

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

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CC:INTL:B01

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Date:

March 09, 2006

In Re:

TY:

**Legend**

Taxpayer =

Company A =

Company B =

Date 1 =

Date 2 =

Date 3 =

Dear :

This responds to your letter dated July 6, 2005, requesting a ruling concerning Article of the United States-United Kingdom income tax treaty (the "Treaty"), as supplemented by letters dated November 1, 2005, and March 9, 2006.

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.

## FACTS

Company A is a U.K. corporation whose principal class of shares is traded on the London Stock Exchange. Prior to Date 2, Company A held 100 percent of the issued and outstanding capital stock of Taxpayer, a domestic corporation. On Date 1, prior to Date 2, Taxpayer paid a dividend to Company A and took the position that such dividend was eligible for an exemption from source state taxation under Article 10(3) of the Treaty, based on the fact that Company A had owned the shares of Taxpayer for more than 12 months at the time the dividend was declared and otherwise qualified for benefits under Article 10(3) of the Treaty. On Date 2, Company A contributed Taxpayer's stock to Company B, a wholly-owned U.K. corporation. Company B has elected under Treas. Reg. § 301.7701-3 to be disregarded as an entity separate from its owner (i.e., Company A) for U.S. federal income tax purposes. Following the contribution Company B holds 100 percent of the issued and outstanding capital stock of Taxpayer. Taxpayer declared a dividend on Date 3, a date less than 12 months after Date 2. Taxpayer represents that:

1. Company B is not an agent, nominee, intermediary, or conduit, as determined under U.S. principles, with respect to the dividend declared on Date 3.
2. Company B is a tax resident of U.K. for U.K. tax purposes, and is subject to tax in the United Kingdom with respect to the dividend declared on Date 3.
3. Company A and Company B met the requirements of Article 10(3)(a)(ii) on Date 3 and at all times during the 12-month period ending on that date.

## RULING REQUESTED

The Taxpayer requests a ruling that the imposition of Company B between Company A and Taxpayer will not cause the dividend declared on Date 3 to lose its qualification under Article 10(3) of the Treaty.

## LAW

Article 10(1) of the Treaty provides that dividends paid by a company that is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

Article 10(2) provides that the dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, but if the dividends are beneficially owned by a resident of the other Contracting State, the tax so charged may not exceed certain limits.

Notwithstanding paragraph 2, paragraph 3 of Article 10 provides that dividends shall not be taxed in the Contracting State of which the company paying the dividends is a

resident if the beneficial owner of the dividends is a resident of the other Contracting State and certain other requirements are satisfied.

Article 10(3)(a) provides that dividends are not taxable in the source State if the beneficial owner is a company resident in the other Contracting State that has owned shares representing 80 percent or more of the voting power of the company paying the dividends for a 12-month period ending on the date the dividend is declared (the "12 month ownership test") and certain other requirements are satisfied.

The U.S. Department of the Treasury Technical Explanation to Article 10 provides:

The term "beneficial owner" is not defined in the Convention, and is, therefore, defined as under the internal law of the country imposing tax (i.e., the source country). The beneficial owner of the dividend for purposes of Article 10 is the person to which the dividend income is attributable for tax purposes under the laws of the source State. Thus, if a dividend paid by a corporation that is a resident of one of the States (as determined under Article 4 (Residence)) is received by a nominee or agent that is a resident of the other State on behalf of a person that is not a resident of that other State, the dividend is not entitled to the benefits of this Article.

Article 1(8) of the Treaty provides that:

An item of income, profit or gain derived through a person that is fiscally transparent under the laws of either Contracting State shall be considered derived by a resident of a Contracting State to the extent that the item is treated for purposes of the taxation law of such Contracting State as the income, profit or gain of a resident.

Treas. Reg. § 1.894-1(d)(1) provides in part that:

An item of income paid to an entity shall be considered to be derived by the entity only if the entity is not fiscally transparent under the laws of the entity's jurisdiction, as defined in paragraph (d)(3)(ii) of this section, with respect to the item of income. An item of income paid to an entity shall be considered to be derived by the interest holder in the entity only if the interest holder is not fiscally transparent in its jurisdiction with respect to the item of income and if the entity is considered to be fiscally transparent under the laws of the interest holder's jurisdiction with respect to the item of income, as defined in paragraph (d)(3)(iii) of this section.

## ANALYSIS

In order to qualify for the exemption from U.S. withholding tax under Article 10(3) of the Treaty, the dividend paid by Taxpayer must be both derived by and beneficially owned by a resident of the United Kingdom, and the beneficial owner must own 80 percent or more of the shares of the company paying the dividend for a 12-month period ending on the date the dividend is declared.

Company B, which is disregarded as an entity separate from its owner, Company A, is liable to tax as a corporation in the United Kingdom. The dividend is treated for U.K. tax purposes as the income, profit or gain of a resident. Accordingly, the requirement of Article 1(8) of the Treaty that the dividend income be derived by a resident of the United Kingdom is satisfied.

For purposes of Article 10(3)(a), the person that derives the dividend income must also be the "beneficial owner" of the income. In this case, Taxpayer represents that Company B is not acting as a nominee or agent on behalf of another person under U.S. tax principles. Accordingly, consistent with the U.S. Treasury Department's Technical Explanation to Article 10, Company B, which is disregarded as an entity separate from its owner, Company A, is the beneficial owner of the dividend income.

Company B did not hold the shares of Taxpayer for the entire 12 month-period ending on Date E. However, taking into account in the aggregate the days during which Company A and Company B, which is disregarded as an entity separate from its owner, Company A, each owned shares representing 80 percent or more of the voting power of Taxpayer, the shares met the requirement that they be owned by a resident of the United Kingdom for the 12-month period ending on Date 3.

Based on the foregoing analysis and on the representations set forth above, we hold that the dividend declared on Date 3 is derived and beneficially owned by Company B, a corporation disregarded as an entity separate from its owner, Company A, and that the dividend is described in paragraph 3(a) of Article 10 of the Treaty.

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 as to whether Company A or Company B meets other conditions required to claim treaty benefits under the Treaty.

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 your authorized representatives.

A copy of this letter must be attached to any tax or information return to which it is relevant.

Sincerely,

Elizabeth U. Karzon  
Chief, Branch 1  
Office of Associate Chief Counsel  
(International)

cc: