

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Telephone Number:

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Legend

Taxpayer =

Covered Employees =

Country A =

Act B =

Entity =

Body C =

Dear

This letter responds to your letter dated July 15, 1998, and supplemental correspondence submitted on behalf of Taxpayer, in which you requested a ruling that Taxpayer is treated as a trust for federal income tax purposes under § 301.7701-4 of the Procedure and Administration Regulations.

The facts submitted indicate that Taxpayer is organized as an Entity under the laws of Country A. Taxpayer was created to provide a vehicle for making retirement, disability, and survivor benefits available to Covered Employees in Country A. Taxpayer is exempt from tax under the laws of Country A.

Taxpayer is governed by Act B and regulated by Body C. Body C is the official government body established under Act B to supervise insurance companies and pension funds in Country A.

Taxpayer's organizing document provides that Taxpayer's purpose is to insure

the pensions of the Covered Employees and their surviving relatives. Taxpayer has the power to engage in any activity that conforms to the laws of Country A and that serves to protect the benefits accumulated by the parties.

Taxpayer derives its funds from a combination of employee contributions, employer contributions, and income from investments. The employers are responsible for pension contributions; however, they may withhold part of such contributions from Covered Employee salaries. Employee participation is mandatory, except in highly unusual circumstances. Employees have no control over the amounts withheld from their salaries.

Taxpayer must invest its available funds responsibly, based on an investment plan adopted annually. Taxpayer must annually submit to Body C an audited report of its financial position showing that the provisions of Act B are satisfied and that the interests of the pensioners are guaranteed. Once every five years, Taxpayer must submit to Body C an actuarial balance sheet, profit and loss statement, and actuary's report concerning Taxpayer.

The Covered Employees cannot assign their interests in Taxpayer. Taxpayer's assets are not subject to the claims of creditors of the Covered Employees or the employers. If a Covered Employee changes employment, the Covered Employee's share of Taxpayer will be valued and transferred to the Covered Employee's new pension fund. If a Covered Employee expatriates from Country A, the Covered Employee may redeem its interest in Taxpayer for a lump-sum value.

A Covered Employee's entitlement to benefits is calculated based on formulas taking into account the Covered Employee's final salary and years of service. A Covered Employee's entitlement does not depend on the performance of Taxpayer's investments.

Section 401 generally provides the requirements for a domestic trust that forms part of a stock bonus, pension, or profit-sharing plan of an employer to qualify as a qualified stock bonus, pension, or profit-sharing plan for federal income tax purposes.

Section 402(b) provides generally that contributions made by an employer to an employees' trust that is not exempt from tax under § 501(a) are included in the employee's gross income in accordance with § 83, except that the value of the employee's interest in the trust will be substituted for the property's fair market value in applying § 83. For this purpose, a trust is exempt under § 501(a) if it is an organization described in § 501(c)(25)(C)(i), which includes an organization that is a qualified pension, profit sharing, or stock bonus plan that meets the requirements of § 401(a).

Under § 402, a stock bonus, pension, or profit sharing trust that would qualify for exemption from taxation under § 501(a) except for the fact that it is a trust created or

organized outside the United States shall be treated as if it were a trust exempt from tax under § 501(a).

Section 301.7701-1(b) of the Administration and Procedure Regulations provides that the classification of organizations that are recognized as separate entities is determined under §§ 301.7701-2, 301.7701-3, and 301.7701-4 unless a provision of the Internal Revenue Code provides for special treatment of that organization.

Section 301.7701-4(a) provides that, in general, an arrangement will be treated as a trust if it can be shown that the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility and, therefore, are not associates in a joint enterprise for the conduct of business for profit. If an entity has both associates and a business purpose, it cannot be classified as a trust for federal income tax purposes.

After applying the law to the facts submitted and representations made, we conclude that Taxpayer is classified as a trust for federal income tax purposes under § 301.7701-4(a). However, it does not appear that Taxpayer meets the requirements to be a qualified plan under § 401(a).

Except as expressly provided, no opinion is expressed concerning the federal income tax consequences of the facts described above under any other provision of the Code. Specifically, we make no determination concerning whether Taxpayer or its beneficiaries are entitled to any benefits under the Internal Revenue Code or the income tax treaty entered into by Country A and the United States concerning income derived from the United States.

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

Under the power of attorney on file with this office, a copy of this letter is being sent to Taxpayer.

Sincerely yours,

Jeff Erickson  
Assistant to the Chief,  
Branch 3  
Office of Assistant Chief Counsel  
(Passthroughs and Special Industries)

cc: