

Internal Revenue Service

Department of the Treasury
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November 18, 2009

TY:

Legend

Taxpayer =

Parent =

Dear :

This letter replies to a letter from your authorized representative, dated April 6, 2009, requesting a ruling that required minimum distributions withdrawn from a traditional individual retirement account (“IRA”), within the meaning of section 408(a) of the Internal Revenue Code, by a participant who is a resident of Canada constitute periodic pension payments that are eligible for a reduced U.S. withholding tax rate under Article XVIII(2)(a) of the Canada-United States income tax treaty (the “Treaty”), provided that all other requirements of the Treaty are satisfied.

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. While this office has not verified any of the material submitted in support of the requested rulings, it is subject to verification on examination. The information submitted for consideration is substantially as set forth below.

Taxpayer is a wholly-owned U.S. subsidiary of Parent, the U.S. parent of a multinational group of corporations. Taxpayer provides fiduciary and administrative services to individual and corporate retirement plans and other institutional funds. These individual and corporate retirement plans invest primarily in investment companies among the Parent group of investment companies. With respect to the IRAs that it services, Taxpayer pays required minimum distribution amounts to owners of such IRAs, including to nonresident alien individuals who are residents of Canada.

Section 871 of the Code generally imposes a tax of 30 percent on amounts received by a nonresident alien individual from sources within the United States as interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income ("FDAP"), but only to the extent the amount so received is not effectively connected with the conduct of a trade or business within the United States.

Section 1441(a) of the Code generally requires all persons, in whatever capacity acting, having control, receipt, custody, disposal, or payment of an item of FDAP of any nonresident alien individual (or foreign partnership) to withhold a tax equal to 30 percent of that item of income. However, section 1.1441-6(a) of the Income Tax Regulations provides that the withholding rate of 30 percent may be reduced to the extent provided under an income tax treaty in effect between the United States and a foreign country.

Article XVIII(2)(a) of the Treaty provides that pensions may be taxed in the Contracting State in which they arise and according to the laws of that State, but if a resident of the other Contracting State is the beneficial owner of a periodic pension payment, the tax so charged shall not exceed 15 per cent of the gross amount of such payment. The term "pensions" for purposes of the Treaty is defined in Article XVIII(3) and includes, among other items, payments from IRAs in the United States.

Section 1.408-8 of the Income Tax Regulations, Q&A A-1, provides that an IRA within the meaning of section 408(a) of the Code is subject to the required minimum distribution rules provided in section 401(a)(9). Generally, the rules of sections 1.401(a)(9)-1 through -9 of the Income Tax Regulations are applied to determine whether the required minimum distribution rules under section 401(a)(9) have been satisfied.

Under section 401(a)(9) of the Code and the regulations thereunder, the entire interest in the IRA must be distributed to the IRA owner by the required beginning date, or be distributed, beginning not later than the required beginning date, over the lives of the IRA owner and a designated beneficiary (or over a period not extending beyond the life expectancy of the IRA owner or the life expectancy of the IRA owner and a designated beneficiary). Section 401(a)(9) also provides required minimum distribution rules applicable to a beneficiary following the death of the IRA owner. Section 4974(a) of the Code imposes an excise tax on the owner of the IRA equal to 50 percent of the amount by which the required minimum distribution amount exceeds the amount actually distributed during the taxable year.

Section 1.408-8 of the Income Tax Regulations, A-3, provides that in the case of distributions from an IRA, the term "required beginning date" means April 1 of the calendar year following the calendar year in which the individual attains age 70 ½ .

Based solely on the information submitted, we conclude that a required minimum distribution amount distributed to the IRA owner in accordance with section 408(a)(6) of the Code and section 1.408-8 of the Income Tax Regulations constitutes a “periodic pension payment” for purposes of Article XVIII(2)(a) of the Treaty that is eligible for the 15 percent reduced withholding tax rate, provided all other requirements of the Treaty are satisfied.

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.

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Each taxpayer involved in the transaction must attach a copy of this ruling letter to the taxpayer's federal income tax return for the taxable year in which the transaction covered by this letter is completed. 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 this ruling letter.

Pursuant to a power of attorney on file with this office, a copy of this letter will be sent to your authorized representative.

Sincerely yours,

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