Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:
August 26, 2002

In Re:

Legend:

Taxpayer	=
Subsidiary	=
Shareholder A	=
Shareholder B	=
Country X	=
Amount 1	=
Amount 2	=

Dear :

This is in response to a letter dated July 11, 2001, in which Taxpayer requested rulings with respect to whether it may reelect under section 953(d) of the Internal Revenue Code ("Code") to be treated as a domestic corporation for all purposes of the Code. Additional information was submitted on March 4, 2002. The information submitted for consideration is substantially as set forth below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request, it is subject to verification on examination.

Taxpayer is a Country X corporation, incorporated on . Shareholder A and Shareholder B, husband and wife, own 100% of the outstanding shares of Taxpayer. Shareholder A and Shareholder B are U.S. persons, under section 957(c), and U.S. shareholders of Taxpayer, under section 951(b), and Taxpayer is a controlled foreign corporation ("CFC") under sections 957(a) and 953(d)(1)(A).

Since its incorporation, Taxpayer has been engaged in the trade or business of reinsuring U.S. accidental and health risks underwritten by unrelated third party ceding companies. Taxpayer's Board of Directors meetings are held in Country X, and its minutes are kept in Country X, as well.

Taxpayer wholly owns Subsidiary, which was formed to enable Taxpayer to conduct certain lending activity and to make certain investments that could only be done indirectly under the rules of Country X. Subsidiary elected under Treas. Reg. § 301.7701-3 to be treated as a disregarded entity for federal income tax purposes effective on .

At the time of its incorporation, Taxpayer's only business activity was reinsuring U.S. risks of an unrelated U.S. insurance company. It was determined that, because of these activities, Taxpayer probably was engaged in a U.S. trade or business and that all of its income was U.S. source income effectively connected with the conduct of that trade or business ("ECI"), under section 864(c). To achieve administrative simplicity in tax reporting and to avoid the imposition of the branch profits tax, under section 884, on its U.S. trade or business profits, Taxpayer made an election under section 953(d) to be treated as a domestic corporation effective the first day of its incorporation. From , Taxpayer was subject to U.S. tax as a domestic insurance corporation.

During , Taxpayer began planning to expand its foreign operations. Taxpayer believed that the restructuring of Subsidiary's insurance market would increase the need for reinsurance capacity in the global market and create new opportunities for it to reinsure non-U.S. risks. Taxpayer determined that, as it began to reinsure more non-U.S. risks, it would benefit from being taxed as a CFC rather than as a domestic insurance company. Therefore, Taxpayer requested a termination of the section 953(d) election in accordance with Notice 89-79, 1989-2 C.B. 392. The Commissioner consented to the termination effective . Until the date of termination, all of Taxpayer's earnings and profits were attributable to U.S. source ECI.

After the termination of the section 953(d) election, Taxpayer actively pursued the reinsurance of non-U.S. risks. These activities were unprofitable for Taxpayer. For and the four years thereafter, Taxpayer filed Forms 1120-F reporting U.S. effectively connected taxable losses. As of the close of , Taxpayer had a U.S. effectively connected operating loss carryforward of Amount 1 and a U.S. effectively

connected capital loss carryforward of Amount 2. Thus, Taxpayer had no positive earnings and profits attributable to through .

Taxpayer intends to withdraw from this loss business by shifting the focus of its business activities back to the reinsurance of U.S. risks. Since substantially all future reinsurance underwriting activities will be of United States risks, Taxpayer could be subject to the branch profits tax on this U.S. source ECI. Thus, pursuant to Notice 89-79, Taxpayer requests permission to reelect under section 953(d) to be treated as a domestic corporation for federal income tax purposes, effective for its taxable year beginning .

Section 953(d) allows a foreign corporation to elect to be treated as a U.S. corporation for all purposes of the Code, provided that such corporation is a CFC under the special definition in section 953(d)(1)(A), would be taxable as an insurance company under Part I or II of subchapter L if it were a domestic corporation, and waives all benefits granted by the United States under any treaty. A foreign corporation that makes this election will be subject to tax in the United States on its worldwide income. Because it is treated as a U.S. corporation for all purposes of the Code, such corporation will not be subject to the branch profits tax or the branch-level interest tax imposed by section 884.

Notice 89-79, 1989-2 C.B. 392, provides the substantive and procedural rules regarding the election under section 953(d). To be effective for a taxable year, the election must be filed by the due date prescribed in section 6072(b) (with extensions) for the U.S. income tax return that is due if the election becomes effective. Generally, the election is effective for the first taxable year for which it is made and for each subsequent taxable year in which the requirements of Notice 89-79 are satisfied. The Commissioner may terminate the election pursuant to a request of the electing corporation. If an election is terminated, the foreign corporation and its successors will be barred from making another election under section 953(d) without the consent of the Commissioner.

Section 953(d)(5) provides that, for purposes of section 367, if a corporation makes a section 953(d) election for a taxable year and the election ceases to apply for a subsequent taxable year, the corporation will be treated as a domestic corporation transferring (as of the first day of the subsequent taxable year) all of its property to a foreign corporation in connection with an exchange to which section 354 applies.

When a section 953(d) election is terminated, U.S. shareholders of the foreign corporation may be liable for subpart F inclusions for taxable years in which the revocation is in effect. Further, the foreign corporation and its premium payors may be liable for the excise tax on premiums for insurance or reinsurance issued by the foreign corporation.

Taxpayer represents that, upon the termination of its prior section 953(d) election, no gain was recognized, for purposes of section 367, on the deemed asset transfer under section 953(d)(5). Taxpayer also represents that, for the tax years following the termination of its section 953(d) election and prior to , Shareholder A and Shareholder B properly included in gross income their pro rata share of any subpart F income of Taxpayer, under section 951(a), and any excise tax imposed under section 4371 on the premiums for insurance or reinsurance issued by the Taxpayer was properly paid. Further, Taxpayer represents that it obtained no incremental tax benefit following the termination of its section 953(d) election.

Section 953(d)(4)(A) provides that, for purposes of section 367, any foreign corporation making an election under section 953(d) will be treated as transferring, as of the first day of the first taxable year for which the election is effective, all of its assets to a domestic corporation in connection with an exchange to which section 354 applies. Taxpayer represents that if it is permitted to reelect under 953(d), such reelection will qualify as a reorganization described in section 368(a)(1)(F).

Based on the information submitted and the representations made, we conclude the following:

1. Taxpayer may reelect under section 953(d) to be treated as a domestic corporation for all purposes of the Code effective , provided Taxpayer satisfies the time for filing requirement and other requirements for making the section 953(d) election in accordance with Notice 89-79.

No opinion is expressed or implied concerning the tax consequences of any aspect of the transaction or item not discussed or referenced in this letter. Specifically, no opinion is expressed or implied regarding the application of section 367(b) and section 1248 to Taxpayer's reelection under section 953(d). See section 367 and section 1248.

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

A copy of this ruling must be attached to any tax return to which it is relevant.

In accordance with the Power of Attorney on file with this office, a copy of this ruling is forwarded to the taxpayer and its authorized representative.

Sincerely,
Valerie A. Mark Lippe
Senior Technical Review, Branch 2
Office of Associate Chief Counsel
(International)