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:

Telephone Number:

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Date:
March 07, 2005

In Re:

LEGEND

Taxpayer

Advisor
Advisor International
REIT 1
REIT 2
REIT 3
REIT 4
REIT 5
REIT 6
REIT 7
REIT 8
REIT 9
REIT 10
REIT 11
REIT 12
REIT 13
REIT 14
REIT 15
REIT 16
REIT 17
REIT 18
REIT 19
REIT 20
REIT 21
REIT 22
REIT 23
State A

Dear :

This is in response to your letter dated January 22, 2004, in which you request a ruling under Treas. Reg. § 1.985-1(b)(1)(iii) that subsidiary real estate investment trusts ("REITs") 1 through 23 may use a currency other than the U.S. dollar as their functional currency. Specifically, you request a ruling that permits each REIT to determine its functional currency by applying the principles used to determine the functional currency of a qualified business unit that is not required to use the dollar as set forth in Treas. Reg. § 1.985-1(c).

The ruling contained in this letter is predicated upon facts and representations submitted by the Taxpayer and accompanied by a penalties of perjury statement executed by the appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of factual information, representations and other data may be required as part of the audit process. Taxpayer has represented the facts described below.

FACTS:

Taxpayer is a U.S. corporation formed primarily for the purpose of investing in and owning net-leased industrial and commercial real property located outside the United States. Taxpayer plans to raise equity capital through an initial public offering of its shares to investors, and will use the net proceeds of this initial public offering to invest in and acquire real property outside the United States.

Taxpayer intends to form the following REITs to facilitate its investment outside of the United States: REIT 1, REIT 2, REIT 3, REIT 4, REIT 5, REIT 6, REIT 7, REIT 8, REIT 9, REIT 10, REIT 11, REIT 12, REIT 13, REIT 14, REIT 15, REIT 16, REIT 17, REIT 18, REIT 19, REIT 20, REIT 21, REIT 22, REIT 23.

Taxpayer and each REIT intend to qualify as real estate investment trusts under Subchapter M of the Internal Revenue Code. Each REIT will be a domestic corporation for Federal income tax purposes. Taxpayer currently expects to organize each REIT as a State A corporation, although Taxpayer may organize them as another form of domestic entity that is taxable as a corporation for Federal tax purposes

Each REIT will invest and operate its business in the currency of the location in which it invests (hereafter referred to in this letter as the "designated currency"). Taxpayer represents that the following will be denominated in the designated currency: funding for acquiring property and making improvements on property, proceeds from dispositions of investments, income from investments (e.g., rents, interest and gains), general financial decisions, transactions between each REIT and its shareholders (including the payment of dividends to shareholders, capital contributions and sales of additional shares).

Taxpayer represents that the books and records of each REIT will be kept in the designated currency.

Taxpayer represents that Advisor, through its subsidiary, Advisor International, will be the advisor to the Taxpayer and the REITs. Advisor will be responsible for the day-to-day management of Taxpayer and the REITs, and will identify property and make acquisitions on their behalf.

LAW:

In general, section 985 provides that all determinations for Federal income tax purposes shall be made in the taxpayer's functional currency. Section 985(a). Treas. Reg. § 1.985-1(b)(1)(iii) provides that except as otherwise provided by ruling or administrative pronouncement, the U.S. dollar shall be the functional currency of a QBU that has the United States as its residence as defined in section 988(a)(3)(B). Treas. Reg. § 1.989(a)-1(b)(2)(i) provides that a corporation is a QBU. Section 988(a)(3)(B)(i)(II) provides that the United States shall be the residence of a corporation which is a United States person. Section 7701(a)(30) provides, in part, that the term "United States person" means a domestic corporation. Section 7701(a)(4) provides that the term "domestic," as applied to a corporation, means created or organized in the United States or under the law of the United States or any State. See also Treas. Reg. § 1.988-4(d)(1)(ii).

Treas. Reg. § 1.985-1(c)(1) provides that if a QBU is not required to use the dollar as its functional currency, then its functional currency shall be the currency of the economic environment in which a significant part of the QBU's activities are conducted, if the QBU keeps, or is presumed to keep, its books and records in such currency. Treas. Reg. § 1.985-1(c)(2) provides that the economic environment in which a significant part of the QBU's activities are conducted shall be determined by taking into account all the facts and circumstances. Treas. Reg. § 1.985-1(c)(2)(i) sets forth some facts and circumstances which are considered when determining the economic environment in which a significant part of the QBU's activities are conducted.

The General Explanation of the Tax Reform Act of 1986 states that "[i]n appropriate circumstances, a domestic QBU (such as a regulated investment company organized to invest in securities denominated in a specific currency) may have a foreign currency as the functional currency." Staff of the Joint Committee on Taxation, 100th Cong., 1st Sess., General Explanation of the Tax Reform Act of 1986, at 1093-94 (Comm. Print 1987).

ANALYSIS:

Absent a ruling to the contrary, each REIT's functional currency would be the U.S. dollar because the REITs are U.S. corporations. Consequently, they would recognize foreign currency gain or loss on every section 988 transaction because such transactions would be denominated in a designated currency, which would be a non-functional currency to the REIT. See section 988 and Treas. Reg. § 1.988-1(a). Moreover, any QBUs of the REITs with a currency other than the dollar as their functional currency would be subject to section 987. Since foreign currency gain or loss is not expressly listed as qualifying income in sections 856(c)(2) or 856(c)(3), and since currency fluctuations could affect the valuation of assets under section 856(c)(4), the REITs risk losing REIT status if they are not permitted to adopt a designated currency as their functional currency.

If the ruling requested herein is issued, each REIT's functional currency would be determined by applying the principles of Treas. Reg. § 1.985-1(c). Under these principles, the REITs would be eligible to adopt their designated currency as their functional currency. This conclusion is consistent with the language contained in the General Explanation of the Tax Reform Act of 1986 as set forth above.

Based solely on the facts and representations submitted, Taxpayer may apply the principles of Treas. Reg. § 1.985-1(c)(2)(i) to determine the designated currency of each REIT. Should a REIT properly adopt a designated currency as its functional currency, it will compute its taxable income or loss in its designated currency and translate its taxable income into dollars using the average exchange rate for the taxable year.

No opinion is expressed regarding the proper functional currency of a REIT under the principles of Treas. Reg. § 1.985-1(c).

No opinion is expressed whether the REITs qualify as real estate investment trusts under section 856.

No opinion is expressed regarding the character of dividends or other REIT income distributed by the REITs to U.S. investors, or the character of income or loss realized on the sale by investors of their ownership interest in the REIT.

No opinion is expressed regarding the treatment of foreign currency received as dividends in the hands of the shareholders.

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

It is important that a copy of this letter be attached to the Federal income tax return of the taxpayers involved for the taxable year in which the determination covered by this letter is made.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the Taxpayer.

Sincerely,

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Jeffrey L. Dorfman
Chief, Branch 5 International