

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:TEGE:EB:EC

PLR-114270-16

Date:

September 08, 2017

Fund A =  
Country A =  
Trustee =

Dear :

This responds to your representative's letter of , and subsequent correspondence, requesting a ruling that Fund A is classified as a nonexempt employees' trust described under § 402(b) of the Internal Revenue Code (Code).

The following facts and representations have been submitted under penalties of perjury in support of your request:

Fund A is organized as a trust under the laws of Country A. Certain employers in Country A maintain retirement plans with Fund A to provide retirement benefits to their employees. Individuals may also create their own accounts with Fund A. Fund A operates according to a trust document, the laws of Country A, and policies set by the Trustee. Fund A is not exempt under § 501(a) of the Code.

The Trustee is required by law to exercise its power in the best interests of Fund A's members. Contributions to Fund A are irrevocable, and no part of Fund A's principal or income may revert to any employer or be used for any purpose other than providing benefits described under the trust document. A member of Fund A may not unilaterally assign or transfer his benefits under Fund A (other than to a spouse). A member's account is not subject to claims from creditors or any other party.

Fund A derives its funds from employer contributions, employee contributions, and income from investments. Each member has a separate account to which contributions and income are allocated. Under the laws of Country A, an employer generally must contribute a certain percentage of each employee's wages to Fund A. For the vast majority of members, employer contributions exceed employee contributions.

Members are 100 percent vested in their account balances at all times. Members can direct the investment of their account balances by choosing from a list of investment options selected by the Trustee. Assets held in members' accounts may only be distributed in certain circumstances, including retirement, death, disability, or financial hardship. A distribution may be paid as a lump sum or an annuity.

Fund A has received a private letter ruling concluding that it is a trust for federal income tax purposes under § 301.7701-4(a). See PLR .

You have asked us to rule that Fund A will be treated as a nonexempt employees' trust described under § 402(b) of the Code. Your request is made only with respect to members whose employer contributions exceed employee contributions.

Section 402(b)(1) of the Code provides, in general, that contributions made by an employer to an employees' trust that is not exempt under § 501(a) are includible in the gross income of the employee in accordance with § 83, with the value of the employee's interest in the trust substituted for the fair market value of the property for purposes of applying § 83.

Section 83 of the Code provides that the excess of the fair market value of property transferred in connection with the performance of services over the amount (if any) paid for the property is includible in the gross income of the person who performed the services for the first taxable year in which the property becomes transferable or is not subject to a substantial risk of forfeiture. Section 1.83-3(e) of the Income Tax Regulations provides that, for purposes of § 83 of the Code, the term "property" includes real or personal property other than money or an unfunded and unsecured promise to pay money or property in the future. Property also includes a beneficial interest in assets (including money) transferred or set aside from claims of the transferor's creditors, for example, in a trust or escrow account. However, to the extent a transfer to a trust is subject to § 402(b), § 83 applies to such a transfer only as provided for in § 402(b). See § 1.83-8(a).

Section 402(b)(2) provides that the amount actually distributed or made available to an employee by a nonexempt employees' trust shall be taxable in the taxable year in which distributed or made available to the employee under § 72 (relating to annuities), except that distributions of income of the trust before the annuity starting date (as defined in § 72(c)(4)) shall be included in the employee's gross income without regard to § 72(e)(5) (relating to amounts not received as annuities).

Section 402(b)(4)(A) of the Code provides that if one of the reasons a trust is not exempt from tax under § 501(a) is the failure of the plan of which it is a part to meet the requirements of § 401(a)(26) or § 410(b), then a highly compensated employee (as defined in § 414(q)) shall, in lieu of the amount determined under § 402(b)(1) or (2), include in gross income for the taxable year with or within which the taxable year of the trust ends an amount equal to the employee's vested accrued benefit (other than the employee's investment in the contract) as of the close of the taxable year of the trust. Since this amount is includible in income in lieu of the amount determined under § 402(b)(1) or (2), it is includible only in the case of a trust to which § 402(b)(1) would otherwise apply.

Section 402(b)(3) provides that the beneficiary of a nonexempt employee's trust described in § 402(b)(1) shall not be considered the owner of any portion of such trust under subpart E of part I of subchapter J. Section 1.402(b)-1(b)(6) of the Income Tax Regulations provides, however, that where contributions made by the employee to a trust are not incidental when compared to contributions made by the employer, if the applicable requirements of such subpart E are satisfied, the beneficiary is treated as the owner of the portion of the trust attributable to the employee's contributions. For this purpose, employee contributions are not incidental when compared to employer contributions if the total employee contributions as of any date exceed the employer contributions on behalf of the employee as of that date.

Based upon the information submitted and the representations made, we conclude that Fund A is a nonexempt employees' trust described under § 402(b) of the Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we make no determination concerning whether Fund A or its beneficiaries are entitled to any benefits under the Code or under the income tax treaty entered into by Country A and the United States concerning income derived from the United States. In addition, we make no determination as to the federal tax consequences of the application of § 402(b) to any particular beneficiary of Fund A. If Fund A is significantly modified, this ruling will not necessarily remain applicable.

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, copies of this letter are being sent to your authorized representatives.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2017-1, 2017-1 I.R.B. 1,

§ 7.01(15)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2017-1, § 11.05.

Sincerely,

John Richards  
Senior Technician Reviewer  
Executive Compensation Branch  
(Tax Exempt & Government Entities)

cc: