tax year? . . . . .</p> <p><b>K</b> (1) At any time during the tax year, was the corporation engaged in a trade or business in the United States? (2) If "Yes," is taxpayer's trade or business within the United States solely the result of a section 897 (FIRPTA) sale or disposition? . . . . .</p> <p><b>L</b> At any time during the tax year, did the corporation have a permanent establishment in the United States for purposes of any applicable tax treaty between the United States and a foreign country? . . . . . If "Yes," enter the name of the foreign country: _____</p> <p><b>M</b> Did the corporation have any transactions with related parties? If "Yes," Form 5472 may have to be filed (see instructions). Enter number of Forms 5472 attached ▶ <u>0</u></p> <p><i>Note: Additional information is required on page 2.</i></p>	<table border="1"> <thead> <tr> <th>Yes</th> <th>No</th> </tr> </thead> <tbody> <tr> <td></td> <td style="text-align: center;">✓</td> </tr> <tr> <td></td> <td style="text-align: center;">✓</td> </tr> <tr> <td style="text-align: center;">✓</td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;">✓</td> </tr> <tr> <td></td> <td style="text-align: center;">✓</td> </tr> <tr> <td></td> <td style="text-align: center;">✓</td> </tr> <tr> <td style="text-align: center;">✓</td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;">✓</td> </tr> </tbody> </table>	Yes	No		✓		✓	✓			✓		✓		✓	✓			✓
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**Computation of Tax Due or Overpayment**





# Das neue DBA USA

Die administrative Seite des DBA USA. 8833.

Form <b>8833</b> (Rev. August 2006) Department of the Treasury Internal Revenue Service	<b>Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)</b>	OMB No. 1545-1354
▶ <b>Attach to your tax return.</b>		
Attach a separate Form 8833 for each treaty-based return position taken. Failure to disclose a treaty-based return position may result in a penalty of \$1,000 (\$10,000 in the case of a C corporation) (see section 6712).		
Name <b>Deutsche Telekom AG</b>		U.S. taxpayer identifying number <b>98-0366489</b>
Address in country of residence <b>Friedrich-Ebert-Allee 140 53113 Bonn, Germany</b>		Address in the United States
Check one or both of the following boxes as applicable:		
• The taxpayer is disclosing a treaty-based return position as required by section 6114 . . . . . ▶ <input checked="" type="checkbox"/>		
• The taxpayer is a dual-resident taxpayer and is disclosing a treaty-based return position as required by Regulations section 301.7701(b)-7 . . . . . ▶ <input type="checkbox"/>		
Check this box if the taxpayer is a U.S. citizen or resident or is incorporated in the United States . . . . . ▶ <input type="checkbox"/>		
<b>1</b> Enter the specific treaty position relied on: <b>a</b> Treaty country <u>Germany</u> <b>b</b> Article(s) <u>11, 21</u>		<b>3</b> Name, identifying number (if available to the taxpayer), and address in the United States of the payor of the income (if fixed or determinable annual or periodical). See instructions.  <b>see statement 1</b>
<b>2</b> List the Internal Revenue Code provision(s) overruled or modified by the treaty-based return position <b>IRC Section 881 (a) (1)</b>		
<b>4</b> List the provision(s) of the limitation on benefits article (if any) in the treaty that the taxpayer relies on to prevent application of that article ▶ <b>Article 28 paragraph 2 c) aa)</b>		
<b>5</b> Explain the treaty-based return position taken. Include a brief summary of the facts on which it is based. Also, list the nature and amount (or a reasonable estimate) of gross receipts, each separate gross payment, each separate gross income item, or other item (as applicable) for which the treaty benefit is claimed <b>see statement 2</b> ..... .....		



Fazit. US-Abkommensrecht sehr gut, aber  
deutsches Recht verbesserungsbedürftig.

# Das neue DBA USA

Fazit.

- DBA-USA nF sehr vorteilhaft. 0% Quellensteuer für konzerninterne Dividenden lässt
  - US-Beteiligungen deutscher Konzerne mit EU-Beteiligungen gleichziehen
  - US-Beteiligungen deutscher Konzerne mit US-Beteiligungen anderer „meistbegünstigter“ Staaten gleichziehen (z.B. UK, Mexiko, Japan).
  
- Aber: Nationalstaatliches Recht verbesserungsbedürftig.
  - Abschaffung 1,5%-Besteuerung von Dividenden und Veräußerungsgewinnen (Standortnachteil § 8b Abs. 3 und Abs. 5 KStG)
  
- Ergebnis:
  - NL als Standort für US-Beteiligungen trotz DBA US/D n.F. vorteilhafter.



Vielen Dank für Ihre Aufmerksamkeit.

