Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Refer Reply To:
CC:INTL – PLR-166961-03
Date:
December 2, 2005

In Re:

LEGEND

Taxpayer =

CPA Firm One =
CPA Firm Two =
Date One =
Date Two =
Date Three =
Date Four =
Date Five =
Date Six =
Date Seven =
Date Eight =
Year One =
Year Two =
Year Three =
Year Four =
Year Five =
Year Six =
Year Seven =

Country A =
Country B =
Country C =
Country D =

Dear :

This is in response to a letter dated July 8, 2003, in which Taxpayer requests an extension of time under Treas. Reg. § 301.9100-3 to file the following: (1) the elections and agreements described in Treas. Reg. § 1.1503-2(g)(2)(i) ("(g)(2) elections") with respect to dual consolidated losses incurred by Taxpayer in tax years ended on Date One through Date Six and (2) the annual certifications required under Treas. Reg. § 1.1503-2(g)(2)(iv)(B), in accordance with Schedule A, which is attached to and made a part of this ruling letter. Additional information was submitted in letters dated April 13, April19, September 8 and November 15, 2005. The information submitted for consideration is substantially as set forth below.

The ruling contained in this letter is predicated upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

Taxpayer relied upon both its own Tax Department and outside tax advisors to ensure that it complied with applicable U.S. income tax laws. Taxpayer's Tax Department prepared and filed the Federal income tax returns for the Taxpayer U.S. consolidated group for the applicable tax years. Taxpayer engaged CPA Firm One to review its consolidated income tax return for the taxable years ending Date One through Date Two. In addition to their review of the consolidated return, CPA Firm One prepared Taxpayer's (g)(2) elections for tax years ending on Date One through Date Four . Taxpayer prepared (g)(2) elections for tax years ending on Date Five through Year Four. In Year Six, Taxpayer engaged CPA Firm Two to review its consolidated income tax return for the taxable year ending on Date Six.

Based upon Taxpayer's and CPA Firm One's understanding of the dual consolidated loss regulations, (g)(2) elections were not needed for certain of Taxpayer's foreign losses, because such losses would not constitute dual consolidated losses due to the fact that the losses could not be used to offset the income of any other person under the income tax laws of a foreign country. Based upon Taxpayer's and CPA Firm One's interpretation of the dual consolidated loss regulations, they did not believe that elections under Treas. Reg. § 1.1503-2(g)(2) were required for certain of Taxpayer's foreign losses, but (g)(2) elections were filed anyway as a protective measure to ensure the deductibility of Taxpayer's losses.

In preparing the (g)(2) elections for taxable Years One through Two, CPA Firm One inadvertently failed to follow the format of its template in determining the information required to be included in the election statements, and therefore did not identify lower-

tier separate units and make separate (g)(2) elections for the lower-tier separate units. Also, certain (g)(2) elections may have been incomplete because in some cases the separate units were not identified in the (g)(2) elections, rather the owners of the separate units had been identified instead. When Taxpayer prepared the (g)(2) elections for taxable years Year Three through Year Four, it followed the format of the previously filed (g)(2) election statements, and thus, made the same omissions. In reviewing the Year Four tax return, CPA Firm Two mistakenly looked to the format of the (g)(2) elections included in Taxpayer's Year Five tax return.

Annual certifications as described in Treas. Reg. § 1.1 503-2(g)(2)(vi)(B) were not filed for taxable years ending Date Three through Date Six, for losses incurred in taxable years ending Date One through Date 2, because Taxpayer and CPA Firm One (CPA Firm Two for Year Three) were not aware that annual certifications were required for hybrid entity separate units.

Taxpayer fully utilized the losses of its separate units to offset income on its U.S. consolidated income tax return but has not utilized the losses to offset income of its foreign subsidiaries. Thus, Taxpayer believed it had performed all necessary acts to fully utilize these losses under the Internal Revenue Service's interpretation of the dual consolidated loss regulations. Taxpayer timely filed what it believed to be the proper number of (g)(2) elections for the Taxpayer consolidated group.

As a Coordinated Industry Case, the Taxpayer consolidated group is under continuous examination by the Internal Revenue Service. Taxpayer's consolidated income tax returns for the taxable years ending Date Four and Date Five are currently under examination. During the examination process, Taxpayer received an Information Document Request from the Revenue Agent requesting information related to Taxpayer's dual consolidated loss elections. Specifically, the Revenue Agent sought information regarding why annual certifications under Treas. Reg. § 1.1503-2(g)(2)(vi)(B) had not been filed with Taxpayer's Year Three consolidated tax return for (g)(2) elections made on Taxpayer's Year Two consolidated tax return.

During the course of gathering information for the Internal Revenue Service, Taxpayer discovered that annual certifications had not been filed for taxable years ending on Date Three through Date Six. Taxpayer then contacted CPA Firm Two to assist in gathering the required information and preparing a request for 9100 relief. CPA Firm Two reviewed the (g)(2) elections and determined that certain (g)(2) elections may have been incomplete because in some cases the separate units were not identified in the (g)(2) elections, rather the owners of the separate units had been identified instead. In addition, CPA Firm Two discovered that in preparing its (g)(2) elections for the applicable tax years, Taxpayer had aggregated the dual consolidated losses of lower-tier separate units, reporting only one dual consolidated loss amount. One (g)(2) election was made by an upper-tier U.S. corporate owner for the aggregate DCLs of all of the owner's separate units. Thus, separate (g)(2) elections were not specifically made

for the lower-tier separate units. Taxpayer was not informed until March of Year Seven by CPA Firm Two that this "aggregate" approach did not fully comply with the dual consolidated loss provisions as interpreted by the Internal Revenue Service. In April of Year Seven, Taxpayer notified the Revenue Agent regarding its intent to request 9100 relief.

Taxpayer has made the following representations with respect to this request for a ruling:

The income tax laws of Country A do not deny the use of losses, expenses, or deductions of Sub 2 to offset income of another person because the dual resident corporation or separate unit is also subject to income taxation by another country on its worldwide income or on a residence basis.

The income tax laws of Country B do not deny the use of losses, expenses, or deductions of Sub 5 to offset income of another person because the dual resident corporation or separate unit is also subject to income taxation by another country on its worldwide income or on a residence basis.

The income tax laws of Country B do not deny the use of losses, expenses, or deductions of Sub 9 to offset income of another person because the dual resident corporation or separate unit is also subject to income taxation by another country on its worldwide income or on a residence basis.

The income tax laws of Country C do not deny the use of losses, expenses, or deductions of Sub 6 to offset income of another person because the dual resident corporation or separate unit is also subject to income taxation by another country on its worldwide income or on a residence basis.

The income tax laws of Country C do not deny the use of losses, expenses, or deductions of Sub 11 to offset income of another person because the dual resident corporation or separate unit is also subject to income taxation by another country on its worldwide income or on a residence basis.

The income tax laws of Country D do not deny the use of losses, expenses, or deductions of Sub 7 to offset income of another person because the dual resident corporation or separate unit is also subject to income taxation by another country on its worldwide income or on a residence basis.

For tax years ending on Date One, Date Seven and Date Eight, the income tax laws of Country C do not deny the use of losses, expenses, or deductions of Sub 10 to offset income of another person because the dual resident corporation or separate unit is also subject to income taxation by another country on its worldwide income or on a residence basis.

For tax years ending Date Three and Date Four the income tax laws of Country C do not deny the use of losses, expenses, or deductions of Sub 10 to offset income of another person because the dual resident corporation or separate unit is also subject to income taxation by another country on its worldwide income or on a residence basis.

Treas. Reg. § 301.9100 -1(b) provides that an election includes an application for relief in respect of tax, and defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant a taxpayer a reasonable extension of time, under the rules set forth in Treas. Reg. § 301.9100-3, to make a regulatory election under all subtitles of the Internal Revenue Code, except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith within the meaning of Treas. Reg. § 301.9100-3(b), subject to the conditions set forth in Treas. Reg. § 301.9100-3(b)(3), and the grant of relief will not prejudice the interests of the Government within the meaning of Treas. Reg. § 301.9100-3(c).

In the present situation, the election and agreement described in Treas. Reg. § 1.1503-2(g)(2)(i) is a regulatory election as defined in Treas. Reg. § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards for relief as set forth in Treas. Reg. § 301.9100-3.

Based on the information and representations submitted, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file the elections and agreements described in Treas. Reg. § 1.1503-2(g)(2)(i) and the annual certifications under Treas. Reg. § 1.1503-2(g)(2)(iv)(B), in accordance with Schedule A, with respect to dual consolidated losses occurring in taxable years ending Date One through Date Six.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to file the elections and agreements. Treas. Reg. § 301.9100-1(a). For example, a taxpayer that is subject to mirror legislation enacted by a foreign country may be ineligible to file election agreements pursuant to §1.1503-2(c)(15)(iv).

A copy of this ruling letter should be associated with the elections and agreements that are the subject of this ruling.

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

No ruling has been requested, and none is expressed, as to the application of any other section of the Code or regulations to the facts presented. Specifically, no opinion is expressed as to the amounts of the dual consolidated losses reported on Schedule A.

Pursuant to a power of attorney on file in this office, a copy of this ruling is being sent to your authorized representatives.

Sincerely,

_____
Meryl Silver
Special Counsel
CC:INTL

Enclosures: Schedule A, Parts I and II
Copy for 6110 purposes

cc: