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September 15th Due Date for Waiver of Filing Deadline for Foreign Taxpayers

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Nonresident aliens and foreign corporations engaged in a trade or business in the United States (U.S. trade or business) are required to file U.S. federal income tax returns. This requirement also applies to most investments in U.S. real property, regardless of whether the investment is active or passive, and regardless of whether the nonresident alien or foreign corporation makes the investment directly or through a partnership. In the case of a U.S. trade or business conducted through a partnership, the filing of a U.S. partnership return does not satisfy the filing requirement applicable to the partnership's foreign partners.

If a nonresident alien or foreign corporation does not file a U.S. federal income tax return before a specified deadline, all deductions from gross income that otherwise would be permitted generally are automatically disallowed. With limited exceptions, the deadline is 16 months after the due date for the return, in the case of a nonresident alien, and 18 months after the due date for the return, in the case of a foreign corporation.

The IRS recently issued Notice 2003-38 announcing a compliance initiative intended to encourage nonresident aliens and foreign corporations to file delinquent returns. The Notice provides that, if certain requirements are satisfied, the IRS will waive the filing deadline, with the result that nonresident aliens and foreign corporations will be able to claim allowable deductions from the gross income relating to their U.S. trade or business income. A foreign taxpayer who filed a U.S. federal income tax return (including a protective return) for a taxable year prior to the year for which the waiver is sought cannot qualify. A foreign taxpayer also cannot qualify for the waiver if the IRS has contacted the taxpayer regarding the failure to file, has initiated an examination or investigation of the taxpayer, or has notified the taxpayer that it intends to commence an examination or investigation.

If the requirements of the Notice are satisfied, the waiver is automatic. If a foreign taxpayer files all required returns for taxable years ending in 1996 and thereafter pursuant to the Notice, the IRS will not assert any potential U.S. federal income tax liability for taxable years ending prior to 1996. For any tax return filed pursuant to the Notice, the IRS will waive the fraudulent failure to file penalty, but the foreign taxpayer will be liable for statutory interest and other penalties, as determined by the IRS.

A nonresident alien or foreign corporation that wishes to qualify for the waiver must file the required U.S. federal income tax return on or before September 15, 2003, and pay any reported tax

liability with such return. Therefore, a taxpayer that wishes to request a waiver under the Notice must act quickly.

If you wish to learn more about the possibility of qualifying for a waiver of the filing deadline pursuant to the Notice, please call Sanford H. Goldberg at (212) 903-8745, Howard J. Levine at (202) 293-3400, Mark David Rozen at (212) 903-8743, Abraham Leitner at (212) 903-8736, or Michael J. Miller at (212) 903-8757.

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