

The information submitted states that X was organized as an Entity under the laws of Country A. X was created to provide pension, disability, early retirement and/or death benefits to Covered Employees and their heirs as required under the terms of the collective labor agreement between employers in the Sector and labor unions representing the interests of Covered Employees. X is exempt from tax under the laws of Country A.

X is governed by Act A and Act B and regulated by Body C. Body C is the official government body established under Act A and Act B to supervise pension funds in Country A. In addition, under Act B, X's market conduct will be supervised by Body D. X has the power to engage in any activity that conforms to Act B and that serves to protect the benefits accumulated by the parties.

X's Articles of Association provide that the day-to-day management of X is determined by the Board, which consists of an equal number of members recommended by the employers' organization and the Sector's labor unions. Although the Sector's employers and labor unions recommend members to the Board, a "Consultative Council" must determine that a nominee to the Board has the required expertise and will properly exercise his or her fiduciary duties to X's stakeholders before that person will be appointed to the Board. X's beneficiaries are not themselves entitled to appoint or remove members to or from the Board. Board members need not obtain any sort of approval from X's beneficiaries or the Sector's labor unions in participating in Board meetings and voting on matters before the Board.

X derives its funds from a combination of employee contributions, employer contributions, and income from investments. X must act as a prudent person and invest its available funds in a sound manner, based on an investment plan adopted by X's Board on an annual basis. X must submit to Body C an annual audited report of its financial position showing that the provisions of Act B are satisfied and that the interests of Covered Employees and their heirs are guaranteed.

Participation in X's pension scheme is mandatory for all individuals who are Covered Employees that have not been excused from participation. An individual cannot decide on his or her own whether or not to voluntarily join the X pension scheme; an individual's participation will be mandatory if he or she is employed by an enterprise that participates in the X pension scheme. Individuals who are not current or former Covered Employees or their heirs may not participate in X.

The members of X cannot unilaterally assign or transfer their pension benefits to another person. However, a Covered Employee may "roll over" that individual's interest in X to another pension scheme if the Covered Employee changes his or her employment to another industry. In addition, a portion of a Covered Employee's interest in X may be transferred to another individual by operation of law (for example, to a

spouse upon divorce) but only in accordance with formulas specified by statute.

Section 301.7701-1(b) provides that the classification of organizations that are recognized as separate entities is determined under § 301.7701-2, § 301.7701-3, and § 301.7701-4 unless a provision of the Internal Revenue Code provides for special treatment of that organization.

Section 301.7701-4(a) provides that, in general, an arrangement will be treated as a trust if it can be shown that the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility and, therefore, are not associates in a joint enterprise for the conduct of business for profit. If an entity has both associates and a business purpose, it cannot be classified as a trust for federal tax purposes.

Based solely on the facts submitted and the representations made, we conclude that X is classified as a trust for federal tax purposes under § 301.7701-4(a).

Except as expressly provided, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, we make no determination concerning whether X or its beneficiaries are entitled to any benefits under the Internal Revenue Code or the income tax treaty entered into by Country A and the United States concerning income derived from the United States.

This ruling is directed only to X. Section 6110(k)(3) 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 X's authorized representatives.

Sincerely,

James A. Quinn
Senior Technician Reviewer (Acting), Branch 2
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
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