

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

[Third Party Communication:

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Person To Contact:

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Refer Reply To:

CC:INTL

PLR-111461-05

Date:

October 24, 2005

LEGEND

Taxpayer =

Sub 1 =

Sub 2 =

Individual =

A

CPA Firm =

A

CPA Firm =

B

CPA Firm =

C

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

DE A =

DE B =

DE C =

DE D =

DE E =

Country A =

Country B =

Country C =

Dear :

This replies to your representative's letter dated December 10, 2004, in which your representative requested on behalf of Taxpayer an extension of time under Treas. Reg. §301.9100-3 for Taxpayer to file the election and agreement described in §1.1503-2(g)(2)(i) and the annual certification described in §1.1503-2(g)(2)(vi)(B) in accordance with Exhibits C through H, which are attached to and made a part of this ruling letter. You submitted additional information in letters dated September 7, 2005, and October 12, 2005. The information submitted for consideration is substantially as set forth below.

The ruling contained in this letter is predicated upon facts and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

During Year 1 through Year 6, Taxpayer directly owned and carried on business operations outside the United States through the entities listed on Exhibit A. These entities were dual resident corporations under Treas. Reg. §1.1503-2(c)(2). With the exception of two domestic subsidiaries with active foreign branch operations, Sub1 and Sub2, elections under §301.7701-3(c) were filed to treat these entities as disregarded entities. These elections were effective at all times during Year 1 through Year 6.

During Year 1 through Year 6, the entities listed on Exhibit A incurred net operating losses as listed on Exhibit B. These net operating losses were dual consolidated losses ("DCLs") under Treas. Reg. §1.1503-2(c)(5)(i).

Individual A assumed the position of Corporate Vice President of Finance for Taxpayer after Year 6. However, Individual A previously held other tax function positions with Taxpayer. In those other positions, Individual A had responsibility for all tax functions, including the review and filing of all consolidated federal income tax returns and any forms, schedules, statements, agreements, and certifications necessary to comply with the Internal Revenue Code for Year 1 through Year 6.

During Year 3, Taxpayer's tax department developed internal compliance procedures intended to meet the requirements of I.R.C. §1503(d) and the regulations thereunder. These procedures were based on a memorandum prepared by CPA Firm A, which addressed the technical requirements of §1503(d) and the regulations thereunder. Taxpayer believed that its DCL procedures complied with those requirements.

For Year 1 through Year 5, CPA Firm A reviewed Taxpayer's consolidated federal income tax returns and signed them as the preparer. Taxpayer relied on CPA Firm A to advise it whether all forms, elections, and agreements required to include the DCLs listed on Exhibit B in Taxpayer's consolidated returns were properly completed and included with the returns for those years.

Individual A states in his affidavit that at no time during Year 1 through Year 5 did CPA Firm A or any member of Taxpayer's tax department inform him that the consolidated returns and supporting statements, schedules, and agreements as filed did not meet the requirements of Treas. Reg. §1.1503-2(g)(2)(i) and (vi)(B). Thus, Individual A assumed that the consolidated returns as filed appropriately included the DCLs as listed on Exhibit B incurred by the entities listed on Exhibit A during those tax years, and that any required elections and certifications were included with those returns.

CPA Firm B reviewed Taxpayer's consolidated federal income tax return for Year 6, and signed that return as the preparer. During its review, CPA Firm B questioned whether Taxpayer's internal DCL compliance procedures satisfied the annual certification requirement of Treas. Reg. §1.1503-2(g)(2)(vi)(B). CPA Firm B also indicated that three elections and agreements required under §1.1503-2(g)(2)(i) and listed on Exhibits C, D, and E had been inadvertently omitted from the consolidated returns. These omissions led CPA Firm B and Taxpayer's tax personnel to jointly undertake an analysis of Taxpayer's compliance with the requirements of I.R.C. §1503(d) and the regulations thereunder for Year 1 through Year 5. It was determined that the procedures did not meet those requirements, and that, in addition to the failure to include the elections referred to above, it was determined that the annual certifications listed on Exhibits D through H were either defective or omitted. Shortly thereafter, members of Taxpayer's tax department discussed the matter with CPA Firm C. The discussion led Taxpayer to submit this request for relief.

Taxpayer represents that the income tax laws of Country A do not deny the use of losses, expenses, or deductions of DE A and DE B to offset income of another person because the separate units are also subject to income taxation by another country on their worldwide income or on a residence basis.

Taxpayer represents that the income tax laws of Country B do not deny the use of losses, expenses, or deductions of DE C to offset income of another person because the separate unit is also subject to income taxation by another country on its worldwide income or on a residence basis.

Taxpayer represents that the income tax laws of Country C do not deny the use of losses, expenses, or deductions of DE D and DE E to offset income of another person because the separate units are also subject to income taxation by another country on their worldwide income or on a residence basis.

Taxpayer represents that it filed this application for relief before the Internal Revenue Service discovered the failure to file the election and agreement described in Treas. Reg. §1.1503-2(g)(2)(i) and the annual certification described in §1.1503-2(g)(2)(vi)(B) for the entities and tax years set forth on Exhibits C through H. Treas. Reg. §301.9100-3(b)(1)(i).

Treas. Reg. §301.9100-1(c) provides that the Commissioner has discretion to grant a taxpayer a reasonable extension of time, under the rules set forth in §301.9100-3, to make a regulatory election under all subtitles of the Internal Revenue Code, except subtitles E, G, H, and I.

Treas. Reg. §301.9100-1(b) provides that an election includes an application for relief in respect of tax, and defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. §301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides evidence (including affidavits described in §301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith within the meaning of §301.9100-3(b), subject to the conditions set forth in §301.9100-3(b)(3), and the grant of relief will not prejudice the interests of the Government within the meaning of §301.9100-3(c).

In the present situation, the election and agreement and the annual certification described in Treas. Reg. §1.1503-2(g)(2)(i) and (vi)(B), respectively, are regulatory elections as defined in §301.9100-1(b). Therefore, the Commissioner has discretionary authority under §301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the rules set forth in §301.9100-3(a).

Based on the facts and information submitted, we conclude that Taxpayer satisfies the standards for relief as set forth in Treas. Reg. §301.9100-3. Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter for Taxpayer to file the election and agreement described in §1.1503-2(g)(2)(i), and the annual certification described in §1.1503-2(g)(2)(vi)(B) in accordance with Exhibits C through H.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to file the elections and agreements, and the annual certifications. Treas. Reg. §301.9100-1(a). For example, a taxpayer that is subject to mirror legislation enacted by a foreign country may be ineligible to file election agreements pursuant to §1.1503-2(c)(15)(iv).

A copy of this ruling letter should be associated with the elections and agreements, and the annual certifications.

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

No ruling has been requested, and none is expressed, as to the application of any other section of the Code or regulations to the facts presented. Specifically, no opinion is expressed as to whether the dollar amounts of the DCLs reported on Exhibit B are correct.

Pursuant to a power of attorney on file in this office, a copy of this ruling letter is being furnished to your authorized representative.

Sincerely,

Associate Chief Counsel (International)

By: Richard L. Chewning

Richard L. Chewning

Senior Counsel

Office of the Associate Chief Counsel (International)

Enclosures (2):

Exhibits A through H

Copy for 6110 purposes

CC:

EXHIBIT C

RELIEF REQUESTED FOR TAX YEAR ENDED

The election and agreement required under Treas. Reg. §1.1503-2(g)(2)(i) for the loss
incurred by _____ for the tax year ended _____ .

EXHIBIT D

RELIEF REQUESTED FOR TAX YEAR ENDED

1. The election and agreement required under Treas. Reg. §1.1503-2(g)(2)(i) for the loss incurred by _____ for the tax year ended _____
2. The annual certification required under Treas. Reg. §1.1503-2(g)(2)(vi)(B) for the loss incurred by _____ in the tax year ended _____ .

EXHIBIT ERELIEF REQUESTED FOR TAX YEAR ENDED

1. The election and agreement required under Treas. Reg. §1.1503-2(g)(2)(i) for the loss incurred by _____ foreign branch operations in _____ for the tax year ended _____.
2. The annual certifications required under Treasury Regulations §1.1503-2(g)(2)(vi)(B) respect to the following entities and their losses for the following years:

EXHIBIT FRELIEF REQUESTED FOR TAX YEAR ENDED

1. The annual certifications required under Treas. Reg. §1.1503-2(g)(2)(vi)(B) with respect to the following entities and their losses for the following years:

EXHIBIT G

RELIEF REQUESTED FOR TAX YEAR ENDED

1. The annual certifications required under Treas. Reg. §1.1503-2(g)(2)(vi)(B) with respect to the following entities and their losses for the following years:

EXHIBIT H

RELIEF REQUESTED FOR TAX YEAR ENDED

The annual certification required under Treas. Reg. §1.1503-2(g)(2)(vi)(B) for the loss
incurred by in the tax year ended