

## Internal Revenue Service

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PLR-153393-06

Date:

August 27, 2008

Parent =

Taxpayer =

Entity 1 =

Entity 2 =

Entity 3 =

Entity 4 =

Entity 5 =

Entity 6 =

Entity 7 =

Entity 8 =

Entity 9 =

Entity 10 =

Entity 11 =

PLR-153393-06

2

Entity 12 =

Entity 13 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Year 7 =

Year 8 =

Year 9 =

Year 10 =

Year 11 =

Year 12 =

Year 13 =

Year 14 =

Year 15 =

Date 1 =

Date 2 =

Date 3 =

X =

Country A =

Country B =

CPA Firm =

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This is in response to your representative's letter dated October 16, 2006, in which your representative requests on behalf of Taxpayer an extension of time under Treas. Reg. § 301.9100-3 to file elections under Treas. Reg. § 1.1503-2(g)(2)(i) or Treas. Reg. § 1.1503-2T(g)(2)(i), as applicable, and annual certifications under Treas. Reg. § 1.1503-2(g)(2)(vi)(B) or Treas. Reg. § 1.1503-2T(g)(2)(vi)(B), as applicable, with respect to dual consolidated losses (as defined in Treas. Reg. § 1.1503-2(c)(5)) attributable to the Taxpayer's interests in its separate units, as described below. Additional information was received in a letter dated February 21, 2007. 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 Parent and 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.

Prior to Date 1, Parent owned less than 50 percent of Taxpayer. On Date 1, Parent acquired all but X percent of the remaining stock of Taxpayer. As a result, Taxpayer became a member of Parent's consolidated group beginning with Year 13.

During the tax years in issue, Taxpayer held investments in partnerships and hybrid entity separate units which generated net operating losses subject to the dual consolidated loss reporting and certification requirements of Treas. Reg. § 1.1503-2T(g)(2). Taxpayer engaged CPA Firm to review its consolidated return for Year 12, and to review the elections and annual certifications required to be filed that were prepared by Taxpayer's tax department.

Parent engaged CPA Firm to review its consolidated tax return for Years 13 through 15 and to review the elections and annual certifications required to be filed that were prepared by Parent's and Taxpayer's tax departments. Due to inadvertent omission and computational errors on the part of Taxpayer and oversight on the part of CPA Firm, Parent and Taxpayer failed to file the required elections and certifications and Parent failed to file the new (g)(2)(i) agreement required by Treas. Reg. § 1.1503-2T(g)(2)(iv)(B)(3)(iii).

Entity 1 is a foreign partnership for federal tax purposes. The interests in Entity 1 are separate units as described in Treas. Reg. § 1.1503-2(c)(3)(i)(B). Incorrect elections and certifications were filed with respect to the interest in Entity 1 for Years 2 through 14 that reflected dual consolidated losses that were not incurred by Entity 1 during certain of those years.

Entity 2 is a foreign partnership for federal tax purposes. The interest in Entity 2 is a separate unit as described in Treas. Reg. § 1.1503-2(c)(3)(i)(B), and a hybrid entity separate unit as described in Treas. Reg. § 1.1503-2(c)(4). Entity 2 has activities in Country A that constitute a foreign branch (“Entity 2 Branch”) within the meaning of Treas. Reg. § 1.367(a)-6T(g). Taxpayer’s interest in Entity 2 Branch is a separate unit described in Treas. Reg. § 1.1503-2(c)(3)(i)(A). Dual consolidated losses incurred in Years 2 through 5 are attributable to Taxpayer’s interest in Entity 2 Branch. No dual consolidated losses are attributable to Taxpayer’s interest in Entity 2. Incorrect elections were filed with respect to the losses incurred in Years 2 and 3, and incorrect certifications were filed in Years 3 through 15 with respect to those losses.

Entity 3 is disregarded as an entity separate from its owner for federal tax purposes. The interest in Entity 3 is a hybrid entity separate unit as described in Treas. Reg. § 1.1503-2(c)(4). Entity 3 has activities in Country A that constitute a foreign branch (“Entity 3 Branch”) within the meaning of Treas. Reg. § 1.367(a)-6T(g). Entity 3 Branch is a separate unit described in Treas. Reg. § 1.1503-2(c)(3)(i)(A). Dual consolidated losses for Years 8 through 14 are attributable to Entity 3 Branch. No dual consolidated losses are attributable to the interest in Entity 3. Incorrect elections were filed for Years 8 through 11 and Year 14, no elections were filed for Years 12 and 13, and incorrect and/or no certifications were filed in Years 9 through 14 for any of the losses.

Entity 4 is disregarded as an entity separate from its owner for federal tax purposes. The interest in Entity 4 is a hybrid entity separate unit as described in Treas. Reg. § 1.1503-2(c)(4). No election was filed with respect to a dual consolidated loss attributable to its interest in Entity 4 for Year 14 and no annual certification was filed with respect to the loss in Year 15.

Entity 5 is a foreign partnership for federal tax purposes. Taxpayer’s interest in Entity 5 is a separate unit as described in Treas. Reg. § 1.1503-2(c)(3)(i)(B), and a hybrid entity separate unit as described in Treas. Reg. § 1.1503-2(c)(4). Entity 5 has activities in Country B that constitute a foreign branch (“Entity 5 Branch”) within the meaning of Treas. Reg. § 1.367(a)-6T(g). Taxpayer’s interest in Entity 5 Branch is a separate unit described in Treas. Reg. § 1.1503-2(c)(3)(i)(A). Dual consolidated losses incurred in Years 5 through 14 are attributable to the interest in Entity 5 Branch. No dual consolidated losses are attributable to Taxpayer’s interest in Entity 5. Incorrect elections were filed with respect to dual consolidated losses attributable to Entity 5 Branch in Years 8 through 10 and for Year 14, no elections were filed for losses incurred in Years 11 through 13, incorrect certifications were filed with respect losses incurred in Years 8 through 10 and Year 14, no certifications were filed with respect to losses incurred in Years 11 through 13.

Entity 6 is disregarded as an entity separate from its owner for federal tax purposes. The interest in Entity 6 is a hybrid entity separate unit as described in Treas. Reg.

§ 1.1503-2(c)(4). Entity 6 has activities in Country B that constitute a foreign branch ("Entity 6 Branch") within the meaning of Treas. Reg. § 1.367(a)-6T(g). Entity 6 Branch is a separate unit described in Treas. Reg. § 1.1503-2(c)(3)(i)(A). Elections and Certifications were filed for the losses in Years 8 through 11 when, in fact, no losses were attributable to Entity 6 Branch in any prior years.

Entity 7 is disregarded as an entity separate from its owner for federal tax purposes. The interest in Entity 7 is a hybrid entity separate unit as described in Treas. Reg.

§ 1.1503-2(c)(4). Dual consolidated losses were incurred in Years 8, 9 and 11.

Incorrect elections and certifications were filed with respect to these losses in those years and incorrect certifications were filed in Years 9 through 14 with respect to the losses.

Entity 8 is disregarded as an entity separate from its owner for federal tax purposes.

The interest in Entity 8 is a hybrid entity separate unit as described in Treas. Reg.

§ 1.1503-2(c)(4). Entity 8 has activities in Country B that constitute a foreign branch ("Entity 8 Branch") within the meaning of Treas. Reg. § 1.367(a)-6T(g). Entity 8 Branch is a separate unit described in Treas. Reg. § 1.1503-2(c)(3)(i)(A). Dual consolidated losses incurred in Years 8 through 11 are attributable to Entity 8 Branch. No dual consolidated losses are attributable to Taxpayer's interest in Entity 8. An incorrect election was filed for Year 8, no elections were filed for Years 9 through 11 and incorrect certifications were filed for Years 9 through 14.

Entity 9 is disregarded as an entity separate from its owner for federal tax purposes.

The interest in Entity 9 is a hybrid entity separate unit as described in Treas. Reg.

§ 1.1503-2(c)(4). Entity 9 has activities in Country B that constitute a foreign branch ("Entity 9 Branch") within the meaning of Treas. Reg. § 1.367(a)-6T(g). Entity 9 Branch is a separate unit described in Treas. Reg. § 1.1503-2(c)(3)(i)(A). Dual consolidated losses incurred in Years 8 through 11 are attributable to Entity 9 Branch. No dual consolidated losses are attributable to Taxpayer's interest in Entity 9. No elections were filed with respect to the Year 8 and Year 10 losses, incorrect elections were filed with respect to the losses incurred in Year 9 and Year 11, and incorrect and/or no certifications were filed for all of the losses in Years 8 through 14.

Entity 10 is disregarded as an entity separate from its owner for federal tax purposes.

The interest in Entity 10 is a hybrid entity separate unit as described in Treas. Reg.

§ 1.1503-2(c)(4). Entity 10 has activities in Country B that constitute a foreign branch ("Entity 10 Branch") within the meaning of Treas. Reg. § 1.367(a)-6T(g). Entity 10 Branch is a separate unit described in Treas. Reg. § 1.1503-2(c)(3)(i)(A). Dual consolidated losses incurred in Years 8 through 11 are attributable to Entity 10 Branch. No dual consolidated losses are attributable to Taxpayer's interest in Entity 10. Incorrect elections were filed in Years 8 and 9, no elections were filed in Years 10 and 11, and incorrect and/or no certifications were filed in Years 9 through 14.

Entity 11 is disregarded as an entity separate from its owner for federal tax purposes. The interest in Entity 11 is a hybrid entity separate unit as described in Treas. Reg. § 1.1503-2(c)(4). Entity 11 has activities in Country B that constitute a foreign branch ("Entity 11 Branch") within the meaning of Treas. Reg. § 1.367(a)-6T(g). Entity 11 Branch is a separate unit described in Treas. Reg. § 1.1503-2(c)(3)(i)(A). Dual consolidated losses incurred in Years 11 and 14 are attributable to Entity 11 Branch. No dual consolidated losses are attributable to Taxpayer's interest in Entity 11. Incorrect elections were filed in Years 11 and 14, and incorrect certifications for the losses were filed in Years 12 through 14.

Entity 12 is disregarded as an entity separate from its owner for federal tax purposes. The interest in Entity 12 is a hybrid entity separate unit as described in Treas. Reg. § 1.1503-2(c)(4). Entity 12 has activities in Country B that constitute a foreign branch ("Entity 12 Branch") within the meaning of Treas. Reg. § 1.367(a)-6T(g). Entity 12 Branch is a separate unit described in Treas. Reg. § 1.1503-2(c)(3)(i)(A). Dual consolidated losses incurred in Year 11 are attributable to Entity 12 Branch. No dual consolidated losses are attributable to Taxpayer's interest in Entity 12. No election was filed with respect to the Year 11 loss and no certifications were filed in Years 12 through 14.

Entity 13 is disregarded as an entity separate from its owner for federal tax purposes. The interest in Entity 13 is a hybrid entity separate unit as described in Treas. Reg. § 1.1503-2(c)(4). Dual consolidated losses are attributable to the interest in Entity 13 in Years 11 through 14. No elections were filed for the losses attributable to the interest in Entity 13 and no annual certifications were filed with respect to the losses.

On Date 2, Parent was issued a ruling granting an extension of time to file the agreement described in Treas. Reg. § 1.1503-2(c)(iv)(B)(3)(iii) (the new (g)(2)(i) agreement) for dual consolidated losses attributable to certain entities owned, directly or indirectly, by Taxpayer. Parent's Vice President-Tax was not aware of the requirement to file the new (g)(2)(i) agreement by filing an amended return within 60 days as required by the ruling, thinking instead he could submit the new (g)(2)(i) agreement to the Internal Revenue Service Exam Team that was in the process of examining Parent's Year 13 tax return. The Vice President-Tax believed he had until Date 3 to submit the ruling to the IRS Exam Team and, therefore, the 60-day deadline was missed.

It is represented that the income tax laws of Country A do not deny the use of losses, expenses, or deductions of Entities 1 through 4 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.

It is represented that the income tax laws of Country B do not deny the use of losses, expenses, or deductions of Entities 5 through 13 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.

The period of limitations on assessment under Section 6501 has expired with respect to taxable years ending before Year 12.

Parent and Taxpayer represent that this application for relief was filed before the Internal Revenue Service discovered the failure to file the necessary elections and agreements under Treas. Reg. § 1.1503-2(g)(2)(i) or Treas. Reg. § 1.1503-2T(g)(2)(i), as applicable, and annual certifications under Treas. Reg. § 1.1503-2(g)(2)(vi)(B) or Treas. Reg. § 1.1503-2T(g)(2)(vi)(B), as applicable, with respect to the dual consolidated losses incurred in the years in question. 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 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. § 301.9100-1(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 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 elections and agreements under Treas. Reg. § 1.1503-2(g)(2)(i) or Treas. Reg. § 1.1503-2T(g)(2)(i) and annual certifications under Treas. Reg. § 1.1503-2(g)(2)(vi)(B) or Treas. Reg. § 1.1503-2T(g)(2)(vi)(B) 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 Parent and Taxpayer satisfy Treas. Reg. § 301.9100-3(a). Accordingly, Parent and Taxpayer are granted an extension of time of 60 days from the date of this ruling letter to file the above described elections and agreements under Treas. Reg. § 1.1503-2(g)(2)(i) or Treas. Reg. § 1.1503-2T(g)(2)(i) described in this letter for dual consolidated losses for Year 12, Year 13, and Year 14 that are attributable to Entity 3 Branch, Entity 4, Entity 5 Branch, Entity 11 Branch, and Entity 13. However, an extension of time is not necessary to file missed

elections and agreements or to correct the previously filed erroneous elections and agreements for dual consolidated losses claimed in tax periods before Year 12.

Parent and Taxpayer are also granted an extension of time of 60 days from the date of this ruling letter to file the above described annual certifications under Treas. Reg. § 1.1503-2(g)(2)(vi)(B) or Treas. Reg. § 1.1503-2T(g)(2)(vi)(B) for Year 12, Year 13, Year 14, and Year 15 with respect to the dual consolidated losses attributable to Taxpayer's interests in Entities 4, 7 and 13. However, an extension of time is not necessary to correct the previously filed erroneous annual certifications filed with respect to Entity 1 and Entity 6 Branch.

Parent and Taxpayer are not required to file annual certifications for dual consolidated losses attributable to Entity 2 Branch, Entity 3 Branch, Entity 5 Branch, Entity 8 Branch, Entity 9 Branch, Entity 10 Branch, Entity 11 Branch and Entity 12 Branch because the 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).

Parent is granted an extension of time of 60 days from the date of this ruling letter to file the above described new (g)(2)(i) agreement that was the subject of the ruling issued on Date 2.

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

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

Associate Chief Counsel (International)

By: \_\_\_\_\_  
Thomas D. Beem  
Senior Technical Reviewer, Branch 4  
Office of Chief Counsel (International)

Enclosure:  
Copy for 6110 purposes