Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

Refer Reply To:
CC:CORP:B02
PLR-124036-08
Date:
July 29, 2009

Legend

US Parent =

Foreign Parent =

Foreign Subsidiary =

Country A =

Exchange =

Business =

Dear :

This is in response to a letter dated May 22, 2008 requesting rulings as to the Federal income tax consequences of a series of proposed transactions. The information submitted in that request and in later correspondence is summarized below.

US Parent, a domestic corporation, is the common parent of an affiliated group of corporations that files a consolidated federal income tax return (the “US Parent Group”) on the basis of a calendar taxable year using the accrual method of accounting.

US Parent is a wholly owned indirect subsidiary of Foreign Parent, a publicly traded Country A corporation that is listed on the Exchange. Foreign Parent is the parent of a worldwide group of foreign and domestic operating companies (the "Foreign Parent Group"). The Foreign Parent Group engages in Business. Domestic members of the Foreign Parent Group (including the US Parent Group) conduct this business within the United States, while other members of the Foreign Parent Group that are foreign corporations (the "Foreign Affiliates") conduct this business outside the United States.

Foreign Parent, the Foreign Affiliates, and the US Parent Group constitute a "controlled group" within the meaning of § 267(f)(1). The Foreign Affiliates maintain books and records that recognize income from business operations in accordance with generally accepted accounting principles. None of the Foreign Affiliates conducts a trade or business within the United States.

Transactions between domestic members and foreign members of the Foreign Parent Group are generally priced in dollars, exposing members of the Foreign Parent Group that do not use the dollar as their functional currency to currency risk. Such risk may be hedged in contracts with Foreign Subsidiary, a Country A corporation that is a member of the Foreign Parent Group, which in turn may consolidate the currency risks of hedging contracts with its affiliates and hedge the net risk with a third party.

The Foreign Parent Group also uses currency hedging contracts to mitigate the asymmetrical tax consequences of transactions between members of the Foreign Parent Group that use different functional currencies. For example, when a dollar member of the Foreign Parent Group enters into a dollar contract with a nondollar member, the taxable gain or loss that is generated for the nondollar member by exchange-rate changes may be mitigated by having the nondollar member enter into a currency hedging contract with a third party or with Foreign Subsidiary. This asymmetrical impact on the Foreign Parent Group's effective tax rate is ordinarily mitigated by causing the nondollar member to enter into a currency hedging contract with a third party or with Foreign Subsidiary. If the nondollar member cannot, for financial or legal reasons, enter into the hedging contract, the asymmetrical impact can nevertheless be mitigated by causing a dollar member with the same effective tax rate to enter into a currency contract of the same magnitude. Depending upon exchange rate changes, a member of the US Parent Group that enters into such a contract with Foreign Subsidiary may from time to time realize a loss that is treated for US tax purposes as a loss from the sale of property to a related person.

A Foreign Affiliate of the Foreign Parent Group that enters into a currency contract with another member will recognize gain or loss on the transaction in accordance with its method of accounting. US Parent has stated that some or all of such gain or loss may be excluded from gross income because it is from sources without the United States and is not effectively connected with the conduct of a trade or business within the United States.

US Parent has made the following representations with respect to the transactions described above:

(a) Members of the Foreign Parent Group that have a nondollar functional currency but borrow in dollars ordinarily conduct a significant portion of their business in dollars.

(b) No member of the US Parent Group will be entering into the currency contracts covered by the ruling below with the purpose or expectation that it will more likely realize an exchange loss than an exchange gain.

(c) There is ordinarily a "spread" between the price at which a currency dealer buys currency from customers and sells currency to customers. When a member of the US Parent Group enters into a currency contract to which the ruling below applies, such member will receive or pay the price that would have been received or paid by a currency dealer. Realizing this "spread" will compensate the US Parent Group for accommodating the needs of the Foreign Parent Group.

Based solely on the information submitted and the representations made, we rule as follows:

A loss realized by a member of the US Parent Group from a currency contract with a Foreign Affiliate that is treated as loss from the sale or exchange of property will be deferred under § 267(f)(2) only until the Foreign Affiliate has taken its corresponding item of income into account under the Foreign Affiliate's method of accounting, provided that no currency involved in such contract is hyperinflationary within the meaning of Treas. Reg. § 1.988-1(f).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion has been requested and none is expressed as to the time at which any Foreign Affiliate will take its corresponding item of income with respect to a currency contract into account under the Foreign Affiliate's method of accounting.

The ruling contained in this letter is 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 for rulings, it is subject to verification on examination.

This 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Sean P. Duffley
Senior Counsel, Branch 2
Office of Associate Chief Counsel (Corporate)

cc: