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Memorandum

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from: Steven A. Musher
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subject: Application of Income Tax Treaties to Lawful Permanent Resident Employees of Foreign Governments

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

This memorandum responds to an inquiry concerning when a lawful permanent resident of the United States working for a foreign government in the United States can claim benefits under the government service provisions of a U.S. income tax treaty.

ISSUE

Whether an applicable U.S. income tax treaty exempts from U.S. income tax the compensation paid to employees of a foreign government in the United States who are lawful permanent residents of the United States?

CONCLUSION

With few exceptions, U.S. income tax treaties do not exempt the compensation paid to employees of a foreign government in the United States who are lawful permanent residents of the United States.

FACTS

Taxpayer lives and works in the United States as an employee of Country X. Taxpayer is a lawful permanent resident of the United States. The United States has an income tax treaty in force with Country X.

LAW AND ANALYSIS

Although U.S. income tax treaties vary in language and the inquiry is a factual one, the treaty provisions dealing with taxation of government remuneration typically provide that remuneration paid to an individual in respect of services rendered to a foreign country is taxable only in that foreign country (i.e., is exempt from tax in the United States). The treaty analysis does not end there, however. Taxpayers must examine the treaty in its entirety for other relevant provisions.

An individual who is a lawful permanent resident of the United States (i.e., a green cardholder) is treated as a resident of the United States under section 7701(b)(1)(A)(i) of the Internal Revenue Code. Such person would also likely be treated as a resident of the United States for treaty purposes if he or she is living and working in the United States.¹

Nearly all U.S. income tax treaties contain a “saving clause” that generally provides that the treaty will not affect the taxation by the United States of its residents and its citizens.² Nearly all U.S. income tax treaties contain an exception to the saving clause for the government service provisions, preserving the benefits conferred by the United States, if any, but only for individuals who are neither U.S. citizens nor lawful permanent residents of the United States.³ Thus, in general, U.S. income tax treaties do not

¹ If such person is also a resident of the treaty country under treaty country law, then he or she must determine his or her residency status under the tiebreaker rules, if any, of the Resident article of the relevant treaty. *See, e.g.*, 2006 U.S. Model Income Tax Treaty, Article 4(3). Because such person is living and working in the United States, he or she will likely be treated as a resident of the United States for treaty purposes based on the center of vital interests.

² *See, e.g.*, 2006 U.S. Model Income Tax Treaty, Article 1(4).

Two treaties limit this provision to citizens only. The U.S.-Pakistan treaty, signed in 1957, does not contain a specific saving clause. Instead, Article II(1)(i) of the treaty provides that a resident of Pakistan does not include a U.S. citizen. The intent of the provision is to preserve the right of the United States to tax its citizens, but it does not extend to residents. *See* Joint Committee on Taxation, *Review of the Present-Law Tax and Immigration Treatment of Relinquishment of Citizenship and Termination of Long-Term Residency*, (JCS-2-03), February 2003, at A-2.

In the U.S.-U.S.S.R. treaty, signed in 1973, which currently applies to residents of Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan, Article VII provides that the treaty shall not restrict the right of a Contracting State to tax a citizen of that Contracting State. The treaty does not extend this rule to residents.

³ *See, e.g.*, 2006 U.S. Model Income Tax Treaty, Article 1(5)(b).

exempt the compensation paid to employees of a foreign government in the United States who are lawful permanent residents of the United States.

There are exceptions to this general rule.⁴ Under the following U.S. income tax treaties in force on the date above, provided the other conditions to applicability of the government remuneration exemption under the treaty are satisfied, the United States cannot tax the compensation paid to employees of a foreign government in the United States who are lawful permanent residents of the United States:

- Canada (signed in 1980 and amended by protocols signed in 1983, 1984, 1995, 1997, and 2007)
- China (signed in 1984)
- U.S.S.R. (signed in 1973 and applicable to residents of Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan)

The chronology of the development of Rev. Rul. 75-425, 1975-2 C.B. 291, has given rise to some confusion with respect to employees of Belgium. Section 2 of Rev. Rul. 75-425 provides, in relevant part: “The Belgium . . . income tax treat[y] exempt[s] from income tax the compensation paid to employees who are citizens of the employing country.” Rev. Rul. 75-425 reflected the result under the U.S.-Belgium income tax treaty signed in 1948 and amended in 1952, 1957, and 1965, which was in force at the time the ruling was drafted. Shortly before publication of Rev. Rul. 75-425, a new U.S.-Belgium income tax treaty signed in 1970 entered into force and did not exempt from income tax the compensation paid to Belgian-citizen employees of Belgium who were lawful permanent residents of the United States. See Article 23(1)(b). Rev. Rul. 75-425 was not updated accordingly, but nevertheless, it was obsoleted by Rev. Rul. 2007-60, 2007-2 C.B. 606. A ruling that is obsoleted is not considered determinative with respect to future transactions. CCDM 32.2.2.8.1(5). Therefore, Rev. Rul. 75-425 has no applicability to transactions subject to a treaty with an effective date after its obsolescence. The U.S.-Belgium income tax treaty signed in 2006 is applicable to tax

⁴ Article XXIX(3)(a) of the U.S.-Canada treaty, signed in 1980 and amended by protocols signed in 1983, 1984, 1995, 1997, and 2007, contains an exception to the saving clause for Article XIX (Government Service) for both U.S. citizens and residents.

Paragraph 2 of the protocol accompanying the U.S.-China treaty, signed in 1984, contains an exception to the saving clause for Article 18 for non-U.S.-citizen residents.

Although Article VII of the U.S.S.R. treaty, discussed *supra* in footnote 2, does not contain any exception to the saving clause, the saving clause is applicable only to citizens, so non-U.S.-citizen residents may still benefit from the government service provision, Article VI(1)(a)(1).

Although Article II(1)(i) of the Pakistan treaty, discussed *supra* in footnote 2, does not contain any exception to the saving clause, the saving clause is applicable only to citizens. Regardless, Article IX(2), the government service provision, does not exempt from U.S. income tax the compensation paid to employees of the Pakistan government in the United States who are lawful permanent residents of the United States.

Article XIV(1) of the U.S.-Greece treaty, signed in 1950, does not contain any exception to the saving clause, so U.S. citizens and residents are taxable on worldwide income.

years 2009 and later. Consistent with the analysis above, the 2006 treaty does not exempt the compensation paid to employees of Belgium who are lawful permanent residents of the United States.⁵

No opinion is expressed concerning the existence or application of international agreements or treaties other than income tax treaties.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call Cheryl Edson at (202) 622-3880 if you have any further questions.

⁵ Under the 2006 treaty, the benefits of Article 18 (Government Service) are unavailable to a U.S. lawful permanent resident working in the United States, either because such person did not become a U.S. resident solely for the purpose of rendering the services, or by reason of the saving clause in Article 1(4) and (5)(b) that expressly makes those benefits unavailable for U.S. lawful permanent residents (whether or not residence was acquired solely for the purpose of rendering the services).