

Internal Revenue Service

Number: **200713003**

Release Date: 3/30/2007

Index Number: 9100.22-00, 1503.04-04

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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CC:INTL

PLR-136538-06

Date:

December 20, 2006

In Re:

Taxpayer =

Entity 1 =

Entity 2 =

Year 1 =

Year 2 =

Year 3 =

aa =

bb =

Country A =

Country B =

CPA Firm =

Dear

This is in response to a letter dated July 31, 2006, requesting an extension of time under Treas. Reg. § 301.9100-3 to file elections, and annual certifications, under Treas. Reg. § 1.1503-2T(g)(2)(vi)(B) with respect to dual consolidated losses attributable to the Taxpayer's interests in its separate units, as described below, for Years 1 through 3.

Additional information was received in a letter dated December 11, 2006. 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 the 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.

Taxpayer merged with another corporation in Year 3. Between the time of the announcement of the merger in Year 2 and the date of the merger in Year 3, all four of Taxpayer's personnel responsible for tax return compliance left the company. As a result of the merger, the federal tax compliance management groups from both corporations changed or were no longer with the combined company. The tax compliance function for the returns was outsourced to a combination of tax contractors and accounting firms. Eventually, the combined company hired internal tax professionals. However, the requirement to file election agreements with Taxpayer's Year 3 return, for the Year 3 dual consolidated losses, was overlooked.

Entity 1 is disregarded as an entity separate from its owner. The interest in Entity 1 is a hybrid entity separate unit as described in Treas. Reg. § 1.1503-2(c)(4). Entity 1 has activities in Country A that constitute a foreign branch ("Entity 1 Branch") within the meaning of Treas. Reg. § 1.367(a)-6T(g) and the Year 3 dual consolidated loss is attributable to those activities. Entity 1 Branch is a separate unit described in Treas. Reg. § 1.1503-2(c)(3)(i)(A). Dual consolidated losses of Amount aa for Year 3 are attributable to Entity 1 Branch. No dual consolidated losses are attributable to the interest in Entity 1. No election agreement was filed with respect to the losses incurred in Year 3.

Entity 2 is disregarded as an entity separate from its owner. The interest in Entity 2 is a hybrid entity separate unit as described in Treas. Reg. § 1.1503-2(c)(4). Entity 2 has activities in Country B that constitute a foreign branch ("Entity 2 Branch") within the meaning of Treas. Reg. § 1.367(a)-6T(g) and the Year 3 dual consolidated loss is attributable to those activities. Entity 2 Branch is a separate unit described in Treas. Reg. § 1.1503-2(c)(3)(i)(A). Dual consolidated losses of Amount bb for Year 3 are attributable to Entity 2 Branch. No dual consolidated losses are attributable to the interest in Entity 2. No election agreement was filed with respect to the losses incurred in Year 3.

The income tax laws of Country A do not deny the use of losses, expenses, or deductions of Entity 2 to offset income of another person because the dual resident corporation or separate unit is also subject to income taxation by another country on its worldwide income or on a residence basis.

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. § 301.9100-1(c) provides that the Commissioner has discretion to grant a taxpayer a reasonable extension of time, under the rules set forth in Treas. Reg. § 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. § 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) 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.

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

Based on the facts and information submitted, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file the elections described in this letter for dual consolidated losses for Year 3 that are attributable to Entity 1 Branch and Entity 2 Branch. Taxpayer is not required to file annual certifications under the facts described herein because the Taxpayer's dual consolidated losses are attributable to separate units described in Treas. Reg. § 1.1503-2(c)(3)(i)(A) and, therefore, an extension of time is not necessary in this regard. Treas. Reg. § 1.1503-2(g)(2)(vi)(C).

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to file the election agreement. 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 Treas. Reg. § 1.1503-2(c)(15)(iv).

A copy of this ruling letter should be associated with the elections that are the subject of this ruling.

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.

Pursuant to a power of attorney on file in this office, a copy of this ruling letter is being furnished to Taxpayer's authorized representatives.

Sincerely,

Meryl Silver
Special Counsel
CC:INTL

Enclosure:
Copy for 6110 purposes