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Dear :

This letter responds to your request dated April 19, 2010, for general information regarding the U.S. Federal income tax treatment of distributions from the to individuals who are residents of France and nonresident aliens of the United States.

International Organizations

Treas. Reg. § 31.3401(a)(5)-1(b) generally provides that remuneration paid for services performed within or without the United States by an employee for an international organization as defined in Internal Revenue Code (“IRC”) § 7701(a)(18) (referring to the International Organizations Immunities Act (22 U.S.C. 288-288f)) is not subject to withholding.

Taxation of Distributions from I.R.C. § 401(a) Qualified Plans under U.S. Law

IRC § 402(a) generally provides that any amount actually distributed to any distributee by any employees’ trust described in § 401(a) that is exempt from tax under § 501(a) is taxable to the distributee, in the taxable year of the distributee in which distributed, under § 72. IRC § 72 generally provides that gross income includes any amount received as an annuity, but not that portion of any amount received that represents the “investment in the contract.” Worksheet A in IRS Publication 575, *Pension and Annuity Income*, provides taxpayers with a simplified method to determine the taxable portion and the non-taxable “investment in the contract” of an annuity paid under a qualified plan.

IRC § 871(a) generally imposes a tax of 30 percent on U.S.-source income received by a nonresident alien individual unless such income is effectively connected with a U.S. trade or business. The U.S.-source portion of a distribution by a § 401(a) plan to a nonresident alien individual is determined by bifurcating the taxable portion of the distribution into (1) contributions by the employer and (2) the investment return on the contributions of the employer and employee ("earnings and accretions"). See Rev. Rul. 79-388, 1979-2 C.B. 270. The portion that is attributable to employer contributions with respect to services rendered outside the United States is treated as foreign source income, and the portion that is attributable to contributions with respect to services within the United States is treated as U.S.-source income. The portion that represents earnings and accretions to contributions of either the employer or the employee is treated as U.S. source income. Rev. Proc. 2004-37, 2004-1 C.B. 1099, provides a method for allocating distributions from a defined benefit plan to sources within and without the United States.

IRC § 871(f)(1) provides that the gross income of a nonresident alien individual does not include any amount received as an annuity from a qualified plan, but only if certain requirements are met, including the requirement that, at the time the first amount is paid as an annuity, 90 percent or more of the employees who are covered by the plan are citizens or residents of the United States. If the plan cannot meet this requirement, IRC § 871(f)(2)(A) preserves the exclusion from income if the recipient's country of residence grants a substantially equivalent exclusion to residents and citizens of the United States. Unless the plan or the taxpayer determines that the taxpayer is entitled to an exclusion under IRC § 871(f), the taxpayer's annuity payments remain taxable in the United States under the rules discussed in the previous paragraphs.

Taxation of Pension Distributions under U.S.-France Income Tax Treaty

Paragraph 1 of Article 18 (Pensions) of the U.S.-France income tax treaty, which was signed August 31, 1994, and amended by protocols signed December 8, 2004, and January 13, 2009, generally provides that pension distributions arising in one of the Contracting States in consideration of past employment paid to a resident of the other Contracting State, whether paid periodically or in a lump sum, shall be taxable only in the first-mentioned State. Thus, pension distributions that arise in the United States and are paid to a nonresident alien who is a resident of France are taxable only in the United States and are exempt from tax in France.

Residents of France cannot avoid U.S. tax on their pension distributions because these payments are taxable under U.S. law as described above.

U.S. Tax Forms

Nonresident alien individuals who receive U.S.-source income generally must file Form 1040NR, *U.S. Nonresident Alien Income Tax Return*, unless all of the U.S. tax they owe was withheld from their income (and they were not engaged in a U.S. trade or business during the taxable year). IRS Publication 519, *U.S. Tax Guide for Aliens*, may be a helpful resource in navigating U.S. tax laws.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2011-1, § 2.04, 2011-1 I.R.B. 1 (Jan. 3, 2011). If you have any additional questions, please contact our office at .

Sincerely,

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(International)