

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

CC:INTL:B03

PLR-157470-05

Date:

February 02, 2006

Legend

Act =

State =

Country X =

Pension Plan =

Organization =

Group A =

Agreement 1 =

Trust =

Agreement 2 =

Y =

Dear :

This is in response to a letter dated November 2, 2005, from your authorized representative requesting a ruling whether the funds that comprise Trust (the taxpayer) are managed by persons who meet the requirement of Temp. Treas. Reg. §1.892-2T(c)(1)(ii). The information submitted for consideration is substantially as set forth below.

Pursuant to the Act, State (a political subdivision of Country X) authorized the establishment of Pension Plan to provide pension benefits to current and former members of Organization and their dependents and beneficiaries ("Pension Plan members"). Membership in Organization is reserved exclusively for Group A.

Pursuant to Agreement 1, State and Organization established Trust to hold and invest the assets of Pension Plan to provide pension benefits to Pension Plan members. Trust is an entity separate and distinct from State and Organization. Trust invests in public and private equity and fixed income markets of Country X and other countries, including the United States. Trust is not subject to income taxes in either Country X or State.

Pursuant to the terms of Agreement 2 between State and Organization, a joint board of trustees (the Board) was established to administer Pension Plan and invest and manage the assets of Trust in accordance with the provisions of the Act and Agreement 1. The operation and administration of Trust, including custody, investment, and management of Trust, are the sole responsibility of Board. The Board is comprised of Y trustees. State and Organization each appoint half of those trustees (State Trustees and Organization Trustees, respectively). Any resolution of the Board requires a vote of the majority of the trustees present, provided that there is a quorum and that at least one State Trustee and one Organization Trustee have supported the resolution. In the case of a deadlock, Agreement 2 provides that an additional trustee is to be appointed by agreement between State and Organization. If they cannot agree, Agreement 2 provides a mechanism for the appointment of the additional trustee.

Since the establishment of Trust, the majority of Trustees serving on the Board have been State employees or appointees of State. Trust represents that at no time since the establishment of Trust has more than two non-government employees served together on the Board at the same time.

Section 892(a)(1) of the Internal Revenue Code excludes from gross income and exempts from U.S. federal income taxation certain income of foreign governments. Such excluded income includes only income received from investments in the United States in stocks, bonds, or other domestic securities owned by such foreign governments; income received from financial instruments held in the execution of governmental financial or monetary policy; and interest on deposits in banks in the United States of monies belonging to such foreign governments. The exclusion does not apply to income derived from the conduct of any commercial activity, whether within or without the United States, or to income received directly or indirectly from or by a

controlled commercial entity or derived from the disposition of any interest in a controlled entity. Section 892(a)(2)(A) of the Code.

For purposes of section 892 of the Code, the term "foreign government" means only the integral parts or controlled entities of a foreign sovereign. Temp. Treas. Reg. § 1.892-2T(a)(1). Temp. Treas. Reg. § 1.892-2T(d) provides that the rules that apply to a foreign sovereign apply to political subdivisions of a foreign country. A "controlled entity" is an entity that is separate in form from a foreign sovereign or otherwise constitutes a separate juridical entity provided that: (i) it is wholly owned and controlled by the foreign sovereign, directly or indirectly, through one or more controlled entities; (ii) it is organized under the laws of the foreign sovereign by which it is owned; (iii) its net earnings are credited to its own account or to other accounts of the foreign sovereign, with no portion of its income inuring to the benefit of any private person; and (iv) its assets vest in the foreign sovereign upon dissolution. Temp. Treas. Reg. § 1.892-2T(a)(3).

Temp. Treas. Reg. § 1.892-2T(c)(1) provides that a "controlled entity" includes a separately organized pension trust that meets the following requirements:

- (i) The trust is established exclusively for the benefit of (A) employees or former employees of a foreign government or (B) employees or former employees of a foreign government and non-governmental employees or former employees that perform or performed governmental or social services;
- (ii) The funds that comprise the trust are managed by trustees who are employees of, or persons appointed by, the foreign government;
- (iii) The trust forming a part of the pension plan provides for retirement, disability, or death benefits in consideration for prior services rendered; and
- (iv) Income of the trust satisfies the obligations of the foreign government to participants under the plan, rather than inuring to the benefit of a private person.

Based solely upon the facts and representations submitted, in our opinion, as of November 2, 2005, Trust satisfied the requirement of Temp. Treas. Reg. § 1.892-2T(c)(1)(ii). Accordingly, as of that date, the funds that comprised Trust were managed by persons who met the requirement of Temp. Treas. Reg. § 1.892-2T(c)(1)(ii).

The ruling contained in this letter is based upon information and representations submitted by Trust and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed or implied as to whether:

1. Trust satisfies the requirements of paragraphs (i), (iii), and (iv) of Temp. Treas. Reg. §1.892-2T(c)(1);
2. Whether Trust is a “controlled commercial entity” as defined in section 892(a)(2)(B) of the Code and Treas. Reg. §1.892-5(a) and Temp. Treas. Reg. §1.892-5T(a); and
3. Whether any U.S. source income received by Trust is exempt from U.S. federal income tax under section 892(a)(1).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the first and second listed authorized representatives.

Sincerely,

Richard L. Chewning
Senior Counsel
Office of Associate Chief
Counsel (International)