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Reference: Application of Article 19 of the U.S.-U.K. Income Tax Treaty

Dear :

This is in reply to your letter dated December 3, 2004, as supplemented by your letter dated February 7, 2005, in which you requested clarification regarding the income tax treaty currently in force between the United States and the United Kingdom (the "Treaty"[1]). In particular, you inquired about the scope of applicability of subparagraph (b) of paragraph 1 of Article 19 (Government Service) to individuals who render services to the United Kingdom within the United States.

In response to your inquiry, we are providing the following general information. This information letter is advisory only and has no binding effect on the Internal Revenue Service.

Article 19 of the Treaty provides, in pertinent part (emphasis added):

1. Notwithstanding the provisions of Article 14 (Income from Employment), 15 (Directors' Fees) and 16 (Entertainers and Sportsmen) of this Convention:

a) salaries, wages and other similar remuneration, other than a pension, paid from the public funds of a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that

1 The Treaty and the accompanying Treasury Department Technical Explanation to the Treaty are both available on the IRS website at: http://www.irs.gov/businesses/corporations/article/0,,id=96739,00.html.

State or subdivision or authority shall, subject to the provisions of sub-paragraph b) of this paragraph, be taxable only in that State;

b) such salaries, wages and other similar remuneration, however, shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a *resident* of that State who:

(i) is a national of that State; or

(ii) *did not become a resident of that State solely for the purpose of rendering the services*.

The term "resident" is defined in Article 4 (Residence) of the Treaty to include individuals who are liable to tax under the laws of a State by reason of domicile, residence, or citizenship. The Treaty's definition of "resident" excludes individuals who are liable to tax in that State in respect only of income from sources in that State.

Under section 7701(b) of the Internal Revenue Code, U.S. resident status is determined for alien individuals in one of two ways: either by virtue of the individual's immigration status as a lawful permanent resident (*i.e.*, the green card test), or because the "substantial presence test" is met. Under Article 19(1)(b) of the Treaty, the salaries, wages and other remuneration of an individual rendering services to the United Kingdom within the United States are taxable only in the United States if the individual is a U.S. resident who (1) is also a U.S. national, or (2) did not become a U.S. resident solely for the purpose of rendering the services. The latter category would include, for example, an individual who met the substantial presence test prior to the time the individual began rendering services to the United Kingdom.

An alien individual who is not a resident as defined in section 7701(b) is a nonresident alien for U.S. income tax purposes, and therefore is not a "resident" for purposes of the Treaty because the nonresident alien is not a domiciliary, resident or citizen. Thus, Article 19(1)(b) does not have any application to nonresident aliens. However, the following types of individuals could fall within the scope of Article 19(1)(a) of the Treaty and would therefore be taxable only in the United Kingdom: (1) nonresident aliens (as determined under section 7701(b) of the Code); and (2) resident aliens who do not hold green cards and who came to the United States solely for the purpose of rendering services to the United Kingdom.

Please note that under the saving clause found in Article 1 (General Scope) of the Treaty, the United States may continue to tax its citizens and permanent residents (green card holders) as if Article 19 were not in effect. Therefore, a green card holder who becomes a resident of the United States solely for the purpose of rendering services to the United Kingdom within the United States is not entitled to an exemption from U.S. tax under Article 19(1)(a).

In your supplemental letter dated February 7, 2005, you asked about the treatment of individuals who are present in the United States on either an A-1 or an A-2 visa. Such individuals are not treated as resident aliens under the substantial presence test and are entitled to an exemption from U.S. tax under Article 19(1)(a) provided they are emporarily present in the United States and the Secretary of the Treasury (after consultation with the Secretary of State) determines that their A-1 or A-2 visa represents full-time diplomatic or consular status for purposes of section 7701(b). An individual is considered to have full-time diplomatic or consular status under section 7701(b) if (1) the individual has been accredited by a foreign government recognized
de jure or de facto by the United States; (2) the individual intends to engage primarily in official activities for that foreign government while in the United States; and (3) the individual has been recognized by the President, or by the Secretary of State, or by a consular officer acting on behalf of the Secretary of State, as being entitled to such status.

The information herein relates only to the application of the Treaty. The treatment of such salaries, wages or other remuneration may differ under the Code or as a result of another applicable agreement between the United States and the United Kingdom. Specifically, Article 28 (Diplomatic Agents and Consular Officers) of the Treaty provides:

> Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreement.

We hope this general information will prove helpful to you. If you should have any further questions in this matter, please contact (not a toll-free number).

Sincerely,

M. Grace Fleeman
Senior Counsel, Branch 1
Office of Associate Chief Counsel
(International)