Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

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Date:
October 14, 1999

Dear:

This letter responds to your letter dated November 19, 1998, as supplemented by your letter dated March 18, 1999, requesting a private letter ruling on behalf of Taxpayer regarding the application of Article 19 of the Treaty to the salary that Taxpayer receives from Employer.

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 a ruling, it is subject to verification on examination.

FACTS

Prior to Date 1, Taxpayer was an employee of Employer, a wholly-owned instrumentality of the Country A government, and performed services in Position 1 in Foreign City in Country A. On Date 1, Employer reassigned Taxpayer to its office in U.S. City to perform services in Position 2. When Taxpayer's duties for Employer in U.S. City are completed, Taxpayer expects to return to Country A to work in Position 1, or a similar position, for Employer in Foreign City.

Taxpayer came to the United States on an A-2 visa, as a non-diplomatic representative of the government of Country A. Taxpayer lives in the United States with his wife and child. Taxpayer is an alien individual who meets the substantial presence test of section 7701(b)(3) of the Internal Revenue Code. Taxpayer represents that he became and remains a resident of the United States solely for the purpose of rendering services to Employer.

While present in the United States as an employee of Employer, Taxpayer entered the "green card" lottery. Taxpayer represents that he did so, not because he requires a

permanent resident visa in order to continue in his own employment, but for the possible benefit for his wife and child. Taxpayer won the lottery, claimed the new visa, and received it on Date 4, a date that is after Date 3 and before Date 5.

Taxpayer represents that the salary he received from Employer between Date 1 and Date 5 was exempt from United States Federal income tax under the prior treaty between the United States and Country A.

RULING REQUESTED

You have requested a ruling that the salary Taxpayer receives from Employer is exempt from U.S. Federal income tax under Article 19 of the Treaty beginning on Date 5.

LAW AND ANALYSIS

The Treaty entered into force on Date 2. Under paragraph 2 of Article 29 (Entry Into Force), the Treaty generally had an effective date of Date 3. However, paragraph 3 of Article 29 provides that where the provisions of the prior treaty would have afforded any greater relief from tax to a person entitled to its benefits than is afforded under the Treaty, the prior treaty continued to have effect until Date 5.

Paragraph 1(a) of Article 19 (Government Service) of the Treaty provides that salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

Paragraph 1(b) of Article 19 provides, however, that such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or
(ii) did not become a resident of that State solely for the purpose of rendering the services.

Paragraph 4 of Article 1 (General Scope) is the “saving clause” of the Treaty. Under this clause, a Contracting State may tax its own citizens and residents (as determined under Article 4 (Residence)) as if the Treaty had not come into effect. Paragraph 5(b) of Article 1 provides, in relevant part, that the saving clause will not affect the benefits conferred by a Contracting State under Article 19 upon individuals who are neither citizens of, nor have been admitted for permanent residence in, that State.

The Technical Explanation of the Treaty, prepared by the Department of the Treasury, provides that:

> Subparagraph (b) of paragraph 5 provides a different set of exceptions to the saving clause. The benefits referred to are all intended to be granted to temporary residents of a Contracting State (for example, in the case of the United States, holders of non-immigrant visas), but not to citizens or to persons who have acquired permanent residence in that State. If beneficiaries of these provisions travel from one of the Contracting States to the other, and remain in the other long enough to become residents under its internal law, but do not acquire permanent residence status (*i.e.*, in the United States context, they do not become "green card" holders) and are not citizens of that State, the host State will continue to grant these benefits even if they conflict with the statutory rules. The benefits preserved by this paragraph are...the host country exemptions for the following items of income: government service salaries and pensions under Article 19;...

When Taxpayer acquired permanent resident status in the United States, the exception to the saving clause for benefits conferred under Article 19 became inapplicable. Taxpayer is not entitled to benefits under Article 19 of the Treaty, and the United States may tax the salary that Taxpayer receives from Employer as if the Treaty had not come into effect.

CONCLUSION

Based solely on the facts and representations submitted, and assuming that Taxpayer is a resident of the United States under Article 4 of the Treaty, it is held that the salary that Taxpayer receives from Employer on or after Date 5 is not exempt from U.S. Federal income tax under Article 19 of the Treaty.

No opinion is expressed as to whether Taxpayer is a resident of the United States for purposes of the Treaty. Further, no opinion is expressed as to whether the salary that Taxpayer received from Employer prior to Date 5 was exempt from U.S. income tax under the prior 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 referred to 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.

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

Sincerely,
M. Grace Fleeman
Assistant to the Branch Chief,Branch 1
Office of the Associate Chief Counsel (International)