

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
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Date:  
July 19, 2023

TY:

### Legend

Taxpayer =

Country A =  
Date 1 =

Dear :

This letter responds to your correspondence dated January 18, 2023, requesting a private letter ruling regarding the federal income tax consequences of certain investment arrangements proposed to be established and administered by Taxpayer on behalf of certain investors. The material information submitted in that request is summarized below.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for this ruling, it is subject to verification on examination. Unless otherwise provided, all Code and section references are to the Internal Revenue Code of 1986, as amended.

### **Summary of Facts**

Taxpayer is a Country A corporation, the annual accounting period for which ends on Date 1. Taxpayer's method of accounting, both for financial accounting purposes and for purposes of U.S. federal income tax reporting, is the accrual method. Taxpayer issues a variety of insurance and annuity contracts and provides investment

management services to many types of investors, including corporate and public pension funds, endowments and foundations, multi-employer funds, private investors, and insurance corporations. As part of its business, Taxpayer acts as a manager to segregated funds established pursuant to specific contracts between such investors and Taxpayer ("Seg Fund Contracts"). These segregated funds permit funds derived from premiums paid by the investors under the relevant contracts to be invested for the benefit of the investors.

The investments held by each segregated fund are acquired and administered by Taxpayer separate from Taxpayer's other assets and are not subject to claims by Taxpayer's other policyholders or creditors. The assets held in each segregated fund are legally owned by Taxpayer, although Taxpayer must follow prescribed separate accounting rules for such assets.

Under the Seg Fund Contracts, investors are issued notional "units," which track the value of the investors' participation in the segregated fund. All income and gains of the segregated fund allocable to an investor are reinvested for the benefit of the investor or, in some circumstances at the investor's request, paid out to the investor (in each case, less any applicable fees payable by the investor to Taxpayer).

Country A has an income tax treaty in force with the United States (the "Treaty").

### **Proposed Transactions**

Taxpayer intends to establish and administer contracts for new segregated funds ("New Seg Funds"), pursuant to which Taxpayer will invest in a portfolio of investments including stocks, bonds, mortgages, and other types of investments. The investors entering into the New Seg Fund contracts will be (i) registered pension plans in Country A ("RPP Investors") and/or (ii) charitable organizations (including endowments) and/or charitable foundations (each a "Charitable Investor"). Certain of the RPP Investors entering into the New Seg Fund contracts will be "qualified holders" as defined in Treas. Reg. § 1.897(l)-1(e)(11). Those investors will only invest in a segregated fund in which all other investors are also qualified holders ("897(l) Seg Fund"). The other New Seg Fund contracts, i.e., contracts for segregated funds other than those in which only qualified holders invest, may have RPP Investors, Charitable Investors, or a mix of both types of investors.

### **Representations**

Taxpayer has made the following representations:

1. Each RPP Investor and Charitable Investor will be resident in Country A for Country A income tax purposes and will be exempt from Country A income tax.
2. Each RPP Investor will be a trust, company, organization or other arrangement described in paragraph 2 of Article XXI of the Treaty, will be a resident of Country

A for purposes of Article IV of the Treaty, and will be entitled to Treaty benefits pursuant to Article XXIX A of the Treaty.

3. Each Charitable Investor will be a trust, organization or other arrangement described in paragraph 1 of Article XXI of the Treaty, will be a resident of Country A for purposes of Article IV of the Treaty, and will be entitled to Treaty benefits pursuant to Article XXIX A of the Treaty.
4. For Country A income tax law purposes, each New Seg Fund will be considered a trust resident in Country A, the investors in such fund will be considered the beneficiaries of such trust, and the property and income of such fund will be considered to be property and income of such trust and not that of any party that facilitated the establishment of such fund.
5. For Country A income tax law purposes, each New Seg Fund will be deemed to distribute all of its income for a taxable year to its beneficiaries in the form of deductible payments such that such fund will not be subject to Country A income tax, and on account of such deemed distributions the income of such fund will be considered income of the investors in such fund and not that of any party that facilitated the establishment of such fund.
6. Seg Funds established pursuant to Seg Fund Contracts with Canadian RPP Investors and/or Canadian Charitable Investors will be operated exclusively to earn income for the benefit of such Canadian RPP Investors and/or Canadian Charitable Investors.
7. Each RPP Investor that invests in an 897(l) Seg Fund will be a qualified holder as defined in Treas. Reg. §1.897(l)-1(e)(11).
8. Each 897(l) Seg Fund will be administered exclusively for the benefit of its RPP Investors.
9. All of the assets of an 897(l) Seg Fund, and all of the income earned with respect to such assets, will be held exclusively for the benefit of its RPP Investors, and such assets or income will not inure to the benefit of any person other than such RPP Investors.

### **Law**

Sections 871(a)(1)(A) and 881(a)(1) impose a 30 percent gross basis tax on U.S. source dividends, interest and other kinds of fixed or determinable annual or periodical gains, profits and income received by a nonresident alien individual or foreign corporation. Sections 1441 and 1442 require a withholding agent to withhold 30 percent of any payments of such income made to certain non-U.S. persons.

Treas. Reg. §1.1441-6(a) provides that the rate of withholding imposed on a payment of income subject to non-resident gross basis tax under section 871(a)(1)(A) or 882(a)(1)

may be reduced to the extent provided under an income tax treaty in effect between the United States and a foreign country. More generally, section 894(a)(1) states that the provisions of the Code shall be applied to any taxpayer with due regard to any treaty obligation of the United States which applies to such taxpayer.

Section 897(a) generally characterizes the gain (or loss) of a nonresident alien and foreign corporation on the disposition of a United States real property interest (USRPI) as effectively connected income (or loss).

Section 1445(a) imposes an obligation on the transferee to withhold 15% of the amount realized on a disposition of a USRPI if the transferor is a foreign person. Section 1445(e) imposes similar withholding obligations on certain distributions.

Section 897(l) states that a qualified foreign pension fund (QFPF), and an entity, all of the interests of which are owned by a QFPF, is not treated as a nonresident alien or foreign corporation for purposes of section 897.

Treas. Reg. §1.897(l)-1(b)(1) states that gain or loss of a qualified holder from the disposition of a USRPI, including gain from a distribution described in section 897(h), is not subject to section 897(a).

Treas. Reg. §1.897(l)-1(b)(2) states that the rule of Treas. Reg. §1.897(l)-1(b)(1) only applies with respect to gain or loss that is attributable to one or more qualified segregated accounts maintained by a qualified holder.

Treas. Reg. §1.897(l)-1(e)(11) defines qualified holder to mean a qualified foreign pension fund or qualified controlled entity that satisfies the requirements of Treas. Reg. §1.897(l)-1(d).

Treas. Reg. §1.897(l)-1(e)(9) defines qualified controlled entity to mean a trust or corporation created or organized under the laws of a foreign jurisdiction all of the interests of which are held by one or more qualified foreign pension funds directly or indirectly through one or more qualified controlled entities.

Treas. Reg. §1.897(l)-1(e)(13)(i) defines a qualified segregated account as an identifiable pool of assets maintained by an eligible fund or qualified controlled entity for the sole purpose of funding and providing qualified benefits to qualified recipients.

Treas. Reg. §1.897(l)-1(e)(2) defines an eligible fund as a trust, corporation, or other organization or arrangement that maintains one or more qualified segregated accounts.

Article XXI (Exempt Organizations) of the Treaty provides benefits to certain organizations that are tax-exempt in their state of residence. Paragraph 1 of Article XXI of the Treaty provides that income derived by a religious, scientific, literary, educational or charitable organization is exempt from tax in a contracting state if it is resident in the

other Contracting State, but only to the extent that such income is exempt from tax in that other Contracting State.

Paragraph 2 of Article XXI of the Treaty provides that income referred to in Articles X (Dividends) and XI (Interest) derived by a trust, company, organization or other arrangement that is a resident of a Contracting State, generally exempt from income taxation in a taxable year in that State and operated exclusively to administer or provide pension, retirement or employee benefits shall be exempt from income taxation in that taxable year in the other Contracting State.

Paragraph 3 of Article XXI of the Treaty provides that dividend and interest income can also be exempt from income taxation in a Contracting State for a taxable year if derived by a trust, company, organization or other arrangement that is (1) a resident of the other Contracting State, (2) generally exempt from income taxation in a taxable year in that state, and (3) operated exclusively to earn income for the benefit of one or more of the entities described in paragraphs 1 or 2.

Paragraph 4 of Article XXI of the Treaty provides an exception whereby the benefits set forth in paragraphs 1, 2, and 3 do not apply to income of a trust, company, organization or other arrangement from carrying on a trade or business or from a related person other than a person referred to in paragraph 1, 2 or 3.

Paragraph 1 of Article IV (Residence) of the Treaty provides that the term “resident” of a Contracting State means any person that, under the laws of that State, is liable to tax therein by reason of that person's domicile, residence, citizenship, place of management, place of incorporation or any other criterion of a similar nature. However, an estate or trust is considered a resident of a Contracting State only to the extent that income derived by the estate or trust is liable to tax in that State, either in its hands or in the hands of its beneficiaries. Paragraph 1 further provides that the term “resident” of a Contracting State is understood to include (1) a trust, organization or other arrangement that is operated exclusively to administer or provide pension, retirement or employee benefits, and (2) a not-for-profit organization that was constituted in that State and that is, by reason of its nature as such, generally exempt from income taxation in that State.

In order to qualify for benefits under the Treaty, a person generally must be considered a “qualifying person” under Article XXIX A (Limitation on Benefits). Paragraph 2 of Article XXIX A (Limitation on Benefits) provides in relevant part:

For the purposes of this Article, a qualifying person is a resident of a Contracting State that is:

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(g) A not-for-profit organization, provided that more than half of the beneficiaries, members or participants of the organization are qualifying persons;

(h) A trust, company, organization or other arrangement described in paragraph 2 of Article XXI (Exempt Organizations) and established for the purposes of providing benefits primarily to individuals who are qualifying persons, or persons who were qualifying persons within the five preceding years; or

(i) A trust, company, organization or other arrangement described in paragraph 3 of Article XXI (Exempt Organizations) provided that the beneficiaries of the trust, company, organization or other arrangement are described in subparagraph (g) or (h).

### **Rulings**

Based solely on the information submitted, we rule as follows regarding the Proposed Transactions:

Any U.S.-source dividends and interest (other than any income described in Article XXI(4) of the Treaty) derived by a New Seg Fund for the benefit of RPP Investors or Charitable Investors will be exempt from U.S. income taxation pursuant to Article XXI(3) of the Treaty.

For purposes of Article XXI(4) of the Treaty, the phrase “related person” in Article XXI(4) of the Treaty will be applied in relation to the RPP Investors and the Charitable Investors.

Gain or loss realized by an 897(l) Seg Fund from any disposition of USRPIs will be exempt from U.S. income taxation pursuant to section 897(l) and will not be subject to withholding under section 1445.

### **Caveats**

No opinion is expressed regarding the tax treatment of any matters that are not specifically covered by this ruling.

### **Procedural Statements**

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 authorized representative.

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,

*/s/ Kenneth Jeruchim*

Kenneth Jeruchim  
Senior Technical Reviewer, Branch 4  
Associate Chief Counsel (International)

cc: