

THE ASSOCIATION OF GLOBAL CUSTODIANS

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May 27, 2005

Robert H. Green, Esq.  
Director, International (SE:LM:IN)  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Re: Form 8802 (Application for U.S. Residency Certification) – Term of Validity and Timing of Submission

Dear Bob:

As counsel for the Association of Global Custodians ("Association"), I am writing to you in connection with two matters. First, I am enclosing a copy of a letter the Association has sent today to Curtis Wilson of APJP and Hal Hicks of ACC(I) concerning the Association's proposal for an extended term of validity for Form 8802 (Application for United States Residency Certification) and accompanying documentation. As you know, we raised this issue with you last year, but subsequently learned that those two IRS offices had some jurisdiction over aspects of the issue. Accordingly, we are pursuing the issue directly with those offices in an effort to address any concerns they may have, but we hope that you will maintain a coordinating role with respect to this and other Form 8802 matters, since that certification process performs such a critical role in allowing U.S. investors to obtain withholding tax relief from U.S. treaty partners.

Second, we want to propose an additional change to current Form 8802 procedures, relating specifically to the timing of submission of those application forms. Current procedural restrictions make it extremely difficult for U.S. investors to establish their entitlement of preferred treaty rates between January and March of each calendar year, the key period for providing foreign withholding agents with claims for relief. The instructions for Form 8802 provide that U.S. investors "may request certification for the current and any prior calendar years". In practice, this rule means that the Philadelphia Service Center ("PSC") only accepts Forms 8802 for current year certification mailed on or after January 1 of the current year. We are finding, however, that it is still taking the PSC about 10-to-14 weeks to process the applications. For some U.S. treaty partners (e.g., France, Japan, and Italy), dividend payments are made in April and May, and in order to obtain relief at source U.S. investors are required to submit valid resident

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certificates prior to payment dates. Given a 10-to-14 week processing window for initial Form 8802 applications, U.S. investors' treaty benefits are being jeopardized. Tax relief in Italy in this context is particularly a problem given that any failure to get tax relief at source will result in the need to file a reclaim with the Italian authorities, and reclaims in Italy can take 10 years or more. The Italian government strictly enforces its policy of not accepting a Form 6166 from the prior year after March 31st of the current year.

Therefore, we suggest that the PSC allow the submission of Forms 8802 for a particular calendar year anytime after October 1 of the prior calendar year to avoid effective forfeiture of taxpayer treaty benefits.

Another procedural difficulty we encountered stems from this same post-January 1 submission requirement. The instructions for Form 8802 provide that a recently filed return should be attached to Form 8802 submissions. In the past years, we have had no problem with complying with this requirement by attaching such returns or return extension requests to all Forms 8802 *submitted* to the PSC *after* the return filing dates (*i.e.*, March 15 or April 15). However, given the current 10-to-14 week processing lag at the PSC, Forms 8802 *submitted* to the PSC in January were being rejected in late March on the grounds that any Form 8802 *processed by the IRS* after March 15, 2005 had to have attached to it a filed return or extension request for 2004. At the time of the submission, such returns or extension requests obviously were not available, and applicants expected a 30-day processing time. The rejections translate to additional administrative burdens and more delays. As a result, for many of our U.S. investors, six months will pass before the PSC honors their Certificate of Residency requests. While we of course recommend that the PSC revert to its prior practice of requiring returns or extension requests to accompany only those Forms 8802 *submitted* after the relevant return filing deadline, our proposal to allow earlier submissions of Forms 8802 should alleviate the problems caused by the current practice.

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As discussed in our recent telephone conversation, we will contact your office by telephone to find a mutually convenient time in the near future for meeting to discuss these Form 8802 issues and certain other procedural issues relating to claims for treaty benefits from foreign countries, about which the Association wrote to on January 11, 2005. If you have any questions in the interim, please do not hesitate to contact me at (202) 452-7045.

Sincerely,



Mary C. Bennett  
Baker & McKenzie LLP  
Counsel to the Association

cc: Ms. Felecia Davenport  
Program Analyst, Philadelphia Service Center (TA:SBSE:PC)