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Department of the Treasury
Washington, DC 20224

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Date:
October 31, 2024

TY:

Legend

Taxpayer =
Members of Taxpayer's CFC Group =

CFC X	=
Date 1	=
Tax Year 1	=
Tax Year 2	=
Tax Year 3	=
Tax Year 4	=
Country X	=
Date 2	=
Date 3	=

Dear :

This letter responds to a letter dated Date 1 and supplemental correspondence submitted on behalf of Taxpayer by its authorized representatives, requesting an extension of time under §301.9100-3 for Taxpayer to file a global intangible low-taxed income ("GILTI") high-tax exclusion election ("GILTI HTE Election") under §1.951A-2(c)(7)(viii) with respect to each controlled foreign corporation (as defined in section 957(a)) ("CFC") that is a member of Taxpayer's CFC Group as defined in Treas. Reg. §1.951A-2(c)(7)(viii)(E)(2)(i), for the CFC inclusion years (as defined in Treas. Reg. §1.951A-1(f)(1)) that end with or within Taxpayer's U.S. shareholder inclusion years (as defined in Treas. Reg. §1.951A-1(f)(7)), Tax Year 1, Tax Year 2, Tax Year 3, and Tax Year 4.

FACTS

Taxpayer is a domestic corporation. During Tax Year 1, Tax Year 2, Tax Year 3, and Tax Year 4, Taxpayer, directly or indirectly, wholly owned all of the members of the Taxpayer's CFC Group as provided in the Legend above. Taxpayer is the only controlling domestic shareholder for each CFC in Taxpayer's CFC Group.

Prior to Tax Year 1, CFC X, a foreign corporation organized under the laws of Country X, became a wholly owned subsidiary and, thus, a CFC of Taxpayer. CFC X was the legal owner of all of the intellectual property (IP) of the group. CFC X contracted with Taxpayer and its other affiliates to provide research and development (R&D) services and sales and marketing support.

For Tax Year 1, Tax Year 2, Tax Year 3, and Tax Year 4, Taxpayer was the sole controlling domestic shareholder of CFC X and the other CFCs in the Taxpayer's CFC Group. For Tax Year 1, Tax Year 2, Tax Year 3, and Tax Year 4, Taxpayer timely filed its original Form 1120 for each year. As originally computed for Tax Year 1, Tax Year 2, Tax Year 3, and Tax Year 4, Taxpayer did not have net CFC tested income within the meaning of section 951A(c)(1) and Treas. Reg. §1.951A-1(c)(2) because its pro rata share of tested losses from its CFCs exceeded its pro rata share of tested income from its CFCs. Therefore, Taxpayer did not report any GILTI inclusions for those years and did not have a reason to consider or make the GILTI HTE Election.

On or around Date 2, the Country X tax authority began its review of the activities of CFC X and its affiliates. Pursuant to a Mutual Agreement Procedure (MAP) between the U.S. Competent Authority and the Country X tax authority, it was agreed that CFC X should have been treated as distributing the group's IP to Taxpayer on the last day of Tax Year 1. The MAP also extended the statute of limitations of Taxpayer for Tax Year 1, Tax Year 2, and Tax Year 3. However, the MAP was not completed until Date 3, which was more than 24 months after the unextended due date of the original tax return for Tax Year 4. As a result of the deemed transfer of IP from CFC X to Taxpayer, CFC X would have been treated as earning tested income in Tax Year 1. In addition, as of the first day of Tax Year 2, all transactions in which Taxpayer had been treated as a service provider to CFC X would be reversed and CFC X would instead be treated as a limited risk distributor and R&D service provider. Therefore, for Tax Year 2, Tax Year 3, and Tax Year 4, CFC X would have been treated as earning tested income as a result of providing R&D services and serving as a limited risk distributor for Taxpayer.

The tested income from both the deemed IP transfer on the last day of Tax Year 1 and provision of services in Tax Year 2, Tax Year 3, and Tax Year 4 would result in GILTI inclusions for Taxpayer unless GILTI HTE Elections were made for each of those years. Taxpayer is not able to make GILTI HTE Elections on amended returns as described in Treas. Reg. §1.951A-2(c)(7)(viii)(A)(2)(i) because more than 24 months have passed since the unextended due date of the original tax return for Tax Year 4. Prior to the Country X review and completion of the MAP, Taxpayer was unaware of the necessity for a GILTI HTE Election for the affected tax years and was not advised to make a GILTI HTE Election in any of those years.

Taxpayer is not currently under examination for Tax Year 1, Tax Year 2, Tax Year 3, or Tax Year 4 or any other year in which any issue with respect to the election is presented on a return. Taxpayer represents that no facts have changed that would indicate the use of hindsight. Taxpayer represents that granting the relief requested will not result in Taxpayer having a lower tax liability in the aggregate for all affected years than Taxpayer would have had if the election had been timely made. Taxpayer represents that the statute of limitations under section 6501(a) has not expired for the tax year of Taxpayer or any of the affected taxpayers for any periods affected by the election. Further, Taxpayer is the only U.S. shareholder that directly or indirectly owns stock in each

member of Taxpayer's CFC Group, and therefore, Taxpayer is the only taxpayer affected by the GILTI HTE Election.

LAW AND ANALYSIS

Section 951A(a) provides that a U.S. shareholder of any CFC for any taxable year of the U.S. shareholder must include in gross income the shareholder's GILTI for that taxable year.

Section 951A(b) provides that the term "GILTI" means, with respect to any U.S. shareholder for any taxable year of such U.S. shareholder, the excess (if any) of such shareholder's net CFC tested income for such taxable year, over such shareholder's net deemed tangible income return for such taxable year.

Section 951A(c)(1) generally provides that the term "net CFC tested income" means, with respect to any U.S. shareholder for any taxable year, the excess (if any) of the aggregate of such shareholder's pro rata share of the tested income of each CFC with respect to which such shareholder is a U.S. shareholder for such taxable year of such U.S. shareholder, over the aggregate of such shareholder's pro rata share of the tested loss of each CFC with respect to which such shareholder is a U.S. shareholder for such taxable year of such U.S. shareholder.

Section 951A(c)(2)(A) provides that the term "tested income" means, with respect to any CFC for any taxable year of such CFC, the excess (if any) of the gross income of such corporation determined without regard to certain items of income, including any gross income excluded from the foreign base company income (as defined in section 954) and the insurance income (as defined in section 953) of such corporation by reason of section 954(b)(4), over the deductions (including taxes) properly allocable to such gross income under rules similar to the rules of section 954(b)(5) (or to which such deductions would be allocable if there were such gross income).

Section 1.951A-2(c)(7)(i) generally provides that for purposes of determining the tested income of a CFC, a tentative gross tested income item (determined under §1.951A-2(c)(7)(ii)(A)) qualifies for the exception described in section 954(b)(4) only if a GILTI HTE Election is effective with respect to the CFC for the CFC inclusion year (as defined in §1.951A-1(f)(1)) and the tentative tested income item with respect to the tentative gross tested income item was subject to an effective rate of foreign tax that is greater than 90 percent of the maximum rate of tax specified in section 11.

Section 1.951A-2(c)(7)(viii) provides that the GILTI HTE Election is made by the controlling domestic shareholders with respect to a CFC for a CFC inclusion year by filing the statement required under §1.964-1(c)(3)(ii) with a timely filed original federal income tax return, or with an amended federal income tax return, for the U.S. shareholder inclusion year of each controlling domestic shareholder in which or with which such CFC inclusion year ends; providing any notices required under §1.964-1(c)(3)(iii); and

providing any additional information required by applicable administrative pronouncements.

Section 1.951A-2(c)(7)(viii)(E)(1) provides that if a CFC is a member of a CFC group, the GILTI HTE Election is made with respect to all CFCs that are members of the CFC group.

Section 1.951A-2(c)(7)(viii)(E)(2)(i) provides that a CFC group means an affiliated group as defined in section 1504(a) without regard to section 1504(b)(1) through (6), except that section 1504(a) is applied by substituting "more than 50 percent" for "at least 80 percent" each place it appears, and section 1504(a)(2)(A) is applied by substituting "or" for "and." For purposes of §1.951A-2(c)(7)(viii)(E)(2)(i), stock ownership is determined by applying the constructive ownership rules of section 318(a), other than section 318(a)(3)(A) and (B), by applying section 318(a)(4) only to options (as defined in §1.1504-4(d)) that are reasonably certain to be exercised as described in §1.1504-4(g), and by substituting in section 318(a)(2)(C) "5 percent" for "50 percent."

Section 1.951A-2(c)(7)(viii)(A)(2)(i) generally provides that a controlling domestic shareholder may make the election with an amended federal income tax return, duly filed within 24 months of the unextended due date of the original federal income tax return for the U.S. shareholder inclusion year with or within which the CFC inclusion year ends.

Section 1.951A-2(c)(7)(viii)(D) provides that a GILTI HTE Election is valid only if all of the requirements in Treas. Reg. §1.951A-2(c)(7)(viii)(A) are satisfied.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code, except subtitles E, G, H, and I.

Section 301.9100-1(b) defines the term "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-2 provides automatic extensions of time for making certain elections.

Section 301.9100-3 provides rules for requesting extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. §301.9100-2. It provides that these requests for relief are granted when the taxpayer provides the evidence (including affidavits) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government. A taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief before the failure to make the regulatory election is discovered by the IRS. Treas. Reg. §301.9100-3(b)(i). A taxpayer is deemed to have acted reasonably and in good faith if the taxpayer failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the

complexity of the return or issue), the taxpayer was unaware of the necessity for the election. Treas. Reg. §301.9100-3(b)(iii).

Section 301.9100-3(b)(3)(ii) provides that a taxpayer is not deemed to have acted reasonably and in good faith if the taxpayer was informed in all material respects of the required election and related tax consequences, but chose not to file the election.

Section 301.9100-3(b)(3)(iii) provides that a taxpayer is not deemed to have acted reasonably and in good faith if the taxpayer uses hindsight in requesting relief. If specific facts have changed since the due date for making the election that make the election advantageous to the taxpayer, the IRS will not ordinarily grant relief. In such a case, the IRS will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

Section §301.9100-1(a) provides that granting an extension of time for making an election is not a determination that a taxpayer is otherwise eligible to make the election or that a taxpayer complied with the other requirements for a valid election.

CONCLUSION

Based on the facts provided and representations made, we conclude that the requirements of Treas. Reg. §§301.9100-1 and 301.9100-3 have been satisfied. Specifically, Taxpayer represents that it met one or more of the conditions in Treas. Reg. §301.9901-3(b)(1), including that it failed to make the election because, after exercising reasonable diligence, Taxpayer was unaware of the necessity for the election. Although the MAP was not completed until Date 3, because the MAP relates to transactions that are deemed to have occurred prior to each of the respective due dates for making the GILTI HTE Election for Tax Year 1, Tax Year 2, Tax Year 3, and Tax Year 4, Taxpayer did not use hindsight in requesting relief because no facts have changed since those respective due dates.

Taxpayer is hereby granted an extension of time of one hundred twenty (120) days from the date of this letter to make GILTI HTE Elections with respect to the Taxpayer's CFC Group for the CFC inclusion years that end with or within Taxpayer's U.S. shareholder inclusion years, Tax Year 1, Tax Year 2, Tax Year 3, and Tax Year 4. Taxpayer should make the elections in written statements attached to duly filed Forms 1120X for Tax Year 1, Tax Year 2, Tax Year 3, and Tax Year 4.

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 ruling, it is subject to verification on examination.

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.

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.

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.

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

Sincerely,

/s/ Melinda E. Harvey

Melinda E. Harvey
Branch Chief, Branch 2
Associate Chief Counsel (International)

Cc: