

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:1 – PLR-149184-03

Date:

January 07, 2004

In Re:

Legend

Participant =

Date 1 =

Corporation Y =

Plan =

Year 2 =

Year 3 =

Date 4 =

Date 5 =

Dear :

This is in response to a letter dated August 13, 2003, requesting a ruling under the United States-Australia income tax convention (“Treaty”) with respect to a lump-sum distribution from a U.S. non-qualified retirement plan to a citizen and resident of Australia.

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The ruling contained in this letter is 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

Participant, a citizen of Australia, was born on Date 1. Participant moved to the United States in Year 2 to work for Corporation Y, and has worked there continually since Year 2. Participant became a lawful permanent resident of the United States in Year 3.

Effective Date 4, Corporation Y, a U.S. corporation, established a U.S. non-qualified supplemental retirement plan ("Plan"). Prior to the beginning of the Plan year, each eligible employee may elect to contribute a portion of his or her compensation that would otherwise be earned and payable in the following Plan year. An account is established for each eligible employee to reflect his or her interest under the Plan. Amounts credited to an employee's account are credited with interest until the employee receives payment of benefits under the Plan. Corporation Y may also make annual contributions to the account of each eligible employee.

During Participant's employment with Corporation Y, Participant participated in the Plan.

Participant intends to retire from Corporation Y on approximately Date 5, at which time he will relinquish his lawful permanent resident status and move back to Australia. On Date 5, Participant will be more than 55 years old. It is anticipated that Participant will receive a lump sum distribution from the Plan after having reestablished Australian residence. Participant will have been employed by the Corporation Y group for longer than five years and will be fully retired from the Corporation Y group of related entities.

RULING REQUESTED

Based on the information above, Participant requests a ruling that any distributions from the Plan received while a resident of Australia (whether all funds are distributed in one lump sum or in a series of distributions over a number of years) will be exempt from U.S. income tax under Article 18 of the Treaty.

LAW AND ANALYSIS

Section 871(a) of the Internal Revenue Code provides, generally, that a nonresident alien individual is subject to a 30-percent tax on amounts received as interest (other than original issue discount as defined in section 1273), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other

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fixed or determinable annual or periodical gains, profits, and income to the extent the amount so received is from sources within the United States, but only to the extent the amount so received is not effectively connected with the conduct of a trade or business within the United States.

Section 871(b) of the Code and section 1.871-8(b)(2) of the Income Tax Regulations provide, in part, that a nonresident alien individual engaged in a trade or business within the United States during the taxable year is taxed as provided in section 1 of the Code on taxable income which is effectively connected with the conduct of a trade or business within the United States.

Section 864(c)(6) of the Code provides, in general, that payments of deferred compensation to a nonresident alien individual that are attributable to services performed in another year will be treated as income effectively connected with the conduct of a U.S. trade or business in the year of receipt if they would have been so treated if the income were taken into account in the year the services were performed.

Section 894(a) of the Code provides that the provisions of the Internal Revenue Code will be applied with due regard to any treaty obligation of the United States that applies to the taxpayer.

Paragraph 1 of Article 18 (Pensions, Annuities, Alimony and Child Support) of the Treaty provides that, subject to the provisions of Article 19 (Governmental Remuneration), "pensions and other similar remuneration paid to an individual who is a resident of one of the Contracting States in consideration of past employment" are taxable only in that Contracting State. Paragraph 4 of Article 18 defines "pensions and other similar remuneration" to mean "periodic payments made by reason of retirement or death, in consideration for services rendered, or by way of compensation paid after retirement for injuries received in connection with past employment". The word "periodic" in Article 18(4) does not preclude the application of Article 18(1) to lump sum distributions.

Based solely on the information submitted and the representations made by the taxpayer, and provided that Participant is a resident of Australia within the meaning of Article 4 (Residence) of the Treaty at the time of a distribution from the Plan, we conclude that the distribution will be exempt from U.S. income tax under Article 18 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: (1) whether Participant will be a resident of Australia for purposes of the application of the Treaty; (2) Participant's

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potential U.S. tax liability for taxable periods after his expatriation under Code sections 877, 2107, and 2501(a)(3); and (3) the timing of the inclusion in Participant's income of contributions or other amounts credited to Participant's account under the Plan.

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, and section 8.02(2) of Rev. Proc. 2003-1, 2003-1 I.R.B. 1, 25, copies of this letter are being sent to your authorized representatives.

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

Sincerely,

M. Grace Fleeman
Senior Counsel, Branch 1
Office of Associate Chief Counsel

(International)

cc: