Dear :

This is in response to your request dated March 19, 2013, submitted by your authorized representative, as supplemented by correspondence dated April 2, 2013, April 4, 2013, June 11, 2013, September 30, 2013, February 11, 2014, March 2, 2014, April 8, 2014, April 25, 2014, May 8, 2014, and May 24, 2014, in which you request several rulings regarding the inclusion of certain non-resident aliens in Company A's employee stock ownership plan (the "Plan").

Company A is a federal government contractor . Company A is an S Corporation for federal income tax purposes.

Company A maintains the Plan, a stock bonus plan that is an employee stock ownership plan as described in section 4975(e)(7) of the Internal Revenue Code ("Code"). Company A has only one class of stock, 100% of which is owned by the Plan. The Plan is a leveraged employee stock ownership plan. Company A makes contributions and expects to pay dividends to be used by the Plan to make payments on its loan from Company A. The Plan currently has several hundred participants in the United States.

The Plan, as currently amended, permits certain "Local National Staff Employees" (or "LNSEs") to participate in the Plan beginning with the 2012 Plan Year. This provision is an exception to the Plan's general exclusion of non-resident aliens with no United States source income from the employer. Under the amendment, LNSEs who work in certain countries and territories listed on an exhibit to the amendment (the "Covered Countries and Territories") would be eligible to participate in the Plan. LNSEs who work in any of the Covered Countries and Territories are referred to in this ruling as "Eligible LNSEs."

The Plan defines an LNSE as an employee (as defined in the Plan) who (a) is not a United States citizen or in possession of an Alien Registration Card issued by U.S. Citizenship and Immigration Services, (b) performs services almost entirely outside the United States, and (c) is:

(1) employed directly by the Company or

(2) is hired locally in the foreign country and is employed by the Company either through

(a) a domestic or foreign entity owned by the Company and that is treated as a "disregarded entity" pursuant to Treas. Reg. Sec. 301.7701-1(a)(4);

(b) a branch office; or

(c) a local hiring office.

You represent that all of the Eligible LNSEs either:

(i) are employed by Company A, and paid wages either directly by Company A or through a payroll agency in the local jurisdiction;

(ii) are employed by a State C limited liability company that is a disregarded entity under section 7701 of the Code; or

(iii) are paid by a local entity that is a foreign eligible entity that has elected to be a "disregarded entity" under section 7701 of the Code.

You further represent that the Eligible LNSEs do not receive United States sourced income subject to tax in the United States under section 861(a)(3) of the Code.

As previously discussed with you, ruling requests number 3 and 5, as numbered in your letter dated March 19, 2013, are not being addressed in this ruling.

Based on the foregoing facts and representations, your authorized representatives have requested the following rulings:

1. The common stock of Company A, which constitutes its only class of outstanding stock, will qualify as "employer securities" under section 409(l) of the Code with respect to the LNSEs, all of whom are either employees of Company A or employees of one of the entities referenced herein that is treated as a "disregarded entity" pursuant to the Treasury Regulations promulgated under section 7701.

2. The compensation paid to LNSEs that is foreign sourced will be treated as "compensation" under section 415(c) of the Code.

3. The Company may deduct under section 404(a) of the Code the contributions it makes to the Plan on behalf of all individuals who are LNSEs and the compensation paid to such LNSEs will constitute "compensation" for purposes of the tax deduction limits of Code section 404(a).

With respect to Ruling Request 1, section 409(l)(1) of the Code defines the term "employer securities" as common stock issued by the employer (or by a corporation that is a member of the same controlled group) which is readily tradable on an established securities market.

Section 409(l)(2) of the Code provides that if there is no common stock which meets the requirements of paragraph (1), the term "employer securities" means common stock issued by the employer (or by a corporation which is a member of the same controlled group) having a combination of voting power and dividend rights equal to or in excess of:

(a) that class of common stock of the employer (or of any other such corporation) having the greatest voting power, and

(b) that class of common stock of the employer (or of any other such corporation) having the greatest dividend rights.

Section 301.7701-1 of the Income Tax Regulations (the "Regulations") prescribes the classification of various organizations for federal tax purposes. 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 301.7701-2(a) of the Regulations provides that for purposes of this section and section 301.7701-3, a business entity with only one owner is classified as a corporation or is disregarded; if the entity is disregarded, its activities are treated in the same manner as a sole proprietorship, branch, or division of the owner.

In this case, you have represented that the stock of Company A held by the Plan is the only class of stock outstanding, and therefore meets the dividend and voting rights requirements of section 409(l) of the Code.

You have further represented that all of the Eligible LNSEs are employed either (a) directly by Company A, (b) by a domestic LLC that is treated as a disregarded entity for tax purposes pursuant to section 301.7701-3(b)(1) of the Regulations, or (c) by a foreign entity that is treated as a disregarded entity under section 301.7701-3(b)(2)(i) of the Regulations.

Under the represented facts, the Eligible LNSEs are all employed either by Company A, or by an entity owned by Company A that is a "disregarded entity" under section 301.7701 of the Code. To the extent that these disregarded entities have no separate existence for federal income tax purposes, each disregarded entity would be treated as a division of Company A for income tax purposes.

Accordingly, based on your representations, including the representation that the common stock of Company A otherwise meets the requirements of section 409(l)(2) of the Code, we conclude that the common stock of Company A qualifies as "employer securities" under section 409(l) of the Code with respect to the Eligible LNSEs.

With respect to Ruling Request 2, section 415(a) of the Code provides that a trust which is part of a pension, profit sharing, or stock bonus plan shall not constitute a qualified trust if it provides for contributions to a defined contribution plan with respect to a participant which exceed the limitation of subsection (c) of such section.

Section 415(c) of the Code provides that contributions and other additions with respect to a participant, when expressed as an annual addition, may not exceed the greater of (a) a specified dollar amount (adjusted annually for cost of living increases pursuant to section 415(d)), or (b) 100 percent of the participant's compensation.

Section 861(a)(3) of the Code defines income from sources within the United States as including compensation for labor or personal services performed in the United States (with exceptions for services performed in the United States that meet certain conditions).

Section 872(a) of the Code provides that in the case of a non-resident alien individual, gross income includes only (1) gross income which is derived from sources within the United States and which is not effectively connected with the conduct of a trade or business within the United States, and (2) gross income which is effectively connected with the conduct of a trade or business in the United States.

Section 1.415(c)-2(c)(1) of the Regulations provides that for purposes of the limitation in section 415 of the Code, "compensation" includes the employee's wages, salaries, fees for professional services, and any other amount received for personal services actually rendered in the course of employment with the employer maintaining the plan, to the extent that the amounts are includible in gross income (or would have been received and includible in gross income but for an election under section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b)).

Section 1.415(c)-2(c)(4) of the Regulations provides that "compensation" does not include amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the employee and are not salary reduction amounts described in section 125).

Section 1.415(c)-2(g)(5)(i) of the Regulations provides that amounts paid to an individual as compensation for personal services do not fail to be treated as compensation under paragraph (b)(1) of such section (and are not excluded from the definition of compensation pursuant to paragraph (c)(4) of such section) merely because those amounts are not includible in the individual's gross income on account of the location of the services.

Similarly, section 1.415(c)-2(g)(5)(i) of the Regulations provides that compensation for services does not fail to be treated as compensation under paragraph (b)(1) (and is not excluded from the definition of compensation pursuant to paragraph (c)(4) of such section) merely because those amounts are paid by an employer with respect to which all compensation paid to the participant by such employer is excluded from gross income. Thus, for example, the determination of whether an amount is treated as compensation under paragraph (b)(1) or (2) of such section is made without regard to the exclusions from gross income under section 872, 873, 894, 911, 931, and 939.

In this case, the Plan defines an LNSE as including only individuals who perform services almost entirely outside the United States, and you have represented that the Eligible LNSEs do not receive United States sourced income subject to tax in the United States under section 861(a)(3) of the Code. Section 872(a) of the Code addresses whether compensation of a non-resident alien that is not United States sourced income is excluded from gross income.

Under section 1.415(c)-2(g)(5)(i) of the Regulations, an employee's compensation for services does not fail to be included as compensation for purposes of section 415 of the Code merely because such compensation is excluded from gross income on the basis of the location of the services, such as under section 872 of the Code. Such compensation is not compensation that receives special tax benefits, such as premiums for group term life insurance, as described in section 1.415(c)-2(c)(4) of the regulations.

Accordingly, based on the representations described above, we conclude that the amounts paid to an Eligible LNSE from Company A or from the disregarded entities as compensation for personal services is treated as "compensation" for purposes of section 415 of the Code, regardless of whether such compensation is excluded from the Eligible LNSE's gross income based on the location of the services, assuming it otherwise meets the requirements of section 415(c).

With respect to ruling request 3, section 404(a)(3)(A)(i) of the Code provides that contributions by an employer to a stock bonus or profit-sharing trust are deductible in the taxable year in which paid, if such taxable year ends within or with a taxable year of the trust with respect to which the trust is exempt under section 501(a), in an amount not in excess of the greater of:

(a) 25 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under the stock bonus or profit-sharing plan, or

(b) the amount such employer is required to contribute to such trust under section 401(k)(11) for such year.

In this case, you have represented that the entities that employ the Eligible LNSEs are disregarded entities under section 301.7701-2(a) of the Regulations, and thus are treated for tax purposes as unincorporated divisions of Company A. In addition, as discussed earlier, we have concluded that the amounts paid to such employees as compensation for personal services constitutes "compensation" for purposes of section 415 of the Code.

Accordingly, we conclude that Company A may deduct under section 404(a) the contributions it makes to the Plan on behalf of participants who are Eligible LNSEs, subject to the limitations on deductions and other generally applicable conditions for such deductions. In addition, we conclude that the compensation paid to such participating LNSEs will constitute "compensation" for purposes of the deduction limits of Code section 404(a).

This ruling letter is based on the assumption that the Plan is otherwise qualified under Code sections 401(a) and 4975(e)(7) at all relevant times.

This letter does not constitute a ruling on whether any entity owned by Company A is a disregarded entity under section 301.7701 of the Code or whether income received by Eligible LNSEs is or is not United States source income within the meaning of section 861(a)(3) of the Code.

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

A copy of this ruling letter has been sent to your authorized representative in accordance with a power of attorney on file with this office.

If you wish to inquire about this ruling, please contact (ID) at ( ) - . Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

Laura B. Warshawsky, Manager,
Employee Plans Technical Group 3

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose

cc: