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Washington, DC 20224

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Person To Contact:

Telephone Number:

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March 17, 2005

Legend

Taxpayer =

Country A =

Bank =

Dear :

This letter responds to your letter dated November 12, 2004, requesting the following rulings:

1. Taxpayer is the trustee for several foreign trusts. Each trust is the sole shareholder of a foreign corporation, and that corporation makes passive investments in various portfolio securities in the United States and outside of the United States. Where the foreign corporation makes dividend payments by depositing money into a bank account maintained by the Taxpayer, as trustee, and located in the United States, the foreign corporation is not required to issue information returns pursuant to section 6042.
2. Some of the trusts loan money to the foreign corporation. Where the foreign corporation makes interest payments on that loan by depositing money into a bank account maintained by the Taxpayer, as trustee, and located in the United States, the corporation is not required to issue information returns pursuant to section 6049.
3. Where Taxpayer, as trustee, sends proceeds from dividend payments to a bank account maintained by the beneficiary, Taxpayer is not required to file information returns with the Service pursuant to section 6042.
4. Where Taxpayer, as trustee, sends proceeds from interest payments to a bank account maintained by the beneficiary, Taxpayer is not required to file information returns with the Service pursuant to section 6049.

Facts

Taxpayer is a Country A subsidiary of Bank, and serves as a trustee for a number of foreign trusts established or settled exclusively by nonresident aliens. Each trust at issue owns all of the outstanding stock of a foreign corporation whose sole purpose is to make passive investments in other foreign corporations that include, but are not limited to, stocks, bonds, and mutual funds. In addition, some of the corporations owned by the trusts have borrowed money from the respective trust to fund its investments. The foreign corporations do not engage in a trade or business in the United States, nor do any of the corporations maintain an office or other fixed place of business in the United States.

The corporations owned by the trusts receive income from its foreign investments. The corporations will then make distributions to the trust, and, if applicable, make payments on obligations it has to the trust. Officers or employees of Taxpayer, located in Country A, handle the approval and authorizations of distributions from the foreign corporation.

You state that these distributions qualify as dividends that are income from sources without the United States, as defined by section 862(a)(2), or as interest payments that are income from sources without the United States, as defined by section 862(a)(1). The Taxpayer, as trustee, will then transfer the payments to an account maintained by the non-resident alien beneficiaries.

Taxpayer wants to accomplish these distributions through the following process:

Step 1. The foreign corporation will issue a dividend or make interest payments to its shareholder, the trust, into an account maintained by Taxpayer, as trustee of the trust. For business reasons, Taxpayer maintains this account in the United States.

Step 2. Taxpayer, as trustee, transfers the proceeds of these payments to the individual beneficiary's account, which may or may not be located in the United States.

Taxpayer has requested a ruling that the distributions in Steps 1 and 2 do not trigger the information reporting requirements of sections 6042 and 6049 of the Code.

Law

Section 6042(a)(1) requires any person who makes payments of dividends aggregating \$10 or more to any other person, or who receives payments of dividends as a nominee and who makes payments aggregating \$10 or more during any calendar year to any other person with respect to the dividends so received shall file an information return with the Service.

Section 6042(b)(1)(A) defines a dividend as any distribution by a corporation that is a dividend as defined by section 316.

Section 6042(b)(2)(A) states that, to the extent provided in regulations, the term “dividend” does not include any distribution or payment by a foreign corporation to a foreign corporation, a nonresident alien, or a partnership not engaged in a trade or business in the United States and composed in whole or in part of nonresident aliens.

Section 6049(a) requires any person who makes payments of interest aggregating \$10 or more to any other person, or who receives payments of interest as a nominee and who makes payments aggregating \$10 or more during any calendar year to any other person with respect to the interest so received shall file an information return with the Service.

Section 6049(b)(2) provides that interest does not include any amounts paid to the extent provided in regulations.

Section 1.6042-3(b)(1)(iv) provides that “dividends” do not include distributions or payments from sources outside the United States, paid outside the United States, by a non-U.S. payor or a non-U.S. middleman. This regulation uses the definitions for non-U.S. payor from section 1.6049-5(c)(5), and uses the circumstances described in section 1.6049-5(e) for when a payment is considered to be made outside the United States.

Section 1.6049-5(b)(6) provides that “interest” does not include amounts from sources outside the United States paid outside the United States by a non-U.S. payor or a non-U.S. middleman.

Section 1.6049-5(c)(5) defines a non-U.S. payor as a payor other than a U.S. payor. Section 1.6049-5(c)(5)(i) through (vi) define a U.S. payor as a person described in section 7701(a)(30); the government of the United States or the government of any State or political subdivision thereof; a controlled foreign corporation within the meaning of section 957(a); a foreign partnership, if at any time during its tax year, one or more of its partners are U.S. persons who, in the aggregate hold more than 50 percent of the income or capital interest in the partnership, or if, at any time during its tax year, it is engaged in the conduct of a trade or business in the United States; a foreign person 50 percent or more of the gross income of which, from all sources for the three-year period ending with the close of its taxable year preceding the collection or payment, was effectively connected with the conduct of trade or business within the United States; or a U.S. branch of a foreign bank or foreign insurance company described in section 1.1441-1(b)(2)(iv).

Section 1.6049-5(e)(1) states that an amount is considered paid outside the United States where the payor completes the acts necessary to effect payment outside the United States. A payment is not considered to be made within the United States merely

by reason of the fact that it is made on a draft drawn on a United States bank account or by a wire or other electronic transfer from a United States account.

Notwithstanding this general rule, section 1.6049-5(e)(1) provides that without regard to the location of the account from which the amount is drawn, an amount that is described in section 1.6049-5(e)(1)(i) or (ii) and paid by transfer to an account maintained by the payee in the United States or by mail to a United States address is not considered to be paid outside the United States.

An amount is described in section 1.6049-5(e)(1)(i) if it is paid by an issuer or paying agent of the issuer and the obligation is either (A) issued by a U.S. payor, (B) registered under the Securities Act; or (C) listed on an exchange that is registered as a national securities exchange in the United States, or included in an interdealer quotation system in the United States. An amount is described in section 1.6049-5(e)(1)(ii) if it is an amount paid by a U.S. middleman that, as a custodian, nominee, or other agent of a payee, collects the amount for or on behalf of the payee.

Analysis

In this case, the payments at issue in Step 1 are dividend and interest payments paid by a foreign corporation to a foreign trust. Pursuant to sections 1.6042-3(b)(1)(iv) and 1.6049-5(b)(6), the dividend and interest payments will not be subject to information reporting where the following two requirements are met: first, the payments must be from sources outside the United States; and second, the payments must be paid outside the United States by a non-U.S. payor or non-U.S. middleman.

Regarding the source of the payment, the information you provide states that the dividend and interest payments are all from sources outside the United States. Based on your representations, the first requirement has been met. We express no opinion regarding the source of any payments that any of the corporations has made, or will make to its shareholders.

Second, it must be determined if the payments are made outside the United States. The corporation making the payments is a foreign corporation. The officers of the corporation are located in Country A. As the authorizations and approval for the distributions from the corporation is completed in Country A, the acts necessary to effect payment are completed outside of the United States. Accordingly, the corporation has complied with the general rule of section 1.6049-5(e)(1). Nevertheless, the payments are made to a bank account located in the United States. Therefore, if the dividends or interest payments are described in section 1.6049-5(e)(1)(i) or (ii), then the payments are considered to be made within the United States.

Here, the dividend and interest payments are made by a foreign corporation. The foreign corporation is not described in section 1.6049-5(c)(5)(i) through (vi). Therefore the foreign corporation is not a U.S. payor under section 1.6049-5(c)(5), and section

1.6049-5(e)(1)(i)(A) does not apply. Further the obligations at issue are not registered under the Securities Act, nor are they listed on an exchange that is registered as a national securities exchange in the United States or included in an interdealer quotation in the United States. Therefore, section 1.6049-5(e)(1)(i)(B) and (C) do not apply. In addition, the foreign corporation is making payments directly to its shareholder, which is the trust. As there is no middleman involved, section 1.6049-5(e)(1)(ii) does not apply.

Because the foreign corporation complied with the general rule of section 1.6049-5(e)(1), and section 1.6049-5(e)(1)(i) or (ii) does not apply, the dividend and interest payments from the foreign corporation to the foreign trust are made from without the United States. As the payor has completed the acts necessary to effect payment outside of the United States, the payments made by the corporation are not dividends pursuant to section 1.6042-3(b)(1)(iv). Accordingly, the dividends at issue in this case are not subject to the information reporting requirements of section 6042.

Similarly, based on the analysis above, the interest payments are amounts from sources outside the United States paid outside the United States by a non-U.S. payor. Therefore, the payments made by the foreign corporation to the trust are not interest payments pursuant to section 1.6049-5(b)(6). Accordingly, these payments are not subject to the information reporting requirements of section 6049.

Next, it must be determined if the money transferred from the trust to the beneficiary described in Step 2 is subject to the information reporting requirements of either sections 6042 or 6049. Section 6042(a)(1)(B) requires every person “who receives payments of dividends as a nominee and who makes payments aggregating \$10 or more during any calendar year to any other person with respect to the dividends so received” to file an information return with the Service. As described above, the dividends made by the foreign corporation are not dividends for purposes of section 6042. Accordingly, the payments made by Taxpayer, as trustee, to the beneficiary are not subject to the information reporting requirements of section 6042.

Section 6049(a)(2) requires every person “who receives payments of interest (as so defined) as a nominee and who makes payments aggregating \$10 or more during any calendar year to any other person with respect to the interest so received” to file an information return with the Service. As described above, the payments made by the foreign corporation to the trust are not interest payments for purposes of section 6049. Accordingly, the payments made by Taxpayer, as trustee, to the beneficiary are not subject to the information reporting requirements of section 6049.

Conclusions

Based solely on the information provided and the representations made, we conclude:

1. Taxpayer is the trustee for several foreign trusts. Each trust is the sole shareholder of a foreign corporation, and that corporation makes passive investments in

other foreign corporations. Where the foreign corporation makes dividend payments by depositing money into a bank account maintained by the Taxpayer, as trustee, and located in the United States, the foreign corporation is not required to issue information returns pursuant to section 6042.

2. Some of the trusts loan money to the foreign corporation. Where the foreign corporation makes interest payments on that loan by depositing money into a bank account maintained by the Taxpayer, as trustee, and located in the United States, the corporation is not required to issue information returns pursuant to section 6049.

3. Where Taxpayer, as trustee, sends proceeds from dividend payments to a bank account maintained by the beneficiary, Taxpayer is not required to file information returns with the Service pursuant to section 6042.

4. Where Taxpayer, as trustee, sends proceeds from interest payments to a bank account maintained by the beneficiary, Taxpayer is not required to file information returns with the Service pursuant to section 6049.

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.

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 taxpayer representative.

Sincerely,

Tiffany P. Smith
Assistant to the Branch Chief, Administrative
Provisions & Judicial Practice
(Procedure & Administration)

cc: