Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Refer Reply To:
CC:PSI:B3
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Date:
May 14, 2012

Legend

Taxpayer =

X =

Entities =

Country =

State =

Dear :

This letter responds to a letter dated November 16, 2011, and subsequent correspondence, submitted on behalf of Taxpayer, requesting a ruling that the transaction described below is not the same as, or substantially similar to, transactions described in Revenue Ruling 2000-12, 2000-1 C.B. 744, and identified in Notice 2009-

59, 2009-31 I.R.B. 170, as listed transactions under § 1.6011-4(b)(2) of the Income Tax Regulations.

Facts

Taxpayer is a State corporation. X was formed in Country and is treated as a partnership for U.S. tax purposes. X is owned by Entities, which were formed in Country. Entities are controlled foreign corporations (within the meaning of § 957 of the Internal Revenue Code) for U.S. tax purposes, wholly-owned indirectly by Taxpayer. X's income and losses will flow through to its partners. Entities are controlled foreign corporations that qualify for the active dealer exception under § 954(c)(2)(C) and none of the income or loss from this transaction will be subpart F income to Taxpayer.

X enters into two offsetting foreign currency forward contracts. X enters into a forward contract with Party #1 whereby X buys Currency A on a forward basis and sells Currency B. At the same time, X enters into a forward contract with Party #2 whereby X sells Currency A on a forward basis and buys Currency B. Neither Party #1 nor Party #2 has any operations in the United States and neither is a 10%-or-more subsidiary of any U.S. person. Both forward contracts are on substantially similar terms as described in the Taxpayer's submission and have the same settlement date. Regardless of market movements in the spot rate, the net value of the two forward contracts for X can never be negative. X has a positive present value in both forward contracts and, therefore, will always have net positive earnings on the forward contracts.

Law

Section 1.6011-4(a) provides that, in general, every taxpayer that has participated in a reportable transaction and who is required to file a tax return must attach a disclosure statement to its return for the taxable year.

Section 1.6011-4(b)(1) provides that a reportable transaction is a transaction described in any of § 1.6011-4(b)(2) through (7). The term transaction includes all of the factual elements relevant to the expected tax treatment of any investment, entity, plan, or arrangement, and includes any series of steps carried out as part of a plan.

Section 1.6011-4(b)(2) provides that a listed transaction is a transaction that is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service (IRS) has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction.

Section 1.6011-4(c)(4) provides that the term substantially similar includes any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the

determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term substantially similar must be broadly construed in favor of disclosure.

In Notice 2009-59, the Service identified transactions described in Rev. Rul. 2000-12 as "listed transactions" for purposes of § 1.6011-4(b)(2). The Service had previously identified these transactions as "listed transactions" in Notice 2004-67, 2004-2 C.B. 600, Notice 2003-76, 2003-2 C.B. 1181, Notice 2001-51, 2001-2 C.B. 190, and Notice 2000-15, 2000-1 C.B. 826.

Rev. Rul. 2000-12 addresses situations in which a taxpayer acquires two debt instruments that are structured so that it is expected that the value of one will increase significantly at the same time that the value of the other one decreases significantly. Rev. Rul. 2000-12 holds that in each situation the taxpayer cannot recognize the claimed loss on the sale of the debt instrument that decreases in value while not recognizing the gain on the other debt instrument. In one situation the loss is not allowable under § 165, in another situation the integration rules of § 1.1275-6(c)(2) apply, and in the final situation the loss is disallowed under the anti-abuse rule in § 1.1275-2(g).

Conclusion

Based on the facts submitted and representations made, we conclude that this transaction does not obtain the same or similar types of tax consequences as those described in Rev. Rul. 2000-12 and is not factually similar to or based on the same or similar tax strategy as the transaction described in Rev. Rul. 2000-12. Consequently, we conclude that this transaction is not the same as, or substantially similar to, the listed transaction described in Rev. Rul. 2000-12.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the above-described facts under any other provision of the Internal Revenue Code.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

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

Sincerely,

Tara P. Volungis
Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):
Copy of this letter
Copy for §6110 purposes

cc: