

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:INTL:Br3-PLR-145859-02

Date:

October 9, 2002

DO: TY:

Legend

Taxpayer =

Corp 1 =

Corp 2 =

Taxable Year c =

Taxable Year d =

Date 1 =

Date 2 =

Country A =

Business K =

Dear :

This is in response to your letter dated August 15, 2002 requesting consent for Taxpayer to revoke its predecessors' elections, effective for Taxable Year c, to use the safe harbor method described in Treas. Reg. §1.901-2A(c)(3) in determining the amount of foreign income tax paid or accrued to Country A. 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 for rulings, it is subject to verification on examination.

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Taxpayer is a widely held and publicly traded domestic corporation. Taxpayer is the common parent of an affiliated group of corporations that join in the filing of a consolidated federal income tax return. The due date for Taxpayer's Taxable Year c consolidated federal income tax return, including extensions, was Date 1. Taxpayer and its affiliated companies are engaged in Business K within and without the United States.

Prior to Date 2, Taxpayer was known as Corp 1. On Date 2, Corp 1 changed its name to Taxpayer to reflect the acquisition of Corp 2 as a wholly owned subsidiary and a new member of the affiliated group.

Taxpayer has made the following representations in connection with its ruling request:

- (a) Both Corp 1 and Corp 2 conducted Business K operations in Country A through subsidiaries.
- (b) The Corp 1 and Corp 2 subsidiaries were and continue after the Date 2 acquisition to be dual capacity taxpayers with respect to their Country A operations as that term is defined under Treas. Reg. §1.901-2(a)(2)(ii)(A).
- (c) Corp 1 and Corp 2 each filed a safe harbor election for Taxable Year d with respect to Country A qualifying levies.
- (d) Neither Corp 1 nor Corp 2's safe harbor election has been revoked pursuant to Treas. Reg. §1.901-2A(d)(4).

Treas. Reg. §1.901-2A permits dual capacity taxpayers to compute foreign tax credits for qualifying levies of each foreign country either by a "facts and circumstances" or "safe harbor" method.

Treas. Reg. §1.901-2A(d) describes the manner in which taxpayers may elect the safe harbor method. Treas. Reg. §1.901-2(d)(1) provides that a member of an affiliated group that files a consolidated U.S. income tax return may use the safe harbor method only if the common parent has made the election on behalf of all members of the group to use the safe harbor method with respect to that country.

Treas. Reg. §1.901-2A(d)(4) provides that an election to use the safe harbor method that has been properly elected may not be revoked without the consent of the Commissioner. An application for consent must be made not later than the 30th day before the due date (including extensions) for the filing of the income tax return for the first taxable year for which the revocation is sought to be effective with some exceptions not applicable to this situation. The Commissioner may make his consent to any revocation conditioned upon adjustments being made in one or more taxable years so as to prevent the revocation from resulting in a distortion of the amount of any item

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relating to tax liability in any taxable year. The Commissioner will normally consent to a revocation under the circumstances described in Treas. Reg. §1.901-2A(d)(4)(i) through (vi).

If a safe harbor election is revoked, a subsequent election to apply the safe harbor method for the same foreign country may be made only with the Commissioner's consent. Treas. Reg. §1.901-2A(d)(4). Treas. Reg. §1.901-2A(d)(4)(vi) provides that the Commissioner will normally consent to a revocation of a safe harbor election if the election has been in effect with respect to at least three taxable years prior to the taxable year for which the revocation is to be effective.

Based solely on the information and representations submitted, (1) Taxpayer's application for consent to revoke the safe harbor elections made by Corp 1 and Corp 2 with respect to qualifying levies of Country A was made not later than the 30th day before the Federal income tax return due date (including extensions) for Taxable Year c; and (2) Corp 1 and Corp 2's safe harbor elections have been in effect for more than three taxable years prior to Taxable Year c. Treas. Reg. §1.901-2A(d)(4)(vi).

Accordingly, consent is granted to Taxpayer to revoke the elections made by Corp 1 and Corp 2 to use the safe harbor method described in Treas. Reg. §1.901-2A(c)(3) with respect to qualifying levies of Country A, effective for Taxable Year c. Treas. Reg. §1.901-2A(d)(4)(vi).

No opinion was requested, and none is expressed, about whether, based upon all relevant facts and circumstances, the amount (if any) paid pursuant to a levy or levies imposed by Country A is not an amount paid in exchange for a specific economic benefit.

This ruling is directed only to the taxpayer(s) 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.

Sincerely,

Anne O'Connell Devereaux
Senior Technical Reviewer
Office of Associate Chief Counsel
(International)