

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:1 PLR-111161-99

Date:

March 15, 2000

Legend

Fund =

Country =

This responds to the letter dated June 15, 1999, submitted on behalf of the Fund, requesting a ruling under § 301.7701 of the Procedure and Administration Regulations that the Fund is a “business entity” eligible to elect its classification for federal income tax purposes.

FACTS

The Fund is a “fonds commum de placement” (FCP) organized under the laws of Country for the purpose of investing in securities and other assets. The Fund enters into contracts with a Management Company, and a Custodian. The Fund is linked to the Management Company and Custodian by Management Regulations.

The Management Company manages the Fund on behalf of investors, including the purchase, sale, subscription, and exchange of any securities held by the Fund. The Management Company may exercise all rights directly or indirectly attached to the Fund’s assets. The Management Company is entitled to receive a periodic management fee based on the net asset value of the Fund.

The Custodian is appointed by the Management Company and is required to hold or to provide for the holding of the assets of the Fund. All cash and securities of

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the Fund are held by the Custodian on behalf of the Fund.

The Fund is a mutual investment umbrella fund consisting of three sub-funds. The three sub-funds invest only in securities and instruments that meet particular requirements. The investment objective of the Fund is to earn a high level of income while preserving capital and liquidity by investing in high-grade money market instruments.

By acquiring units in any of the sub-funds, every investor approves and fully accepts that the Management Regulations shall govern the relationship between the investor, the Management Company, and the Custodian. Ownership of a unit in one of the sub-funds affords investors the opportunity of having their investment spread over the complete range of securities held by the sub-fund. All units in the sub-funds have equal rights as to dividends, repurchase, and proceeds in liquidation.

By agreement between the Management Company and the Custodian: (1) a sub-fund may be liquidated at any time and the investors of such sub-fund will be allocated the net sale proceeds of the assets of the sub-fund; or (2) a sub-fund may be liquidated at any time and unit of another sub-fund may be allocated to the investors of the sub-fund being liquidated as contribution in kind for the assets of the liquidated sub-fund. Neither the Management Regulations nor local law requires any investor in the Fund to obtain the approval or consent of any other interest holder of the Management Company in order to transfer his/her interest in the Fund. Investors are liable only up to the amount contributed to the Fund.

LAW AND ANALYSIS

Whether an organization is an entity separate from its owners for federal tax purposes is a matter of federal tax law and does not depend on whether the organization is recognized as an entity under local law. Section 301.7701-1(a)(1). A joint venture or other contractual arrangement may create a separate entity for federal tax purposes if the participants carry on a trade, business, financial operation, or venture and divide the profits therefrom. Section 301.7701-1(a)(2).

Section 301.7701-3T(a) of the Temporary Regulations provides that a "business entity" that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes as provided in this section. The Fund represents that it is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7) or (8).

Section 301.7701-3T(a) further provides that an eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership, and an eligible entity with a single owner

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can elect to be classified as an association or to be disregarded as an entity separate from its owner. Section 301.7701-3(b) provides default classifications for eligible entities that do not make an election.

Section 301.7701-2(a) defines a “business entity”, for purposes of this section and § 301.7701-3, as any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner under § 301.7701-3) that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Code.

Section 301.7701-4(a) provides that, generally, an arrangement will be treated as a trust if the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility and, therefore, are not associates in a joint enterprise for the conduct of business for profit.

Section 301.7701-4(c) provides that an “investment” trust will not be classified as a trust if there is a power under the trust agreement to vary the investment of the certificate holders. See Commissioner v. North American Bond Trust, 122 F.2d 545 (2d Cir. 1941), cert. denied, 314 U.S. 701 (1942). An investment trust with multiple classes of ownership interests ordinarily will be classified as a business entity under § 301.7701-2; however, an investment trust with multiple classes of ownership interests in which there is no power under the trust agreement to vary the investment of the certificate holders, will be classified as a trust if the trust is formed to facilitate direct investment in the assets of the trust and the existence of multiples classes of ownership interests is incidental to that purpose. Section 301.7701-4(c)(1).

CONCLUSIONS

Based solely on the facts submitted and representations made, we conclude that the Fund is a “business entity” within the meaning of § 301.7701-2(a). The Fund represents that it is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7) or (8). Accordingly, we further conclude that the Fund is an eligible entity and can elect its classification for federal tax purposes as provided in § 301.7701-3T and § 301.7701-3.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the Power of Attorney on file with this office, a copy of this ruling is

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being sent to X's authorized representative.

Sincerely,

Signed/Dianna K. Miosi
Dianna K. Miosi
Chief, Branch 1
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
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