



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

OFFICE OF  
CHIEF COUNSEL

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Dear [REDACTED]:

This is in reply to your letter dated March 13, 2002, in which you requested assistance in determining the tax-free (recovery of basis) portion of your U.N. pension. In a telephone conversation on April 5, 2002, we suggested that you contact the Employee Plans Actuarial Group1, Tax Exempt and Government Entities Division at (202) 283-9717 (not a toll-free number) for assistance with regard to your worksheet calculations.

A key component required to complete the simplified method pension worksheet is knowing the correct "investment in the contract" amount as defined in sections 72(c)(1) and 72(e)(6) of the Code. To assist you in determining whether your employer's contributions may be included in computing your "investment in the contract" amount, we offer the following general information. Section 72(f)(2) permits an employee to include employer contributions in his "investment in the contract" amount to the extent that the employer contributions would not have been includible in the employee's gross income if they had been paid directly to the employee at the time they were contributed by the employer.

Section 872(a) of the Code provides that in the case of a nonresident alien individual, gross income includes only (1) U.S. source income which is not effectively connected with the conduct of a trade or business within the United States, and (2) income which is effectively connected with the conduct of a trade or business within the United States. Under section 862(c)(3), compensation paid for labor or personal services performed outside the United States is considered foreign source income. Accordingly, in general, the gross income of a nonresident alien who is not engaged in a U.S. trade or business does not include compensation for services performed outside the United States. Therefore, employer contributions made on behalf of a nonresident alien employee in respect of foreign service may be included in the employee's "investment in the contract" for purposes of section 72(f)(2).

The foregoing is general information provided for your assistance and does not constitute a ruling. We hope the information will be helpful to you.

Sincerely,  
Barbara A. Felker  
Chief, Branch 3  
Office of the Associate Chief Counsel  
(International)