



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

OFFICE OF
CHIEF COUNSEL

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CC:INTL:Br1: [REDACTED]

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[REDACTED]

Reference: Treaty Tax Exemption for Research Activities

Dear [REDACTED]:

We are responding to your letter to the Department of the Treasury dated March 3, 2002. Your letter did not reach our office until July 8, 2002.

You have requested general information regarding the application of the United States - China Income Tax Treaty ("Treaty"), 1988-1 C.B. 414, reprinted in 1 Tax Treaties (CCH) ¶ 2103, to Chinese researchers who engage in research activities at educational institutions or scientific research institutions in the United States. You have asked whether payments to such researchers qualify for exemption from U.S. income tax under Article 19 of the Treaty.

In response to your request, we are providing the following general information pursuant to section 2.04 of Revenue Procedure 2002-1, 2002-1 I.R.B.1 (Jan. 7, 2002). This information letter is advisory only and has no binding effect on the Internal Revenue Service. If you require a definitive determination of the law applicable to your particular facts, you should submit a request for a private letter ruling pursuant to the rules set forth in section 8 of Revenue Procedure 2002-1. The revenue procedure is available on the Internet at http://www.irs.gov/ind_info/bullet.html.

Article 19 (Teachers and Lecturers) of the Treaty provides as follows:

An individual who is, or immediately before visiting a Contracting State was, a resident of the other Contracting State and is temporarily present in the first-mentioned Contracting State for the primary purpose of teaching, giving lectures or conducting research at a university, college, school or other accredited educational institution or scientific research institution in the first-mentioned Contracting State shall be exempt from tax in the first-mentioned Contracting State for a period not exceeding three years in the aggregate in respect of remuneration for such teaching, lectures or research.

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The Treasury Department Technical Explanation of the Treaty, reprinted in 1 Tax Treaties (CCH) ¶ 2150, gives an example to illustrate how the three-year exemption period is aggregated. The Technical Explanation contains the following:

This article provides that a resident of a Contracting State who goes to the other Contracting State for the primary purpose of teaching, lecturing, or conducting research at an accredited educational institution or scientific research institution in that other State will be exempt from tax in that other State on the remuneration for such activities for a period of up to three years in the aggregate. Thus, for example, a resident of China who visits the United States to conduct research at the National Institute of Health (NIH) for two years, 1986 and 1987, returns to China for a year, and then comes back for another year of research at NIH in 1989 would be exempt from tax on his NIH remuneration for each of the three years. However, if he stayed at NIH in 1990 or returned at a later time the exemption would no longer be available. The exemption provided in this article is not available if the research is not undertaken in the public interest, but for the private gain of a specific person or persons.

The Report of the Senate Foreign Relations Committee on the Treaty, reprinted in 1 Tax Treaties (CCH) ¶ 2155, points out that the income tax exemption only applies to income earned for teaching, giving lectures, or conducting research. The exemption does not apply to any other kind of income earned by the individual. The Report includes the following example:

Under this provision, a U.S. professor, for example, who visits China for nine months for the primary purpose of teaching at a Chinese university will be exempt from Chinese tax on remuneration the professor receives for the teaching. However, the professor may be taxed by China under the 183-day-presence-rule of Article 13 on any other independent personal services income (e.g., income from consulting) that the professor may earn while in China.

We hope this information is helpful to you. As noted above, if you require a definitive determination of the law applicable to your particular facts, you should submit a request for a private letter ruling.

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