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Person To Contact:

, ID No.

Telephone Number:

In Re:

Refer Reply To:  
CC:PSI:B04  
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Date:  
April 28, 2010

Legend

- Donor =
- Daughter 1 =
- Daughter 2 =
- Son =
- Granddaughter 1 =
- Granddaughter 2 =
- Grandson =
- Country =
- Holding Company =
- Partnership =
- Company 1 =
- Company 2 =
- Company 3 =
- W =
- Year 1 =
- X =
- Y =
- Z =
- Citation =

Dear :

This letter responds to your authorized representative's letter of October 29, 2009, requesting rulings on the treatment of Donor's transfers of interests in stock to her children and grandchildren.

Facts

The facts and representations submitted are summarized as follows: Donor is a citizen and resident of Country. Donor has three children, Daughter 1, Daughter 2, and

Son, Daughter 2 and Son are citizens and residents of Country. Daughter 1 is a citizen of Country. However, Daughter 1 has resided in the United States since Year 1 and holds a United States green card. Daughter 1 has three children, Granddaughter 1, Granddaughter 2, and Grandson. Granddaughter 1, Granddaughter 2, and Grandson were all born in the United States and are dual citizens of Country and the United States.

Donor owns W percent of the stock in Holding Company, an entity organized under the laws of Country. Donor proposes to transfer the naked title to her shares in Holding Company (Holding Company shares) to Daughter 1, Daughter 2, Son, Granddaughter 1, Granddaughter 2, and Grandson. Donor will retain a usufruct interest in the shares for life.

Holding Company owns X percent of Partnership. Holding Company also owns X percent of Company 1, Y percent of Company 2, and Z percent of Company 3 (collectively, the Companies). The Companies and Partnership are organized under the laws of Country. It is represented that all of the shareholders of Holding Company and the Companies (except for Holding Company with respect to its interests in Partnership) have limited liability. In addition, it is represented that none of these entities have elected to be treated as an entity other than a corporation for United States tax purposes. The property rights regarding these transfers are governed by the laws of Country. The rulings requested in the letter pertain to Donor, Daughter 1, Granddaughter 1, Granddaughter 2, and Grandson.

Under Country law, in the case of a gift with a reservation of a usufruct, one person, the full owner, transfers title in property to another person (the naked title owner) while reserving the current rights to use and enjoy the property for life in his or her capacity as the usufructuary (sometimes referred to as usufructary). Citation. Upon the cessation of the usufructuary's interest, the full rights in the property will be reunited in the hands of the naked title owner. Citation.

The Articles of Association of Holding Company state that, in case of the division of property rights in stock, the usufructary has the full power to vote the stock, and the naked owners have no current right to vote the stock. Neither Donor nor her estate is under any obligation to restore the value of the property at the end of the usufructary term. Donor will have the power to alienate her usufruct interest, but she will not have the power to sell the Holding Company shares. The Articles could be amended in the future to give Daughter, Granddaughter 1, Granddaughter 2, and Grandson voting rights. In the event the Articles are amended in the future to provide limited voting rights to the naked shareholders, Donor will always retain the right to veto any decision of the shareholders.

Donor, Daughter 1, Granddaughter 1, Granddaughter 2, and Grandson request the following rulings:

1. After the transfers of the naked title to the Holding Company shares, Donor will hold a legal life estate in the Holding Company shares.
2. The gifts of the naked title to the Holding Company shares by Donor will not be subject to federal gift or generation-skipping transfer taxes.
3. Daughter 1, Granddaughter 1, Granddaughter 2, and Grandson will be required to file information returns to report the receipt of a foreign gift for the taxable year in which Donor transfers the naked title to the Holding Company shares to Daughter 1, Granddaughter 1, Granddaughter 2, and Grandson.

#### ISSUE 1:

Section 301.7701-1(b) of the Administration and Procedure Regulations 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 income tax purposes.

In Rev. Rul. 64-249, 1964-2 C.B. 332, the taxpayer and her husband owned, as community property, all of the stock of a small business corporation. Upon his death, the husband bequeathed his shares of stock in the corporation to his children, with a usufruct for life to the taxpayer. The taxpayer was considered neither a guardian nor a trustee for the benefit of her children, but rather held her interest as usufructary for her own benefit. Rev. Rul. 64-249 provided that the relationship between the children and the taxpayer was roughly comparable to the relationship between remainderman and life tenant in a common law state. As a result, the usufructary (the taxpayer) had the income interest and was required to include in her gross income the dividends paid with respect to the stock. Rev. Rul. 64-259 held that a usufructary under Louisiana law is considered to be a shareholder of a small business corporation.

Based solely on the facts submitted and the representations made, we conclude that because Donor is neither a guardian nor a trustee for the benefit of her children and grandchildren, but rather, holds her interest as usufructary for her own benefit, a trust, as defined in § 301.7701-4(a), was not established. Further, we conclude that Donor's

usufruct interest in the Holding Company shares should be treated as that of a life tenant in a common law state.

## ISSUE 2:

Section 2501(a)(1) of the Internal Revenue Code provides that a tax, computed as provided in § 2502, is imposed for each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident.

Section 2501(a)(2) provides that, except as provided in § 2501(a)(3), § 2501(a)(1) shall not apply to the transfer of intangible property by a nonresident not a citizen of the United States.

Section 2511(a) provides, in part, that subject to limitations contained in chapter 12, the tax imposed by § 2501 shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible; but in the case of a nonresident not a citizen of the United States, shall apply to a transfer only if the property is situated within the United States.

Section § 2511(b) provides that, for purposes of chapter 12, in the case of a nonresident not a citizen of the United States who is excepted from the application of § 2501(a)(2), shares of stock issued by a domestic corporation, and debt obligations of a United States person, or the United States, a State or political subdivision thereof, or the District of Columbia, which are owned and held by such nonresident is deemed to be property situated within the United States.

Section 25.2511-1(e) of the Gift Tax Regulations provides that if a donor transfers by gift less than his entire interest in property, the gift tax is applicable to the interest transferred. The tax is applicable, for example, to the transfer of an undivided half interest in property, or to the transfer of a life estate when the grantor retains the remainder interest, or vice versa.

Section 25.2511-2(b) provides that as to any property, or part thereof or interest therein, of which the donor has so parted with dominion and control as to leave in him no power to change its disposition, whether for the donor's own benefit or for the benefit of another, the gift is complete.

Section 25.2511-3(b)(3)(ii) provides that irrespective of where the stock certificates are physically located at the time of the transfer, shares of stock issued by a corporation which is not a domestic corporation constitute property situated outside the United States.

Section 2601 imposes a tax on every generation-skipping transfer (GST) made by a transferor to a skip person. A GST is defined under § 2611(a) as a taxable

distribution, a taxable termination, and a direct skip. Section 2612(c)(1) provides, in relevant part, that the term “direct skip” means a transfer subject to a tax imposed by chapter 11 of an interest in property to a skip person. Section 2613(a)(1) provides that for purposes of chapter 13, the term “skip person” means a natural person assigned to a generation which is 2 or more generations below the generation assignment of the transferor.

Under § 2652(a)(1) and § 26.2652-1(a)(1) of the Generation-Skipping Transfer Tax Regulations, for purposes of chapter 13, the term “transferor” means, in part, the donor in the case of any property subject to the tax imposed by chapter 12.

Section 26.2652-1(a)(2) provides that, for GST purposes, a transfer is subject to federal gift tax if a gift tax is imposed under § 2501(a) (without regard to exemptions, exclusions, deductions, and credits).

Section 2663 provides that the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of chapter 13, including regulations (consistent with the principles of chapters 11 and 12) providing for the application of chapter 13 in the case of transferors who are nonresidents not citizens of the United States.

Section 26.2663-2 provides rules for applying the GST tax to transfers by a transferor who is a nonresident not a citizen of the United States (NRA transferor). Section 26.2663-2(b)(1) provides, in relevant part, that a transfer by a NRA transferor is a direct skip subject to chapter 13 only to the extent that the transfer is subject to the federal gift taxes within the meaning of § 26.2652-1(a)(2).

In this case, Donor is a citizen and resident of Country. Donor is a nonresident not a citizen of the United States. The Holding Company shares are intangible property, not real property or tangible property. The Holding Company shares were issued by a corporation organized under the laws of Country. Holding Company is not a United States corporation and is not situated in the United States. Accordingly, the transfers of the naked title in the Holding Company shares to Daughter 1, Granddaughter 1, Granddaughter 2, and Grandson are not subject to federal gift taxes under chapter 12 of the Code.

In this case, Granddaughter 1, Granddaughter 2, and Grandson are skip persons for purposes of chapter 13. Accordingly, the transfers of Donor’s naked title in the Holding Company shares are direct skips. However, Donor is a NRA transferor. Accordingly, these transfers are subject to chapter 13 only to the extent that the transfers are subject to the federal gift taxes within the meaning of § 26.2652-1(a)(2). We have already concluded that the transfers of the naked title in the Holding Company shares by Donor are not subject to federal gift taxes. Accordingly, based on the facts submitted and the representations made, we conclude that the transfers of the naked

title to the Holding Company shares by Donor will not be subject to federal gift taxes under chapter 12 or GST taxes under chapter 13 of the Code.

ISSUE 3:

Section 6039F(a), as interpreted by Notice 97-34, 1997-1 C.B. 422, provides that if the value of the aggregate foreign gifts received by a United States person during any taxable year exceeds \$100,000, such United States person must report the receipt of the foreign gifts to the Internal Revenue Service (Service).

For purposes of § 6039F, § 6039F(b) defines the term “foreign gift” to mean any amount received from a person other than a United States person which the recipient treats as a gift. The term does not include any qualified transfer within the meaning of § 2503(e)(2) (relating to certain transfers for educational or medical expenses) or any distribution properly disclosed in a return under § 6048(c).

Foreign gifts under § 6039 must be reported on Part IV of Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts. This form must be filed with the Service on or before the due date of the United States recipient’s federal income tax return, including extensions, for the taxable year during which the gift is received.

As indicated above, Donor will make completed gifts of the naked title to the Holding Company shares to Daughter 1, Granddaughter 1, Granddaughter 2, and Grandson. Donor will retain a usufruct interest in the Holding Company shares. Accordingly, based upon the facts submitted and representations made, we conclude that Daughter 1, Granddaughter 1, Granddaughter 2, and Grandson will be required to file information returns to report the receipt of these foreign gifts for the taxable year in which Donor transfers the naked title to the Holding Company shares to them.

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 request for rulings, it is subject to verification on examination.

The GST tax rulings in this letter apply only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

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

Sincerely,

Lorraine E. Gardner  
Senior Counsel, Branch 4  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes  
Copy of this letter

cc: