

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact: _____, ID No. _____

Telephone Number: _____

Refer Reply To:
CC:INTL:01
PLR-139607-05
Date:
November 3, 2005

In Re:

Legend

Company X =
Country Y =
Date 1 =
Date 2 =
Date 3 =
Shareholder Z =
Number A =
Number B =
Exchange C =

Dear _____ :

This is in response to a letter dated December 31, 2004, requesting a ruling under section 1(h)(11) of the Internal Revenue Code (Code).

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.

FACTS

Company X is a Country Y limited liability company that maintains an office in the United States. Company X files its federal income tax return using the 52-53 week fiscal year convention. The most recently ended fiscal year ended on Date 1.

Company X intends to make distributions during the period between Date 2 and Date 3. Company X may have current earnings and profits in its taxable year that begins on Date 2. If so, these distributions would be treated as dividends for federal income tax purposes.

Company X is not incorporated in a possession of the United States, nor is it eligible for benefits of a comprehensive income tax treaty with the United States which the Secretary has determined is satisfactory for purposes of section 1(h)(11)(C)(i)(II). Company X's common shares are listed on the Exchange C and are Company X's only outstanding class of stock.

Shareholder Z, the majority shareholder, owns approximately Number A shares of Company X common stock. Prior to Date 2, Company X filed a Registration Statement on SEC Form S-3 with respect to Number B shares of its common stock owned by Shareholder Z. This registration is now effective and as a result, Shareholder Z can (subject to any secondary restrictions) sell up to Number B of its Company X common shares in the open market.

The remainder of Shareholder Z's shares have not been registered under the Securities Act of 1933. Shareholder Z plans to dispose of its remaining unregistered shares by distributing such shares to its partners as restricted shares. These unregistered shares may be sold in accordance with Rule 144 of the Securities Act of 1933, as amended, which permits limited sales of restricted shares of a publicly traded company subject to certain restrictions.

RULING REQUESTED

- 1) Whether the Number B shares of Company X common stock that are subject to the Registration Statement on SEC Form S-3, which was declared effective on March 15, 2005, are "readily tradable on an established securities market in the United States" for purposes of Code section 1(h)(11)(C)(ii).
- 2) Whether the restricted shares of Company X common stock are "readily tradable on an established securities market in the United States" for purposes of Code section 1(h)(11)(C)(ii).

LAW AND ANALYSIS

Section 1(h)(11) generally provides that certain dividends paid to individual shareholders from either a domestic corporation or a "qualified foreign corporation" are subject to tax at the reduced rates applicable to certain capital gains.

Section 1(h)(11)(C)(ii) provides that a foreign corporation not otherwise treated as a qualified foreign corporation under Section 1(h)(11)(C)(i) shall be so treated with respect to any dividend paid by such corporation if the stock with respect to which such dividend is paid is readily tradable on an established securities market in the United States.

Notice 2003-71, 2003-43 I.R.B. 922, provides in part that for purposes of applying section 1(h)(11)(c)(ii) to taxable years beginning on or after January 1, 2003, common or ordinary stock is considered readily tradable on an established securities market if it is listed on a national securities exchange that is registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) or on the NASDAQ Stock Market. Securities so listed must be registered under the Securities Act of 1933.

Exchange C is a national securities exchange that is registered under section 6 of the Securities Exchange Act of 1934. Accordingly, pursuant to Notice 2003-71, for taxable years beginning on or after January 1, 2003, common shares that are registered under the Securities Act of 1933 and are, therefore, tradable on Exchange C are considered readily tradable on an established securities market in the United States under section 1(h)(11)(C)(ii). Common shares that are not registered under the Securities Act of 1933 are not considered readily tradable and, thus, do not satisfy the requirements of Code section 1(h)(11)(C)(ii).

Ruling 1

The Number B shares of Company X common stock that were registered under the Securities Act of 1933 based on the filing of the Registration Statement on SEC Form S-3, which was declared effective on _____, are "readily tradable on an established securities market in the United States" for purposes of Code section 1(h)(11)(C)(ii).

Ruling 2

The unregistered shares of Company X common stock are not "readily tradable on an established securities market in the United States" for purposes of Code section 1(h)(11)(C)(ii). Accordingly, Company X will not be treated as a qualified foreign corporation with respect to any dividend paid on these restricted shares, and therefore any distribution made by Company X with respect to the restricted shares is excluded from the definition of "qualified dividend income" for purposes of Section 1(h)(11).

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. In particular, no opinion is expressed or implied concerning whether distributions made by Company X with respect to Number B shares will be “qualified dividend income” to the shareholders owning such shares.

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.

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

A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely,

Karen A. Rennie
Senior Technical Reviewer, Branch 1
Office of Associate Chief Counsel
(International)

cc: