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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

APR 14 2008

SE:T:EP:RA:A2

A =
B =
N =
X =
Y =

Dear

This is in reply to your request for a ruling concerning the income tax treatment of your annuity benefits payable by X.

According to the information submitted, commencing August 1, 2007, you became entitled to pension annuity benefits of ( ) per year payable monthly for life. Your first payment was due as of , 2007. At the same time your spouse B became entitled to survivor annuity payments of (€) per month for such time as she survives you. You were born and B was born

You worked for your employer and you were an active participant in its pension plan from 1977 to 2007. From 1977 through 1988, you were a nonresident alien. During that time, your employee contributions to Y totaling $ were tax deferred under the laws of Country N. You moved to the United States and eventually you became a US resident. From 1989 through 2007 you made contributions totaling . These contributions were subject to US income tax and included in income for those years. The contributions held by Y were transferred from Y to X in an exchange transferring the obligation to pay your pension annuity. In addition to the employee contributions you made to the plan, your employer made contributions totaling $, , none of which was includible in your gross income while you were employed. Your pension payments from X originate as a fixed amount computed in Euros.

Applicable Tax Law and Regulations

Pension and annuity income is includible in gross income under Section 72 of the Internal Revenue Code (the Code). Section 72(b) provides for the exclusion from gross income of that portion of each payment which represents a return of the annuitant's investment in the contract.

Section 72(c) provides that the investment in the contract includes the aggregate amounts of premiums or other consideration paid for the contract, minus any amounts received under the contract before the annuity starting date to the extent such amount was excludable from gross income.

Section 72(f)(1) provides that the investment in the contract also includes employer contributions to the extent that such amounts were includible in your gross income.

Section 72(w) provides that that the investment in the contract does not include contributions made (A) with respect to compensation which is both (i) for labor performed by a nonresident alien, and (ii) is treated as from sources without the United States; (B) if such amounts were not subject to income tax (and would have been subject to income tax if paid as cash compensation when the services were rendered) under the laws of the US or any foreign country.

Section 1.72-2(b)(3) of the Federal Income Tax Regulations provides that for specified payments the value of which may vary for income tax purposes, such as in the case of any annuity payable in foreign currency, each payment received shall be considered as an amount received as an annuity only to the extent that it does not exceed the amount computed by dividing the investment in the contract by the number of periodic payments that are to be made. To the extent that the payments received under the contract during the taxable year exceed the total amount thus considered to be received as an annuity during such year, they shall be considered to be amounts not received as an annuity and shall be included in the gross income of the recipient.

Analysis and Application

Under Section 72 of the Code, your pension benefits are includible in your gross income for US tax purposes. However, you are entitled to exclude from your gross income such amounts which represent a return of your investment in the contract. Your investment in the contract includes the amount of your contributions to the plan from 1989 through 2007, as these amounts were subject to income tax. Due to the provisions of section 72(w) of the Code, your investment in the contract does not include the amounts you contributed to the plan before 1989 (while you were a nonresident alien), as such amounts were not includible in your gross income and would have been includible had they been paid to you as cash compensation. Similarly, your investment in the contract does not include any of the amounts contributed by your employer, as the provisions of section 72(w) of the Code apply to these amounts also. Therefore, for the purposes of section 72 of the Code your investment in the contract is $

Your annuity is computed and paid based on the Euro, and as a result the amount payable each year will fluctuate in terms of US dollars. Therefore, section 1.72-3(b)(3) of the Regulations applies to your annuity. A certain fixed dollar amount is considered to be the amount received as an annuity and is excludable from gross income each year. All amounts in excess of this fixed dollar amount are considered to be amounts received not as an annuity for these purposes and are includible in gross income. The excludable fixed dollar amount is determined by dividing the investment in the contract by the number of periodic payments anticipated using the actuarial tables of section 1.72-9 of the Regulations. The required computations are provided below:

(1) Age of A
(2) Age of B
(3) Table VI Expected Return Multiple
(4) Number of Anticipated Payments:
12 times line (4)
(5) Investment in the Contract
(6) Monthly Excludable Amount:
Line (5) divided by line (4)
(7) Number of Payments in 2007
(8) Exclusion for 2007
(9) Annual Exclusion for Year with 12 Payments

Accordingly, your gross income for 2007 excludes $ received as an annuity, and the rest of your pension is includible in gross income. For future years in which you receive 12 payments, $ will be excludable from gross income. This dollar amount excludable will remain fixed even though the gross amount payable will fluctuate due to changes in values between Euros and US dollars. If your spouse survives you, she will exclude from gross income the same dollar amounts that would have been excludable from your income. These amounts are excludable each year until the total amount so excluded under the contract equals the investment in the contract of $. Thereafter all amounts received under the contract are includible in gross income. If both you and your spouse should die before the total amount excluded equals the investment in the contract, a miscellaneous deduction for the remaining balance of the investment in the contract may be taken by the last annuitant for his or her last taxable year.

A copy of this ruling should be attached to your Federal income tax return. We have included a copy for that purpose.

If you have any question concerning this matter, please contact .

Sincerely,

David M. Ziegler
Acting Manager, Actuarial Group 2
Employee Plans Technical

Enclosures
Copy of this ruling
Notice 437
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