

**Minutes of the AGC/IRS Meeting
July 25, 2005**

Present for AGC: Phillip Caldwell (Northern Trust); Peter Daub (Baker & McKenzie); Chris Gilbert (JPMorgan Chase); Larry Manning (JPMorgan Chase); Justine O'Brien (The Bank of New York); Keri Smith (Investor Bank & Trust); Jenny Wong (JPMorgan Chase).

Present for IRS: Aziz Benbrahim (Tax Treaty Group Manager, International, Tax Treaty), Felecia Davenport (Program Analyst, Philadelphia Service Center); Elizabeth Karzon (Branch Chief, Office of Associate Chief Counsel International); Quyen P. Huynh and Patti Valancius (Competent Authority Analyst, LMSB International);

Synopsis of Discussion of U.S. Issues

Country Certification

It was generally agreed that it is in all parties' interests for the IRS to discontinue providing country-specific certifications except for those instances when they are required by a foreign country. During the May 13th, 2004 meeting, the IRS agreed to discontinue issuing country-specific Forms 6166s and committed to a system fix.

In our discussion of July 25th, 2005, the AGC asked the IRS to confirm its previous announcement and provide an effective date as to when the "certified for (country)" wording at the bottom of Form 6166 will be removed. The IRS reiterated its commitment to provide a generic Form 6166 for all countries. However, this will not be completed until September 2006 or early 2007 due to delays in system developments.

Furthermore, the IRS indicated that Box 10 on Form 8802 is likely to stay in place for data gathering purposes due to the need to document and collect statistics on comparative treaty versus non-treaty uses for the Form 6166 certification and the volume of certifications requested for each foreign country. The IRS stated that non-treaty uses exceed treaty-related uses and over 4.5 million Forms 6166 were requested in the most recent year. The AGC believes that the volume may not accurately reflect actual usage as country-specific Forms 6166 necessitate anticipating the countries in which potential investments may be made. The AGC continues to be concerned about collection of country-specific information in box 10 of the Form 8802 and has suggested that it be removed. The value of the data, e.g., use in treaty administrative processing discussions, could be obtained in coordination with industry and without the associated administrative burden. The Association offers to compile and provide the following information to assist the IRS: (i) Form 6166 usage in all countries listed in Box 10 of Form 8802 and

any other country for which Form 6166 is required and (ii) countries that are generally "early year" priorities for the issuance of Forms 6166.

Same-Period Recertification Process

The current form does not allow for easy reuse. Once the IRS deems a taxpayer to be a US resident for a particular year, a new request for additional certifications should be possible by just a check of a box and a list of countries. However, where the taxpayer provides permission in Box 11 of the current-year Form 8802 to request "other year" certifications, the interplay of Box 7 (year certification is required) and Box 10 (countries) makes it difficult as each reordered year (per Box 11) may have different country requirements. A second problem is that, while the IRS does not want the form altered, making more than one request with the same form may require changing the information in Boxes 7, 9, and 10.

In our discussions of July 25, 2005, the AGC asked the IRS to clarify that custodians are able to cross through the information in Box 7 of a completed Form 8802 and write the necessary year in that box, providing that the taxpayer had duly completed the authorization statement in Box 10. The IRS confirmed that custodians are authorized to alter Form 8802 when additional requests are made. This practice has been acceptable since the beginning of 2005, the IRS view being that such administrative data was processing data, not taxpayer data. The IRS will also issue a new Form 8802 with enhanced 'Additional Request' features and new written instructions on recertification. The new instructions will allow the appointee (e.g. custodian) to sign supplementary Forms 8802, provided a copy of the original Form 8802 in favor of the appointee is attached. The form and instructions scheduled for release in August 2005. To improve processing time, additional requests will be handled separately from original requests.

In addition, the IRS confirmed that no other changes will be made to Form 8802 and custodians can continue to use the current Form 8802 for 2006 solicitation.

Form 8802 Submission Dates

To obtain treaty benefits, it is imperative that US taxpayers receive Form 6166 certifications on a timely basis. This is especially a concern between January and March, during payment season for corporations resident in a number of foreign countries. Currently, the PSC accepts submissions for the current year only on and after January 1. However, in 2005 it was not until mid-March to mid-April that the IRS issued residency certificates for Forms 8802 submitted on January 1, resulting in delay of refunds or sometimes permanent loss of benefits.

In our discussion of July 25th, 2005, the AGC proposed that the IRS should permit Forms 8802 to be submitted beginning October 1st of the year prior to the year for which the Form 6166 is sought. The IRS clarified the submission procedures as follow: (i) the PSC will issue a residency certificate only on and after January 1 (although it may set up the Form 8802 request in its systems prior to January 1); (ii) any submission postmarked before December 1 of the prior year will be rejected and returned to sender; and (iii) any submission post-marked on or after December 1 will be processed by the PSC.

Thus, the IRS has now agreed to accept for 2006 Forms 8802 postmarked on and after December 1, 2005. Despite this IRS concession, the AGC noted that custodians would like to get Form 8802 to the IRS in enough time to receive certification early in January, which may mean that the IRS would need to consider accepting submissions two to three months prior to the new year (assuming a two or three month IRS processing lag).

Rejections Due to Tax Filing Deadlines

In recent months the PSC rejected a large number of Forms 8802 on the ground that a Form 8802 cannot be issued if a return, filed after the submission of the Form 8802 but before the completion of the processing of the form, is not attached.

In our discussion of July 25th, 2005, the AGC contended that if a form is provided to the IRS before a return filing deadline, the IRS should not be able to reject the form because the IRS did not process prior to the deadline. The IRS admitted that this was a processing error, which has since been corrected via an internal memorandum.

To better address similar errors and to improve future discussions, both parties agreed to more regular communication between the AGC and the PSC. The AGC will prepare a rolling issues log on a monthly basis and provide details directly to PSC's Program Analyst, Felicia Davenport, or Procedure Analyst, Lisa Daniels.

Form 8802 Annual Renewal Requirement

The annual renewal requirement for Form 8802 and the annual penalty of perjury statement to the effect that the taxpayer intends to remain a U.S. resident are unnecessarily burdensome on both the IRS and US taxpayers. During the May 13th, 2004 meeting, the IRS and the AGC discussed the possibility of a three-year Form 8802 if taxpayer includes in its Form 8802 a penalties of perjury

statement that it is a US resident for the current year and plans to remain a U.S. resident through the end of the second succeeding taxable year.

In our discussion of July 25th, 2005, the IRS stated that some discussions had taken place among different branches and that a three-year validity period is "possible" for certain types of entities. The IRS representatives indicated a willingness to work on this issue; in particular, a representative from the Tax Treaty Division (Quyên P. Huynh) suggested that she will coordinate with the Disclosure Division and the PSC to file a "formal request". The IRS's main concern again appeared to be systems or programming resource related.

The AGC also proposed methodologies for simplifying Form 8802 processing for US partnerships and common trust funds, since these entity types frequently have large institutional partners/participants. Given the complexity of processing for these entities, it was generally agreed that this issue would have to be revisited as progress on other priorities was made. The AGC expressed an ongoing concern that the current complexity of Form 8802 processing for US partnerships and common trust funds effectively denied these taxpayers the benefit of the US treaty network.

Foreign Issues

The AGC had previously written to Robert Green (letter dated January 11, 2005) to highlight various foreign issues which it believed would benefit from US Competent Authority assistance. In our discussions of July 25, 2005, the AGC emphasized its desire to work collaboratively with the US Competent Authority to achieve the best possible result for the benefit of the US taxpayer and the US Treasury. The AGC also proposed that the AGC and IRS meet regularly in the future to review these foreign tax issues and any others that may subsequently be identified by the AGC. The relevant foreign tax issues, together with further salient details of our discussions of July 25, 2005, are summarized below:

Germany

The German tax office has changed its procedures and imposed a 30 - 60 day domestic appeals deadline on rejected tax reclaim applications filed by foreign investors. Failure to respond by the deadline results in the forfeiture of tax relief, notwithstanding that the claim is still within the normal statute of limitations. Following AGC representations, the German authority has apologized for not providing custodians with advance notice of the change of procedures but has rejected AGC requests to revoke the imposition of the appeals deadline.

In our discussions of July 25, 2005, the AGC noted that while the revised administrative procedures adopted by the German tax office clearly had the potential to adversely impact US resident investors, it would appear that no US investors had so far forfeited tax relief entitlement (although residents of certain other foreign countries had suffered such forfeiture). Accordingly, no assistance was presently being sought from the US Competent Authority.

Italy

The failure of the Italian tax administration to refund tax reclaim applications filed on behalf of foreign investors has been a longstanding matter of concern to AGC members. While the Italian market does offer increased opportunities for obtaining appropriately reduced rates of tax at source, situations inevitably arise where it is not possible to obtain tax relief at the time of income payment and tax reclaim applications must therefore be filed. The AGC has written to the Italian Ministry of Finance (MOF) highlighting the fact that tax refund payments received to date account for only three percent of the value of the remaining outstanding tax reclaims and requesting MOF support in expediting settlement of the historical tax reclaim entitlements. However, the AGC has received no response from the MOF to date.

In our discussions of July 25th, 2005, the AGC emphasized its concern over the continued failure of the Italian authorities to address the historical tax reclaim backlog and noted that many outstanding claims were now 10 – 20 years old. The AGC requested US Competent Authority assistance to address the current inequitable application of the Italy/US treaty. The IRS confirmed that it was well aware of the problems experienced in Italy and that the US Treasury had had a number of discussions with the Italian authorities in this connection. However, these discussions had failed to resolve the problem, and it was considered that any final resolution would require political decisions to be made. While sensitive to the political considerations, the AGC is concerned that the extended tax reclaim processing delays constitute an effective denial of treaty relief agreed by the treaty partners.

Japan

The new Japan/US treaty prompted a change by the Japanese National Tax Authority (NTA) of administrative requirements. These necessitated the provision of (a) beneficial owner breakdown details for each income payment arising on securities held for US pension funds in “omnibus” accounts on the books of Japanese sub-custodians and (b) a Form 6166 for each US pension fund in respect of each income payment. The AGC had written to the NTA expressing its concern over the substantial administrative burden caused as a

result of these changed administrative requirements and setting out its own alternative proposals.

In our discussions of July 25, 2005, the AGC noted that the NTA had gone some way towards addressing the concerns raised by the AGC in (b) above. A single Form 6166 for each beneficial owner for all dividend payments is now generally sufficient. However, Form 6166 is valid only if it is dated within one year of the record date of the dividend. And separate Forms 6166 are still required in respect of interest payments. No progress had yet been made with regard to the concerns raised in (a) above. The AGC intends to issue a further representation to the NTA outlining its concerns and proposed remedial actions in respect of beneficial owner breakdown requirements, Form 6166 validity period, and the inconsistency between the treatment of dividend and interest payments. The AGC requested US Competent Authority support in respect of these remaining issues. The IRS replied that it did not believe that it could directly intervene in matters of an "administrative" nature. However, it did agree to a follow-up AGC suggestion that it forward a copy of the proposed AGC representation to the Japanese Competent Authority, requesting its views in respect of the points raised.

The AGC also asked the IRS whether reports that IRS representatives were shortly due to visit Tokyo were true and, if so, whether the residual AGC concerns/proposals could be put on the agenda. Aziz Benbrahim confirmed that a meeting was planned for September and that he would provide the AGC with relevant IRS contact details.

Portugal

The Portuguese tax administration introduced new administrative arrangements in 2003 covering the provision of tax relief, both at source and by means of tax reclaim. The revised arrangements effectively prevent foreign investors holding Portuguese securities through one or more intermediaries from benefiting from the tax relief that they are due under the US treaty. The AGC has written to the Portuguese Ministry of Finance setting out its concerns and proposed remedial actions. However, no response has yet been forthcoming.

In our discussions of July 25th, 2005, the AGC highlighted the main issues attached to the revised administrative arrangements. First, full beneficial owner breakdown details must be provided for each purchase and sale transaction in respect of securities held in "omnibus" accounts on the books of Portuguese sub-custodians. This is done so that the Portuguese sub-custodian can maintain a beneficial owner register. Only investors reflected on this register are entitled to tax relief. If a global custodian holds securities for an intermediary client and is

unable to provide full underlying beneficial owner breakdown details, tax relief entitlement is forfeited not because of treaty ineligibility but simply on account of the way that the securities are held. This would seem quite contrary to tax treaty intent.

Second, relief at source requires, inter alia, Forms MOD 7-RFI or MOD 8-RFI to be certified by the IRS prior to the date of the payment. This is a practical impossibility, given that the global custodian will not be in a position to finalize income entitlement until the ex dividend date (generally three days before the dividend payment date) and current IRS processing times.

Third, if a retrospective tax reclaim payment is filed, refund cheques (or rejection notices) are sent directly to the beneficial owner's registered address, not – as is the case in every other reclaim market – to the person submitting the reclaim form. Invariably, the beneficial owner (say, a large insurance company) will not be expecting the cheque and will not be able to apply it.

For much the same reasons, rejection notices are unlikely to be responded to. Meanwhile the person that has filed the reclaim application has no way of tracking the progress of the claim.

The AGC requested US Competent Authority support in respect of these issues. The IRS again replied that it did not believe that it could directly intervene in matters of an "administrative" nature. The AGC expressed its concern that, while the source of the problem was administrative, the practical effect was the denial of treaty benefits envisaged under the treaty and that this should therefore be regarded as a Competent Authority issue. The IRS did agree to a follow up on the AGC suggestion that it forward details of the AGC's concerns and proposed remedial actions to the Portuguese Competent Authority, requesting its views. Aziz Benbrahim suggested that Rick Smith, IRS Deputy Tax Attaché (based in Paris), may be able to assist in this respect.

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