

## COORDINATION COUNCIL FOR NORTH AMERICAN AFFAIRS

123 PO AI ROAD, TAIPEI, TAIWAN  
REPUBLIC OF CHINA

JUN - 1 1988

Ref No: (77) CCNAA 8733

May 31, 1968

Communications Programs Office  
 American Institute in Taiwan  
 Taipei Office  
 7, Lane 134, Hsin Yi Road, Sec. 3, Taipei

Attention: Mr. Philip T. Lincoln, Jr.  
 Chief  
 Economic/Commercial Section

Dear Mr. Lincoln:

I have the honor to acknowledge receipt of your letter (AIT B-366) of today's date, which reads as follows:

"Dear Mr. Wang:

The American Institute in Taiwan (AIT) proposes to the Coordination Council for North American Affairs (CCNAA) the conclusion of an agreement amending the agreement of February 8 and 26, 1972 to exempt from income tax, on a reciprocal basis, income derived by residents/citizens and corporations of the territory represented by the other party from the international operation of ships and aircraft. The terms of the agreement are as follows:

-- The AIT, in accordance with sections 872(b) and 883(a) of the Internal Revenue Code, and 22 U.S.C. 3305, agrees to exempt from tax gross income derived from the international operation of ships or aircraft by individuals who are residents of the territory represented by CCNAA (other than citizens of the territory represented by AIT) and corporations organized in the territory represented by CCNAA. This exemption is granted on the basis of equivalent exemptions granted by CCNAA to citizens of the territory represented by AIT (who are not residents of the territory represented by CCNAA) and to corporations organized in the territory represented by AIT (which are not subject to tax by the territory represented by CCNAA on the basis of residence).

-- In the case of a corporation, the exemption shall apply only if the corporation meets either of the following conditions:

(1) more than fifty percent of the value of the corporation's stock is owned, directly or indirectly, by individuals who are residents of the territory represented by CCNAA or of a country which grants a reciprocal exemption to citizens and corporations of the territory represented by AIT; or

Page 2  
(77) CCNAA 0733  
Mr. Philip T. Lincoln, Jr.  
AIT

(2) the corporation's stock is primarily and regularly traded on an established securities market in the territory represented by CCNAA, or is wholly owned by a corporation whose stock is so traded and which is also organized in the territory represented by CCNAA.

For purposes of the exemption from taxation of the territory represented by AIT, subparagraph (2) will be considered to be satisfied if the corporation is a "controlled foreign corporation" under the Internal Revenue Code.

-- Gross income includes all income derived from the international operation of ships or aircraft, including income from the rental of ships or aircraft on a full (time or voyage) basis and income from the rental of containers and related equipment which is incidental to the international operation of ships or aircraft. It also includes income from the rental on a bareboat basis of ships and aircraft used for international transport.

-- The AIT considers that this letter, together with the CCNAA's reply letter confirming that CCNAA agrees to these terms, constitutes an agreement which shall enter into force on the date of CCNAA's reply letter and shall have effect with respect to taxable years beginning on or after January 1, 1987.

-- Either party may terminate this agreement by giving written notice of termination."

In reply, I have the pleasure to confirm that CCNAA agrees to the above proposal in your letter, and that your proposal, together with this reply, constitutes an agreement which enters into force on today's date.

Sincerely yours,

  
James W. O'Connell  
Chief, Business Division

JW/sc



AMERICAN INSTITUTE IN TAIWAN  
 TAIPEI  
 7, LANE 134, HSIN YI ROAD, SEC 3, TAIPEI, TAIWAN  
 TELEPHONE: 709-2000 CABLE: AITAIWAN TAIPEI

美國在台協會台北辦事處  
 台北市信義路三段134巷7號  
 電話: 709-2000

May 31, 1988  
 B-366

Mr. James W.C. Wang  
 Chief, Business Division  
 Coordination Council for  
 North American Affairs  
 133 Po Ai Road  
 Taipei

Dear Mr. Wang:

The American Institute in Taiwan (AIT) proposes to the Coordination Council for North American Affairs (CCNAA) the conclusion of an agreement amending the agreement of February 8 and 26, 1972 to exempt from income tax, on a reciprocal basis, income derived by residents/citizens and corporations of the territory represented by the other party from the international operation of ships and aircraft. The terms of the agreement are as follows:

-- The AIT, in accordance with sections 872(b) and 883(a) of the Internal Revenue Code, and 22 U.S.C. 3305, agrees to exempt from tax gross income derived from the international operation of ships or aircraft by individuals who are residents of the territory represented by CCNAA (other than citizens of the territory represented by AIT) and corporations organized in the territory represented by CCNAA. This exemption is granted on the basis of equivalent exemptions granted by CCNAA to citizens of the territory represented by AIT (who are not residents of the territory represented by CCNAA) and to corporations organized in the territory represented by AIT (which are not subject to tax by the territory represented by CCNAA on the basis of residence).

-- In the case of a corporation, the exemption shall apply only if the corporation meets either of the following conditions:

(1) more than fifty percent of the value of the corporation's stock is owned, directly or indirectly, by individuals who are residents of the territory represented by CCNAA or of a country which grants a reciprocal exemption to citizens and corporations of the territory represented by AIT; or

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Mr. James W.C. Wang  
 CCNAA  
 Page Two

(2) the corporation's stock is primarily and regularly traded on an established securities market in the territory represented by CCNAA, or is wholly owned by a corporation whose stock is so traded and which is also organized in the territory represented by CCNAA.

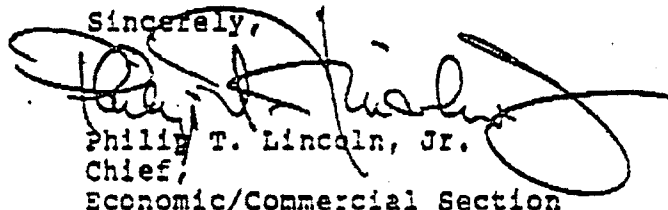
For purposes of the exemption from taxation by the territory represented by AIT, subparagraph (1) will be considered to be satisfied if the corporation is a "controlled foreign corporation" under the Internal Revenue Code.

-- Gross income includes all income derived from the international operation of ships or aircraft, including income from the rental of ships or aircraft on a full (time or voyage) basis and income from the rental of containers and related equipment which is incidental to the international operation of ships or aircraft. It also includes income from the rental on a bareboat basis of ships and aircraft used for international transport.

-- The AIT considers that this letter, together with the CCNAA's reply letter confirming that CCNAA agrees to these terms, constitutes an agreement which shall enter into force on the date of CCNAA's reply letter and shall have effect with respect to taxable years beginning on or after January 1, 1987.

-- Either party may terminate this agreement by giving written notice of termination.

Sincerely,



Philip T. Lincoln, Jr.  
 Chief,  
 Economic/Commercial Section

bcc: MOF - Rua Chuan  
 MOC - Fan Kuang-you  
 L/T - State Dept.

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## COORDINATION COUNCIL FOR NORTH AMERICAN AFFAIRS

133 FO AI ROAD, TAIPEI, TAIWAN  
REPUBLIC OF CHINA

MAY 27 1988

Ref No: (77) CCNAA 0712

May 27, 1988

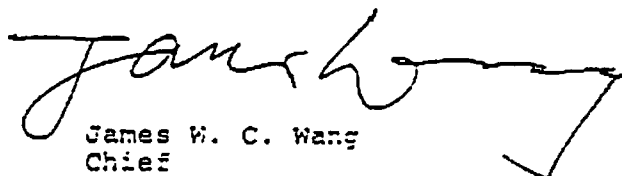
Communications Programs Office  
American Institute in Taiwan  
Taipei Office  
7, Lane 134, Hsin Yi Road, Sec. 3, TaipeiAttention: Mr. Philip T. Lincoln, Jr.  
Chief  
Economic/Commercial Section

Dear Mr. Lincoln:

Further to my letter (CCNAA 0706) of May 26, 1988 regarding the CCNAA/AIT agreement on reciprocal exemption from income tax of income derived from the international operation of ships and aircraft, I wish to state that if the relative American statutes should be changed in the future to remove the "citizen/resident asymmetry" in the said agreement by referring to residents of both countries, CCNAA and AIT should then exchange letters accordingly so to bring the agreement in conformity with the relative statutes.

Thank you for your attention to this matter.

Sincerely yours,

James W. C. Wang  
Chief  
Business Division

JW/sc



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TAIPEI OFFICE  
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電話: 709-2000

April 5, 1988  
AIT B-236

Mr. James W.C. Wang  
Chief, Business Division  
Coordination Council for  
North American Affairs  
133 Po Ai Road  
Taipei, Taiwan

Dear Mr. Wang:

Further to the most recent CCNAA letter on this subject, concerning the AIT/CCNAA Agreement to exempt from income tax income derived from air and shipping operations, I am pleased to inform you that to date, the United States has concluded agreements with ten countries: Argentina, the Bahamas, Bolivia, Colombia, Denmark, El Salvador (aviation only), Liberia, Panama, Sweden and Venezuela. The Internal Revenue Service ruled that Turkey also satisfied the requirements (including the citizen/resident asymmetry) of U.S. Law. Similar notes may be signed shortly with other parties. Each contains an exemption by the U.S. of the other country's residents and an exemption by the other country of U.S. citizens.

A Legislative Amendment is being proposed to remove the asymmetry by referring to residents of both countries. It is part of a massive bill of technical corrections to the 1986 Tax Reform Act and is not likely to be enacted until late this year. Waiting for new legislation before concluding the agreement could mean paying 1987 taxes.

The Exchange of Notes does not have the force of law itself, but simply implements statutory authority. Thus, if the statute changes, the agreement must conform to the changed statute. AIT does not expect further changes beyond the technical corrections

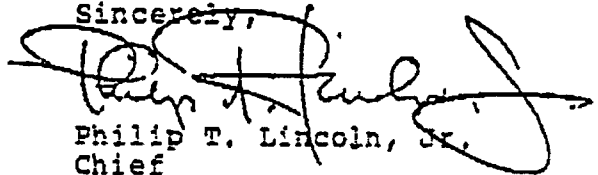
Mr. James W.C. Wang  
AIT B-236  
Page 2

bill, and would in any event request a delayed effective date if a change were proposed, but the decision is a legislative one so AIT cannot make a commitment to that effect.

Please provide this information to the relevant authorities.

Thank you for your continuing cooperation.

Sincerely,



Philip T. Lincoln, Jr.  
Chief  
Economic/Commercial Section

AIT B-236, AIT/CCNAA Agreement on Exempting Shipping and  
Aircraft Income from Taxation

DRAFTED: ECON: PHChase 5444e

bcc: Kelly Hsieh, MOFA  
Huan Chuan, International Taxation Office, MCF  
Pan Kuang-you, MOC



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## COORDINATION COUNCIL FOR NORTH AMERICAN AFFAIRS

133 PO AI ROAD, TAIPEI, TAIWAN  
REPUBLIC OF CHINA

Ref No: (77) CCNAA 0706

May 26, 1988

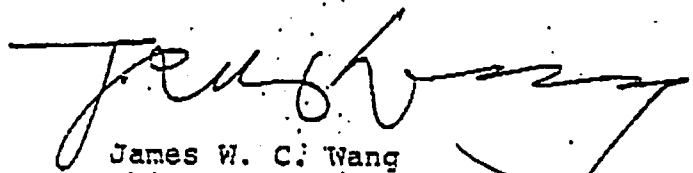
Communications Programs Office  
American Institute in Taiwan  
Taipei Office  
7, Lane 134, Hsin Yi Road, Sec. 3, TaipeiAttention: Mr. Philip T. Lincoln, Jr.  
Chief  
Economic/Commercial Section

Dear Mr. Lincoln:

Reference is made to your letters (AIT B-151, B-236) of March 2 and April 5 respectively, regarding the CCNAA/AIT agreement on reciprocal exemption from income tax of income derived from the international operation of ships and aircraft.

In reply, I wish to inform you that the draft letter proposed by AIT is agreeable to us.

Sincerely yours,

James W. C. Wang  
Chief  
Business Division

JW/sc



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 電話: 709-2000

March 2, 1988  
 B-151

Mr. James W.C. Wang  
 Chief, Business Division  
 Coordination Council for  
 North American Affairs  
 132 Fo Ai Road  
 Taipei, Taiwan

Dear Mr. Wang:

I write in reference to your December 26, 1987 letter (76 CCNAA 1982) which forwarded CCNAA's revised draft of the proposed exchange of notes concerning reciprocal exemption from income tax of income derived from the international operation of ships and aircraft.

Unfortunately, AIT will be unable to accept some of the changes proposed by CCNAA. In particular, the CCNAA draft has:

- a) revised references to individuals from those resident in the territory represented by CCNAA to citizens of that territory; and
- b) changed the definition of corporation from one of legal entities organized in the territories represented by AIT and CCNAA to "corporations which are incorporated under the laws of and whose business are managed and controlled in" the respective territories.

In the case of individuals, the territory represented by AIT taxes on the basis of citizenship, not only residence. Section 872(b) of the Internal Revenue Code accordingly requires that the other party to a bilateral agreement such as this exempt citizens of the territory represented by AIT. However, since other areas, including the territory represented by CCNAA, tax on the basis of residence and do not tax non-resident citizens, the exemption on the part of the territory represented by AIT can only extend to residents (not including non-resident citizens) of that party. In effect, AIT agrees to exempt individuals taxed by the other party (its residents) and asks the other party to exempt individuals taxed by AIT (our citizens).

Mr. James W.C. Wang  
CCNAA  
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This asymmetry is specifically written into the relevant statutes of the territory represented by AIT and must be retained. We hope that CCNAA will be able to accept this, noting that the distinction is unlikely to have any practical significance. Non-resident citizens will rarely be involved in international operation of ships or aircraft. Even resident citizens are highly unlikely to engage in such operations as individuals; they are almost certain to form a corporation or other limited liability company if only to protect their personal assets from liability or loss claims.

In the case of corporations, AIT taxes all corporations organized under the laws of the territory represented by AIT, no matter where they are managed. Conversely, the territory represented by AIT does not tax a corporation managed in that territory if it is not incorporated there. Thus, we ask that CCNAA exempt a corporation organized under AIT's laws even if that corporation is managed in Canada, because it will be subject to the relevant taxes in the territory represented by AIT. It should be noted that if CCNAA taxes a corporation only if it is both incorporated and managed in the territory represented by CCNAA, AIT can accommodate this by limiting its exemption to such cases. This would, however, result in another asymmetry in the notes.

In addition, AIT will unfortunately be unable to commit itself to the termination notification procedure suggested by CCNAA. While it is unlikely that the law underlying this exchange of notes will be changed any time in the near future, if the statute is changed in a way that is inconsistent with the note, the note will cease to become effective as of the date of the new law. Typically, such changes would be effective at the beginning of the next tax (i.e., calendar) year, but that cannot be guaranteed, nor can it be guaranteed that any amendments would be enacted in time to give notice by the June 30 deadline suggested by CCNAA. (The 1986 Tax Reform Act, for instance, was passed October 22, 1986.) In sum, we cannot commit ourselves to a termination clause that we may not be able to honor.

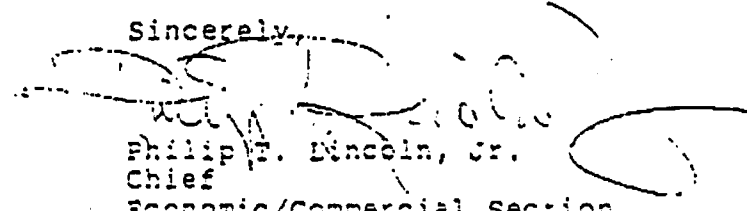
James W.C. Wang  
CCNAA  
Page 3

For your information, I am attaching another draft of the exchange of notes which takes into account some of the other changes proposed in CCNAA's revised draft. I am also enclosing copies of the relevant statutes.

Please bring this letter and its attachments to the attention of the relevant authorities as soon as possible. We look forward to completing the exchange of notes before the middle of March.

Thank you for your continuing cooperation.

Sincerely,



Philip T. Lincoln, Jr.  
Chief  
Economic/Commercial Section

DRAFT LETTER PROVIDING FOR  
RECIPROCAL EXEMPTION FROM INCOME TAX  
OF INCOME DERIVED FROM  
THE INTERNATIONAL OPERATION OF  
SHIPS AND AIRCRAFT

The American Institute in Taiwan (AIT) proposes to the Coordination Council for North American Affairs (CCNAA) the conclusion of an agreement amending the agreement of February 8 and 26, 1972 to exempt from income tax, on a reciprocal basis, income derived by residents/citizens and corporations of the territory represented by the other party from the international operation of ships and aircraft. The terms of the agreement are as follows:

-- The AIT, in accordance with sections 872(b) and 883(a) of the Internal Revenue Code, and 22 U.S.C. 3305, agrees to exempt from tax gross income derived from the international operation of ships or aircraft by individuals who are residents of the territory represented by CCNAA (other than citizens of the territory represented by AIT) and corporations organized in the territory represented by CCNAA. This exemption is granted on the basis of equivalent exemptions granted by CCNAA to citizens of the territory represented by AIT (who are not residents of the territory represented by CCNAA) and to corporations organized in the territory represented by AIT (which are not subject to tax by the territory represented by CCNAA on the basis of residence).

-- In the case of a corporation, the exemption shall apply only if the corporation meets either of the following conditions:

(1) more than fifty percent of the value of the corporation's stock is owned, directly or indirectly, by individuals who are residents of the territory represented by CCNAA or of a country which grants a reciprocal exemption to citizens and corporations of the territory represented by AIT; or

(2) the corporation's stock is primarily and regularly traded on an established securities market in the territory represented by CCNAA, or is wholly owned by a corporation whose stock is so traded and which is also organized in the territory represented by CCNAA.

For purposes of the exemption from taxation by the territory represented by AIT, subparagraph (1) will be considered to be satisfied if the corporation is a "controlled foreign corporation" under the Internal Revenue Code.



## Draft Reply Letter

The Coordination Council for North American Affairs (CCNAA) acknowledges receipt of the American Institute in Taiwan (AIT) letter of today's date proposing the terms of a reciprocal exemption from income derived from the international operation of ships and aircraft.

-- The CCNAA, in accordance with Article 5 of the Tax Enforcement Law, agrees to exempt from tax gross income derived from the international operation of ships or aircraft by citizens of the territory represented by AIT (who are not residents of the territory represented by CCNAA) and corporations organized in the territory represented by AIT (other than corporations which are subject to tax by the territory represented by CCNAA on the basis of residence).

-- In the case of a corporation, the exemption shall apply only if the corporation meets either of the following conditions:

(1) more than fifty percent of the value of the corporation's stock is owned, directly or indirectly, by individuals who are citizens of territory represented by AIT or of another country which grants a reciprocal exemption to residents of the territory represented by CCNAA and corporations organized in the territory represented by CCNAA; or

(2) the corporation's stock is primarily and regularly traded on an established securities market in the territory represented by AIT, or is wholly owned by a corporation whose stock is so traded and which is also organized in the territory represented by AIT.

-- Gross income includes all income derived from the international operation of ships or aircraft, including income from the rental of ships or aircraft on a full (time or voyage) basis and income from the rental of containers and related equipment which is incidental to the international operation of ships or aircraft. It also includes income from the rental on a bareboat basis of ships and aircraft used for international transport.

-- The CCNAA confirms that the AIT's letter and this reply letter constitute an agreement which shall enter into force on today's date and shall have effect with respect to taxable years beginning on or about January 1, 1957.

-- Either party may terminate this agreement by giving written notice of termination.

The relevant Internal Revenue Code sections are as follows:

Section 872(b)

-- The following items shall not be included in gross income of a nonresident alien individual, and shall be exempt from taxation under this subtitle:

(1) Ships operated by certain nonresidents. Gross income derived by an individual resident of a foreign country from the operation of a ship or ships if such foreign country grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.

(2) Aircraft operated by certain nonresidents. Gross income derived by an individual resident of a foreign country from the operation of aircraft if such foreign country grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.

Section 883(a)

-- The following items shall not be included in gross income of a foreign corporation, and shall be exempt from taxation under this subtitle:

(1) Ships operated by certain foreign corporations. Gross income derived by a corporation organized in a foreign country from the operation of a ship or ships if such foreign country grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.

(2) Aircraft operated by a certain foreign corporation. Gross income derived by a corporation organized in a foreign country from the operation of aircraft if such foreign country grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.