DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200602046

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

UICs: 401.00-00
404.00-00
404.03-00

OCT 18 2005

SE:T:EP:RA:T3

Attn:
Vice President, Finance

LEGEND:

Taxpayer A:

Company A:

Company B:

Company C:

Plan X:

Plan Y:

Plan Section U:

Trust T:

Country W:

Agency Z:

Treaty:

Exchange of Notes

Date 1:

This letter is in response to your February 14, 2005 request for letter rulings with

respect to issues arising under the Treaty.

Facts:

Taxpayer A, a Country W citizen and United States resident alien who is not a lawful permanent resident ("Green Card" holder), is currently an employee of Company A, a United States corporation. From [redacted] Taxpayer A was employed by Company B (a Country W Employer"), which is a member of the same controlled group of corporations as Company A. On January 1, [redacted] Company B seconded Taxpayer A to the United States to work for Company A for a period expected to last five years.

Since [redacted], Taxpayer A has been a participant in Plan X sponsored by Company B. Plan X, amended, is currently embodied in Plan Section U of Plan Y which is sponsored by Company C. Plan X is funded through Trust T, and together Plan X and Trust T comprise what is collectively referred to herein as "Country W Scheme".

Plan X is a defined benefit plan that is an approved retirement benefits scheme for the purposes of Chapter I of part XIV of Income and Corporation Taxes Act 1988 of Country W. The Country W Scheme requires both employer contributions and employee contributions, which are deductible (or excludable) for Country W income tax purposes by Company B and participating employees, respectively. In addition, participants are permitted to make additional voluntary contributions subject to limits imposed by Agency Z and the plan's trustees ("Trustees").

Company A sponsors a qualified defined benefit plan and a qualified defined contribution plan that includes a cash-or-deferred arrangement qualified under Internal Revenue Code section 401(k), but Taxpayer A does not participate in either plan.

Taxpayer A wishes to continue his active participation in the Country W Scheme for as long as he continues to be employed by Company A or any other U.S. affiliate of Company B. Such participation would require Taxpayer A to make employee contributions to the Country W Scheme. Company A and Company B intend that Company A would make related employer contributions to the Country W Scheme.

Taxpayer A's required contributions to the Country W Scheme would be 6 percent of his compensation in excess of 1.5 times the "Lower Earning Limit" defined in Plan X. For [redacted] and subsequent years, Taxpayer A represents that this would result in a contribution of an amount expected to be less than the applicable limitation on the exclusion for elective deferrals prescribed by Code section 402(g).

Company A has requested the following private letter rulings with regard to the desired arrangement.

1. For purposes of Article 18 of the Treaty, the Country W Scheme generally corresponds to a pension scheme established in the United States.

2. To the extent Company A makes contributions under the provisions of the Country W Scheme to satisfy the funding requirements relating to Taxpayer A's benefit accruals under the Country W Scheme, those contributions will be tax-deductible by Company A in computing Company A's business profits in the United States.

Law and Analysis

Code section 402(g)(1), in summary, sets forth the limits on the amount of elective deferrals an individual taxpayer may take for a taxable year.

Code section 404(a), in pertinent part, sets forth the rules governing deductions for contributions of an employer made to retirement plans qualified within the meaning of Code section 401(a).

Code section 415, in pertinent part, sets forth the limitations on contributions and other additions that may be made with respect to a participant to defined contribution plans qualified within the meaning of Code section 401(a), and on benefits that may be provided to a participant by defined benefit plans qualified within the meaning of Code section 401(a).

Paragraph 1(o) of Article 3 (General Definitions) of the Treaty provides that the term "pension scheme" means any plan, scheme, fund, trust or other arrangement established in a Contracting State which is both generally exempt from income taxation in that State and operated principally to administer or provide pension or retirement benefits or to earn income for the benefit of one or more such arrangements.

Paragraph 1 of Article 18 (Pension Schemes) of the Treaty provides that where an individual who is a resident of a Contracting State is a participant in a pension scheme established in the other Contracting State, income earned by the pension scheme may be taxed as income of that individual only when, and, subject to paragraphs 1 and 2 of Article 17 (Pensions, Social Security, Annuities, Alimony, and Child Support) of the Treaty, to the extent that, it is paid to, or for the benefit of, that individual from the pension scheme (and not transferred to another pension scheme).

Paragraph 2 of Article 18 of the Treaty provides that where an individual who is a participant in a pension scheme established in a Contracting State exercises an employment or self-employment in the other Contracting State:

a) contributions paid by or on behalf of that individual to the pension scheme during the period that he exercises an employment or self-employment in the other State shall be deductible (or excludible) in computing his taxable income in that other State; and

b) any benefits accrued under the pension scheme, or contributions made to the pension scheme by or on behalf of the individual's employer, during that period shall not be treated as part of the employee's taxable income and any such contributions shall be allowed as a deduction in computing the business profits of his employer in that other State.

The reliefs available under this paragraph shall not exceed the reliefs that would be allowed by the other State to residents of that State for contributions to, or benefits accrued under, a pension scheme established in that State.

[Emphasis added]

Paragraph 3 of Article 18 of the Treaty provides that the provisions of Article 18(2) shall not apply unless:

a) contributions by or on behalf of the individual, or by or on behalf of the individual's employer, to the pension scheme (or to another similar pension scheme for which the first-mentioned pension scheme was substituted) were made *before the individual began to exercise an employment or self-employment in the other State*; and

b) the competent authority of the other State has agreed that the pension scheme generally corresponds to a pension scheme established in that other State.

[Emphasis added}

The Exchange of Notes to the Treaty provides that, with reference to Article 18(3)(b) and 18(5)(d) of the Treaty, the pension schemes listed with respect to a Contracting State in the Exchange of Notes in connection with Article 3(1)(o) shall generally correspond to the pension schemes listed in the Exchange of Notes with respect to the other Contracting State.

The Exchange of Notes provides that, with reference to Article 3(1)(o) of the Treaty, it is understood that pension schemes *shall include the following* and any identical or substantially similar schemes which are established pursuant to legislation introduced after the date of signature of the Convention:

a) under the law of the Country W, *employment-related arrangements* (other than a social security scheme) *approved as retirement benefit schemes for the purposes of Chapter I of Part XIV of the Income and Corporation Taxes Act 1988*, and personal pension schemes approved under Chapter IV of Part XIV of that Act; and

b) under the law of the United States, qualified plans under section 401(a) of the Internal Revenue Code, individual retirement plans (including individual retirement plans that are part of a simplified employee pension plan that satisfies section 408(k), individual retirement accounts, individual retirement annuities, section 408(p) accounts, and Roth IRAs under section 408A), section 403(a) qualified annuity plans, and section 403(b) plans.

[Emphasis added]

With respect to Company A's ruling request one, pursuant to the Exchange of Notes with reference to Articles 3(1)(o) and 18(3)(b), Country W pension schemes eligible for the benefits of Article 18(2) of the Treaty include employment-related arrangements approved as retirement benefit schemes for the purposes of Chapter I of Part XIV of the Income and Corporation Taxes Act 1988. Taxpayer A has submitted an approval letter dated July 16, 2002 from Agency Z, which indicates that Plan X has been approved as a retirement benefits scheme for the purposes of Chapter I of Part XIV Income and Corporation Taxes Act 1988. Accordingly, Plan X generally corresponds to a pension scheme established in the United States.

With respect to Company A's second ruling request, contributions were made to the Country W Scheme by Taxpayer A and Company A prior to the time Taxpayer A began to exercise employment in the United States, and, as discussed above, the Country W Scheme generally corresponds to a pension scheme established in the United States. Therefore, both of the requirements of Article 18(3) are met.

Therefore, Article 18(2)(b) applies, with the result that where an individual who is a participant in a pension scheme established in the Country W exercises an employment in the United States, any contributions made to the pension scheme by or on behalf of the individual's employer during that period will be allowed as a deduction in computing the business profits of the individual's employer in the United States.

Accordingly, Article 18(2) allows Company A a deduction in computing its U.S. business profits for any contributions made to the Country W Scheme with respect to Taxpayer A. However, we note that the Treasury Department's Technical Explanation to the Treaty

states that the deduction of employer contributions under Article 18(2) is subject to the limitations of sections 415 and 404. The Technical Explanation further states that the section 404 limitation on deductions is calculated as if the individual were the only employee covered by the plan.

Thus, our response to Company A's second ruling request incorporates the limitations imposed by Article 18(2), which provides that the reliefs available under that article may not exceed the reliefs that would be allowed by the United States to United States residents for contributions to, or benefits accrued under, a pension scheme established in the United States.

Our response to this second ruling request applies "so long as Taxpayer A is a U.S. resident but not a U.S. citizen or lawful permanent resident" as this is key to the application of Article 18(2)(a). If Taxpayer A were not a resident of one of the Contracting States, he would not be eligible for the benefits of Article 18. Alternatively, if Taxpayer A were a U.S. citizen or a green card holder, he could not claim the benefits of Article 18(2), because Article 1(5)(b) lists Article 18(2) as an exception to the saving clause of Article 1(4). Article 1(5)(b) is applicable only to individuals who are neither citizens of, nor have been admitted for permanent residence in, the host State. Therefore, it is essential for purposes of Article 18(2) that Taxpayer A be neither a U.S. citizen nor a lawful permanent resident (green card holder).

Accordingly, based on the facts submitted by Company A's representative and the Treaty analysis set forth previously, we conclude with respect to Company A's letter ruling requests as follows:

1. For purposes of Article 18 of the Treaty, the Country W Scheme generally corresponds to a pension scheme established in the United States.

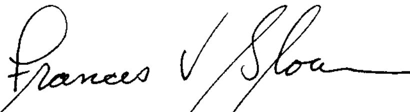
3. For as long as Taxpayer A is resident in the U.S., but is not either a U.S. citizen or a permanent resident, to the extent Company A makes contributions under the provisions of the Country W Scheme to satisfy the funding requirements relating to Taxpayer A's benefit accruals under the Country W Scheme, those contributions will be tax-deductible by Company A in computing Company A's business profits in the United States to the extent the limitations of Code sections 404 and 415 are not exceeded..

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the

Code provides that it may not be used or cited as precedent. If you wish to inquire about this ruling, please contact , Esquire, (I.D. at (phone-not a toll-free number), or (FAX). Please address any correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of letter ruling
Notice of Intention to Disclose