

THE ASSOCIATION OF GLOBAL CUSTODIANS

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September 2, 2005

Via Hand Delivery

Aziz Benbrahim
Tax Treaty Group Manager
International Tax Treaty Division
Internal Revenue Service
LM:IN:T
1111 Constitution Avenue, N.W.
Washington, D.C. 20224-0002

Re: July 25, 2005 Meeting with the Association of Global Custodians

Dear Mr. Benbrahim:

On behalf of the Association of Global Custodians (the "Association"), I thank you and the other Internal Revenue Service ("Service") personnel who attended our meeting on July 25 for a very productive exchange.¹ We are also grateful for the sincere efforts that the Service has made in addressing the very difficult issues that we discussed.

I am enclosing the minutes we recorded of our discussion, which we hope will help serve as a guide to making progress on the matters we discussed. Without prejudice to requests we have previously made and will make in the future, we note and italicize below particular action steps to which we believe the Service agreed, or at least agreed to consider, at the meeting.

¹ Please note the addition of HSBC Securities Services to the membership of the Association from August 2005.

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The key issues are briefly summarized below. Before addressing them, however, I reiterate the Association's desire to have a *monthly call with one or more representatives of the Philadelphia Service Center (the "PSC")* on those issues that have not yet been resolved and new issues as they arise. By copy of this letter, I ask *Felicia Davenport to notify me of how such calls can be arranged.* As mentioned at our meeting, *we also propose that representatives of the Service and the Association meet regularly (perhaps semi-annually) to discuss the specific problems the Association's members are encountering procuring treaty relief from withholding tax in foreign jurisdictions. Mr. Benbrahim, I would be grateful if you could contact me suggesting how these meetings might be arranged.*

Turning to the specific issues we discussed at the meeting, we emphasize the following:

Form 8802 Country-Specific Certification

We were delighted to learn at the meeting that the Service intends to eliminate the country-specific Form 6166 (U.S. Residency Certification) in late 2006 or early 2007.

Even with the elimination of the country-specific Form 6166, however, the membership and the Service will continue to bear the burden of unnecessary paperwork unless the companion country-specific Form 8802 (Application for U.S. Residence Certification) is also eliminated. We do not believe there exists an adequate tax compliance rationale for a country-specific Form 8802, especially when the result of a processed Form 8802, a Form 6166, is itself not country-specific. We appreciate that the Service and possibly other U.S. Government agencies use completed Forms 8802 not merely to issue Forms 6166 with which relief is sought, but to monitor portfolio investment in particular countries. Yet, as we noted at our meeting, a completed Form 8802 is not an accurate measure of such investment. This is largely because investment managers must shift investments at a moment's notice based on market developments, and custodians must therefore have in hand Forms 6166 for a broad range of countries in which investments turn out to be only possibilities. We reiterate our commitment, on a continuing basis, to furnish the Service with information regarding the countries in which the Forms 6166 are used for treaty and specified non-treaty purposes (such as account openings). We believe that this information will provide the Service with more accurate investment information than can be gleaned from the Form 8802 and should permit the Service to dispense completely with the country-specific requirement.

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We emphasize that the return to a non-country specific Form 6166 will not eliminate the paperwork problems for taxpayers and the Service. In general terms, residency certificate processing has nearly doubled since the introduction of the new Form 8802, with its country-specific requirement. We encourage the Service to address the issue of resource constraints and increased processing volumes promptly at its source by implementing a timely systems solution which would include the elimination of country-specific residency certificates.

Term of the Form 8802

The Association has previously requested that its institutional clients need not be required to execute a new Form 8802 and penalties of perjury statement as to intended U.S. residency annually, but only every third year, with only a copy of the most recent Form 8802 (including penalties of perjury statement) submitted in the two years in which a new Form 8802 is not executed. *The Service indicated the willingness of the Disclosure Division and the PSC to work towards enabling certain entity types to execute Form 8802 with a three-year period of validity.*

In the meantime we understand that the Service will be amending the Form 8802 to permit, once an investor has executed the Form 8802, the investor's appointee (e.g., a custodian) to execute a supplementary Form 8802 on behalf of the investor for other years, without the necessity of the investor's signature and provided that the investor had originally (that is, when it executed the original Form 8802) authorized the appointee to request certifications for years other than the current year. We thank the Service for its good work in this regard.

Nevertheless, we again emphasize the apparent lack of Service systems resources to cope with an annual Form 8802. Like the country-specific requirement, this annual Form 8802 renewal requirement has substantially increased processing volume for both Association members and the Service. Elimination of the requirement to re-execute the Form 8802 annually would substantially lessen the burdens on both Association members and the Service. We are eager to work with the Service in devising a reasonable solution.

Form 8802 Submission Dates

From our discussions we understand that the Service will, beginning with Forms 6166 issued on or after January 1, 2006, permit investors to submit, for a Form 6166 issued

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in any calendar year, the associated Form 8802 to be postmarked on or after December 1 of the previous year. As stated, our recent experience is that it is taking the PSC three to four months, and in some cases six months, to process a Form 8802. Since corporations in some jurisdictions pay dividends annually as early as January, we believe that, unless the PSC's processing time improves dramatically, investors should be permitted to initiate processing by submitting the Form 8802 on or after October 1 of the year preceding the calendar year for which the Form 6166 is sought. The Association is still greatly concerned that the Forms 6166 will not be received in time for the dividend payments. As discussed, as a practical matter, the only way to obtain treaty relief in a number of jurisdictions is through submission of the Form 6166 prior to dividend payment. The Association believes that, given the current processing time of the Forms 8802, an investor can have reasonable assurance of treaty relief only if the investor is permitted to submit the Form 8802 on or after October 1 of the year prior to the calendar year for which a Form 6166 is sought.

Rejections Due to Tax Filing Deadlines

We were pleased to learn that the Service will no longer reject a Form 8802 on the ground that the investor filed a tax return after the submission, but before PSC processing, of the Form 8802.

Systems Improvement Considerations

The Association is concerned about the adequacy of systems development resources. Lack of resources has led to delays in programming enhancements. For example, while we greatly appreciate the Service's efforts, and in particular the PSC's and the Chief Counsel's support in eliminating the country-specific Form 6166, the time required to carry out the actual systems modification is estimated at two and a half years. Delays in systems implementation adversely affect both the Service and taxpayers, causing both unnecessary expense. We are eager to work with the Service to facilitate Form 6166-related systems improvements.

Foreign Issues

The Association members' continuing difficulties with certain foreign jurisdictions are outlined in the minutes attached hereto. We understand that the Service has agreed to help with these difficulties in two cases. *With respect to Japan, the Service agreed to forward a copy of a proposed Association representation to the Japanese Competent*

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Authority for comment. The Service also confirmed that its personnel will soon meet with representatives of the Japanese Government and agreed to provide the Association with the contact information of the representatives so that its concerns can be expressed to the Japanese at the meeting. Please provide the undersigned with those details. With respect to Portugal, the Service agreed to forward a copy of the Association's concerns and suggestions to the Portuguese Competent Authority for comment.

Again, we thank you for a productive meeting and your continuing cooperation.

Very truly yours,

/s/ Peter M. Daub

Peter M. Daub
Counsel to the Association

Enclosure

cc: Robert H. Green
Director, International (SE:LM:IN) (w/ enclosure)

Harry J. Hicks, Esq.
Associate Chief Counsel, International (CC:INTL) (w/ enclosure)

Curtis G. Wilson , Esq.
Assistant Chief Counsel, Administrative Provisions and Judicial Practice
(CC:PA:APJP) (w/ enclosure)

Felicia Davenport
Program Analyst, Philadelphia Service Center (TA:SBSE:PC) (w/ enclosure)

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cc: Elizabeth U. Karzon
Branch Chief, Office of the Associate Chief Counsel (International)
(CC:INTL:B01) (w/ enclosure)

Quyen P. Huynh
Attorney, Office of Chief Counsel, International, Branch 1 (w/ enclosure)

Patricia L. Valancius
Competent Authority Analyst, LMSB International (Tax Treaty) (w/ enclosure)