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Department of the Treasury

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Refer Reply To:
CC:INTL:Br3-PLR-139508-01
Date:

January 23, 2002

TY:

Legend

Board =

State =

FC =

k =

Plan =

Commission =

Fund =

Minister =

Group =

Ministry =

year 1 =

year 2 =

Dear :

This is in response to a letter dated July 18, 2001, from your authorized representative requesting rulings under sections 892 and 1441 of the Internal Revenue Code. Additional information was provided in letters dated September 13, 2001 and November 1, 2001. The information submitted for consideration is substantially as set forth below.

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The Board is a corporation established in year 2, without share capital, by an act of the legislature of State, a political subdivision of the country of FC. The Board was formed to administer a contributory defined benefit retirement plan for the benefit of public and private k within State, and to manage and maintain the pension plan funds for that purpose. It is represented that the Board does not carry on a trade or business in the United States and has no office or place of business within the United States.

The pension plan (the Plan) was first established in year 1 and administered by the Commission, also a corporate body established by the State legislature. Upon its dissolution, the Commission's assets (those assets being the pension plan funds now known as the Fund) were transferred to the Board. The Plan is funded by mandatory contributions by each Plan participant of a specified percentage of their compensation. Voluntary contributions are not permitted. Neither the Plan nor the Fund constitutes a separate legal entity or possesses any of its own rights, powers or duties. A portion of the Fund managed by the Board has been invested in United States stocks, bonds, and other domestic securities. The Board is prohibited, pursuant to State pension investment regulations, from owning controlling interest investments either directly or indirectly in corporate securities.

The Board is managed by nine members consisting of four appointed by the Minister, four appointed by the Group and the ninth member, the chair, appointed jointly by the Minister and the Group. The Group is a corporate body established by State to serve as a professional organization for k within State and as the official liaison between k and the Ministry. All k within State are required to belong to the Group as a condition of their employment. The law creating the Board does not provide for its dissolution. Dissolution can only be accomplished by an act of the legislature of State. It is represented that upon dissolution the Board's assets (those assets being the Fund) would vest in any successor entity, and to the extent the Plan were terminated (which can only be accomplished by act of the State legislature), the assets would revert to State.

Section 892(a)(1) of the Code excludes from gross income and exempts from federal income taxation the income of foreign governments 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).

For purposes of section 892 of the Code, the term "foreign government" means only the integral parts or controlled entities of a foreign sovereign. Treas. Reg. § 1.892-2T(a)(1). 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

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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. Treas. Reg. § 1.892-2T(a)(3).

Treas. Reg. §1.892-2T(c)(1) describes the requirements for a separate pension trust to qualify under section 892 of the Code. Neither the Board nor the Fund qualify as a separate pension trust. However, Treas. Reg. §1.892-2T(c)(1) provides that income of a superannuation or similar pension fund (which does not qualify as a separate pension trust) of an integral part or controlled entity of a foreign government is subject to the rules that generally apply to a foreign sovereign. Such a pension fund may also benefit non-governmental employees or former employees that perform or performed governmental or social services.

Although established without share capital, the Board has an independent juridical status as a separate corporate body that can only be dissolved by the legislature of State. The Board derives its authority directly from the State legislature. Its members are jointly appointed by the Minister and the Group, an entity created by a State statute. It is represented that the Board's assets (those assets being the Fund) would upon dissolution vest in a successor body designated by the State legislature or revert to State. All the individuals for whom retirement benefits are provided are either government or non-government employees that perform a governmental or social service. The earnings used to provide retirement benefits to governmental or non-governmental employees are not considered to inure to the benefit of private persons; see Rev. Rul. 88-7, 1988-1 C.B. 269. Therefore, the Board is a controlled entity of State within the meaning of Treas. Reg. §1.892-2T(a)(3).

Sections 1441 and 1442 of the Code provide for withholding of tax on payments of dividends and interest made to nonresident aliens and foreign corporations that are subject to tax under sections 871(a) and 881(a). Income exempt under section 892 is not subject to withholding under sections 1441 and 1442. Treas. Reg. §1.892-7T(e).

Based solely upon the facts and representations submitted, we conclude as follows:

1. The Board is a "controlled entity" within the meaning of Treas. Reg. §1.892-2T(a)(3) and therefore is a foreign government for purposes of Treas. Reg. §1.892-2T(a)(1) and section 892(a)(1) of the Code.
2. The income earned by the Board from investments in the United States in stocks, bonds, or other domestic securities owned by the Board and allocable to the Fund is exempt from United States income tax under section 892(a)(1) of the Code.

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3. The income earned by the Board from investments in the United States in stocks, bonds, or other domestic securities owned by the Board and allocable to the Fund is not subject to withholding of tax under sections 1441 and 1442 of the Code and the regulations thereunder.

No opinion is expressed or implied whether the Board is engaged in commercial activities within the meaning of Treas. Reg. 1.892-4T(b), nor whether the Board is a controlled commercial entity as defined in section 892(a)(2)(B). No opinion is expressed or implied whether any of the income earned by the Board from investments in the United States is derived from or by a controlled commercial entity as defined in section 892(a)(2)(B).

The rulings contained in this letter are based upon information and representations submitted by the taxpayer 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.

This ruling is directed only to the taxpayer(s) 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 in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,
Anne O'Connell Devereaux
Senior Technical Reviewer
Office of Associate Chief Counsel
(International)