Office of Chief Counsel
Internal Revenue Service
Memorandum

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to:

from: Robert W. Lorence, Senior Counsel
(CC:INTL:B04)

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subject: Domestic F Reorganization Private Letter Ruling

This Chief Counsel Advice brings to your attention a private letter ruling recently issued to the below referenced taxpayer. Please see the private letter ruling enclosed with this memorandum. This advice may not be used or cited as precedent.

LEGEND

Taxpayer =

Country A =
State A =

In the private letter ruling, we ruled that deferred gain that is the subject of a gain recognition agreement (GRA) filed pursuant to Treas. Reg. § 1.367(a)-8 is not

recognized when Taxpayer, the U.S. transferor under the gain recognition agreement, participates in a domestic to domestic reorganization under section 368(a)(1)(F).

In this particular private letter ruling, Taxpayer is a private limited liability company organized under the laws of Country A. It is represented, for U.S. federal income tax purposes, that Taxpayer is a stapled foreign corporation that is treated as a U.S. corporation pursuant to section 269B. Taxpayer proposes to transfer its statutory seat to State A and terminate its corporate charter in Country A. Taxpayer represents this reincorporation is a section 368(a)(1)(F) reorganization. After that, it is represented that Taxpayer's stapled status will be removed.

Because the effect of the reorganization is to change Taxpayer's place of incorporation via a domestic to domestic section 368(a)(1)(F) reorganization, the letter ruling holds that the Taxpayer remains in existence for purposes of the GRA and the GRA is not triggered, provided Taxpayer complies with reporting requirements similar to those contained in Treas. Reg. § 1.367(a)-8(g)(2).

We want to inform you of a possible issue related to this private letter ruling under Notice 2003-50, 2003-32 I.R.B. 295. In the past, taxpayers have used the stapled stock rules of section 269B and Notice 89-94, 1989-2 CB 416, to manipulate the computation of their foreign tax credit limitation. Notice 2003-50 provides rules to stop these abuses. These transactions generally involve stapling the interests of a domestic and foreign corporation, all or substantially all of the interests of which are held by the same person or related persons. In the private letter ruling, Taxpayer and the domestic corporation to which it was stapled were owned by the same or related persons.

For the tax years governed by Notice 2003-50,[1] it is assumed that Taxpayer did not engage in the foreign tax credit manipulation because the notice stopped the abuse (although this should be confirmed). For prior tax years not governed by Notice 2003-50, the IRS should still consider using principles of existing laws to disregard the stapling structure if Taxpayer has employed its stapled stock structure to manipulate its foreign tax credit limitations. *See* Notice 2003-50. For example, under a substance-over-form analysis, restrictions on the transferability of ownership interests may be disregarded for tax purposes if the interests are held by the same or related persons.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call at if you have any further questions.

[1] Notice 2003-50 applies to tax years beginning after July 22, 2003. In the case of stapled stock structure completed on or after July 22, 2003, such provisions are effective for tax years including July 22, 2003. Proposed Regulations implementing Notice 2003-50 were recently published (REG-101282-04, 9/7/04). Final Regulations will be issued with the same effective dates.