Internal Revenue Service

Number: **201028027**
Release Date: 7/16/2010

Index Number: 9114.03-47, 9114.01-14, 894.07-01, 875.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:INTL:B1
PLR-152834-09
Date:
April 05, 2010

Legend

Taxpayer:
Partnership:
Country A:

Dear :

This letter responds to your November 15, 2009, letter in which you requested a ruling under section 871(b)(1) of the Internal Revenue Code of 1986, as amended (the "Code") and Article 13 (Independent Personal Services) of the U.S.-Russian Federation Income Tax Treaty (the "Treaty"), which became effective on January 1, 1994. In particular, you requested a ruling on the proper treatment of your distributive share of income from Partnership, a service partnership with offices in the United States as well as Russia, under Article 13 of the Treaty. The information submitted in that letter is summarized below.

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.

FACTS

Taxpayer, a citizen of Country A and a resident of Russia, is a partner in the Moscow office of Partnership. Taxpayer represents that he is not a resident of the United States and spends less than 183 days in a calendar year in the United States. Partnership has a fixed base in the United States. A portion of Taxpayer's distributive share of income

from Partnership is from U.S. sources and effectively connected with the conduct of Partnership's trade or business within the United States.

RULING REQUESTED

Taxpayer requests a ruling that his distributive share of income from Partnership is not taxable in the United States under Article 13 of the Treaty provided he is not present in the United States for a period or periods exceeding in the aggregate 183 days in the calendar year.

LAW

Code section 701 states that a partnership is not subject to income tax, but that the persons carrying on business as partners are liable for income tax in their separate or individual capacities.

Code section 875(1) states that a nonresident alien individual shall be considered as being engaged in a trade or business within the United States if the partnership of which such individual is a member is so engaged.

Code section 871(b)(1) states that a nonresident alien individual engaged in trade or business within the United States during the taxable year shall be taxable on his taxable income which is effectively connected with the conduct of a trade or business within the United States.

Code section 894(a)(1) states that the provisions of the Code shall be applied to any taxpayer with due regard to any treaty obligation of the United States which applies to such taxpayer. Section 1.894-1(a) of the Income Tax Regulations states that income of any kind is not included in gross income and is exempt from income tax to the extent required by a U.S. income tax treaty.

Article 13 of the Treaty states, in relevant part:

> 1. Income derived by an individual who is a resident of a Contracting State from the performance of independent personal services shall be taxable only in that State, unless
>
> a) such services are performed or were performed in the other Contracting State; and
>
> b) the income is attributable to a fixed base which the individual has or had regularly available to him in that other State; and
>
> c) such individual is present or was present in that other State for a period or periods exceeding in the aggregate 183 days in the calendar year.
>
> * * *

> 2. The term “independent personal services” includes, in particular, independent scientific, literary, artistic, educational or teaching activities, as well as the independent services of physicians, lawyers, engineers, architects, dentists, and accountants.

The U.S. Treasury Department Technical Explanation (Technical Explanation) to Article 13(1)(c) of the Treaty states that the requirement in paragraph 1(c), that the State in which the services are performed may not tax unless the individual performing the services is or was present for more than 183 days during the calendar year, is not found in the U.S. or OECD Model Conventions.[1] The 183-day requirement was carried over from paragraph 2 of Article VI (Exemptions for Individuals) of the 1973 U.S.-U.S.S.R. Income Tax Treaty.

The Technical Explanation to Article 13(2) of the Treaty states that the types of independent personal services listed are not exhaustive. The term “independent personal services” includes all personal services performed by an individual for his own account, where he receives the income and bears the risk of loss arising from the services.

Rev. Rul. 2004-3, 2004-1 C.B. 486, analyzed a similar issue under the independent personal services article in the U.S.-German income tax treaty, as in effect prior to the German protocol that was signed June 1, 2006. Article 14 (Independent Personal Services) of the German treaty at that time provided:

> 1. Income derived by an individual who is a resident of a Contracting State from the performance of personal services in an independent capacity shall be taxable only in that State, unless such services are performed in the other Contracting State and the income is attributable to a fixed base regularly available to the individual in that other State for the purpose of performing his activities.
>
> 2. The term "personal services in an independent capacity" includes but is not limited to independent scientific, literary, artistic, educational, or teaching activities as well as the independent activities of physicians, lawyers, engineers, economists, architects, dentists, and accountants.

Rev. Rul. 2004-3 confirms that Article 14 applies to independent personal services performed by a partner in a partnership and holds that a nonresident alien partner in a service partnership having a fixed base in the United States is treated as having a fixed base regularly available to him in the United States, without regard to whether the partner performs services in the United States. The ruling also holds that it applies in interpreting other U.S. income tax treaties that contain provisions that are similar to Article 14 of the German treaty.

---

[1] Article 14 of the 1981 U.S. Treasury Department’s Proposed Model Income Tax Treaty and Article 14 of the 1992 OECD Model Tax Convention

ANALYSIS

Taxpayer, a nonresident alien individual, is partner in a partnership that is engaged in a U.S. trade or business. Under Code section 875(1), Taxpayer is considered engaged in the U.S. trade or business of Partnership. Thus, Taxpayer is taxable on his share of partnership income to the extent it is effectively connected with the conduct of Partnership's U.S. trade or business.

Under Code section 894(a)(1), the provisions of the Code shall be applied to Taxpayer with due regard to any treaty obligation of the United States which applies to Taxpayer. Taxpayer is resident of Russia under Article 4 (Residence) of the Treaty.

Article 13(1) of the Treaty provides that income derived by a resident of Russia from the performance of independent personal services shall be taxable only in Russia, unless the individual meets conditions a), b) and c). While Article 13(1)(a) and (b) are comparable to Article 14(1) of the German treaty, Article 13(1)(c) has no analogue in the German treaty. Rather it is an additional condition carried over from the 1973 U.S.-U.S.S.R. Income Tax Convention. That condition requires a resident of Russia to be present in the United States for a period or periods exceeding in the aggregate 183 days in the calendar year in order for such individual's income from independent personal services to be taxable in the United States. Thus, even though Taxpayer may meet the conditions of Article 13(1)(a) and (b), by deriving income attributable to services performed in the United States and the income is attributable to a fixed base of Partnership that Taxpayer is considered to have regularly available to him in the United States, he will still not be taxable under Article 13 provided he is not present in the United States for a period or periods exceeding in the aggregate 183 days in the calendar year.

HOLDING

Based solely on the information and representations submitted, it is held that Taxpayer's distributive share of Partnership's income (to the extent that such income is attributable to Partnership's fixed base in the United States) is not taxable in the United States under Article 13 of the Treaty, provided he is not present in the United States for a period or periods exceeding in the aggregate 183 days in the calendar year.

No opinion was requested and none is given about the source of Taxpayer's share of partnership income. It is unnecessary to make that determination in view of the ruling herein.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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 your authorized representative.

Sincerely,

Elizabeth U. Karzon
Branch Chief, Branch 1
(International)

cc: