



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

The Trust is an investment trust organized under the laws of Jurisdiction 1. The Trust Units are publicly traded on the Exchange. The Trust is not listed on a securities exchange in the United States.

The Trust's principal activity is to receive royalties and other income (including interest income) and to acquire and hold securities of its subsidiaries, trusts, and partnerships. The Trust's subsidiaries are entitled to carry on the Business.

The Trust represents that, under Country A tax principles, it is taxed as a mutual fund trust pursuant to section \_\_\_\_\_ of the Country A Tax Act. As such, the Trust is subject to Country A tax to the extent it does not currently distribute its earnings to Trust unitholders. The Trust indicates that it is structured with the objective of having income tax incurred only in the hands of its unitholders.

The Trust represents that it qualifies as a business trust under Treas. Reg. § 301.7701-4(b) and therefore is a "business entity" as defined in Treas. Reg. § 301.7701-2(a). As a "business entity," the Trust is an "eligible entity" under Treas. Reg. § 301.701-3(a), because it is not a per se corporation under Treas. Reg. § 301.7701-2(b)(8). As a "foreign eligible entity," the Trust is a corporation by default for U.S. federal income tax purposes, because all of its unit holders have limited liability. See Treas. Reg. § 301.7701-3(b)(2)(i)(B) and (ii).

The Trust represents that it is not a passive foreign investment company, as defined in section 1297, for any of its tax years since formation.

The Trust represents that the Trust Units are properly classified as equity in a corporation, rather than debt, for U.S. federal income tax purposes. The Trust is required to file SEC Form 40-F and certain other periodic disclosures with the SEC which contain statements that the Trust Units are properly classified as equity and not debt for U.S. federal income tax purposes.

The Treaty is a comprehensive income tax treaty with the United States which the Secretary has determined is satisfactory and which includes an exchange of information provision, as per Notice 2006-101, 2006-47 I.R.B. 930.

## RULING REQUESTED

Does the Trust satisfy the Section 3.03(c) treaty test safe harbor of Notice 2003-79?

## ANALYSIS

Section 1(h)(1) generally provides that a taxpayer's "net capital gain" for any taxable year is subject to a maximum tax rate of 15 percent (or 5 percent in the case of certain taxpayers).

Section 1(h)(11) provides that "net capital gain" for purposes of section 1(h) means net capital gain (determined without regard to section 1(h)(11)) increased by "qualified dividend income." Section 1(h)(11)(B)(i) provides that "qualified dividend income" means dividends received during the taxable year from domestic corporations and "qualified foreign corporations."

Section 1(h)(11)(C)(i) states that a "qualified foreign corporation" is any foreign corporation that is incorporated in a possession of the United States (the "possessions test"), or that is eligible for benefits under a comprehensive income tax treaty with the United States which the Secretary determines is satisfactory and which includes an exchange of information provision (the "treaty test"). Notice 2003-79 provides that Notice 2003-69<sup>1</sup> contains the current list of treaties that satisfy the requirements of the treaty test. If a foreign corporation does not satisfy either of these two tests, it still is treated as a qualified foreign corporation if the stock on which the dividend is paid is readily tradable on an established securities market in the United States (the "readily tradable" test). Section 1(h)(11)(C)(ii).

In addition, Section 3.01 of Notice 2003-79 provides that in order to be a qualified dividend under section 1(h)(11), a distribution must be made on equity rather than debt, as determined under U.S. federal income tax principles (the "equity test"). Section 3.01 of Notice 2003-79 also specifies that, if a security is not a common or ordinary share, a person required to make an information return under section 6042 can treat the security as satisfying the equity test if the foreign corporation "has a public statement filed with the SEC stating that the security will be, should be, or more likely than not will be properly classified as equity rather than as debt for U.S. federal income tax purposes" (the "equity test safe harbor").<sup>2</sup>

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<sup>1</sup> Notice 2003-79 was amplified and superseded by Notice 2006-101. Notice 2006-101 updates the list of U.S. tax treaties that meet the requirements of the treaty test to reflect new U.S. income tax treaties that have entered into force since the publication of Notice 2003-69.

<sup>2</sup> Section 6042(a) provides that any person that makes payments of dividends aggregating \$10 or more during any calendar year, or any person that receives payments of dividends as a nominee and makes payments aggregating \$10 or more in a calendar year to another person with respect to dividends it receives, shall make a return according to the forms or regulations prescribed by the Secretary, setting forth the aggregate amount of such payments and the name and address of the person to whom paid. In addition, section 6042(c) provides that a person filing such a return must furnish to every person with respect to whom such information is reported a statement of the aggregate amount of payments required to be shown on the information return.

Section 3.03(c) of Notice 2003-79 provides a safe harbor under which a person required to make an information return under section 6042 shall treat a foreign corporation as satisfying the treaty test if: (i) the foreign corporation is organized in a treaty country listed in Notice 2003-69,<sup>3</sup> and (ii) the corporation's common or ordinary stock is listed on an exchange covered by the public trading test in the limitation on benefits provision (the "treaty test safe harbor").

Unlike the equity test safe harbor of Section 3.01 of Notice 2003-79, the treaty test safe harbor of Section 3.03(c) of Notice 2003-79 does not include any provisions addressing the treatment of securities that are not common or ordinary stock.

The Trust is organized in Country A, a treaty country listed in Notice 2006-101. The Trust is required to file SEC Form 40-F and certain other periodic disclosures with the SEC which contain statements that the Trust Units are properly classified as equity and not debt for U.S. federal income tax purposes. The Trust Units are listed on the Exchange, a "recognized stock exchange" for purposes of the public trading test in Article \_\_\_\_\_ of the Treaty. See Article \_\_\_\_\_ of the Treaty. By its terms, the Treaty's public trading test applies to shares and units. Accordingly, based solely on the information submitted and the representations made, the Trust Units will be treated in the same manner as common or ordinary stock for purposes of applying the treaty test safe harbor of Section 3.03(c) of Notice 2003-79.

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 referenced in this letter. No opinion is expressed about the tax treatment of the Trust under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, any dividend distribution that are not specifically covered by the above rulings.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your representative.

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<sup>3</sup> See supra note 1.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Edward R. Barret  
Assistant to the Branch Chief, Branch 1  
Office of Associate Chief Counsel  
(International)