

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200923001**
Release Date: 6/5/2009

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

Index Number: 897.02-00; 897.09-00; 1445.08-00, ID No

Telephone Number:

Refer Reply To:
CC:INTL:B04
PLR-117760-08
Date:
February 26, 2009

Entity =
A

Entity =
B

Entity =
C

Entity =
D

Entity =
E

Entity =
F

Entity =
G

V =

W =

Y =

Z =

Dear :

This letter responds to your April 11, 2008 letter requesting a ruling to determine whether Entity B and Entity C will be treated as domestic holders of their respective Entity A stock for purposes of determining whether Entity A is a

domestically controlled qualified investment entity within the meaning of section 897(h)(4)(B).

Additional information was provided for consideration in supplemental submissions dated June 4, 2008, August 22, 2008, and November 6, 2008. The information provided by Entity A is summarized below.

The ruling contained in this letter is based on facts and representations submitted by the taxpayer and accompanied by penalty of perjury statements executed by appropriate parties. This office has not verified any of the above 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.

Entity A is a domestic corporation that elected to be taxed as a real estate investment trust under sections 856-860 of the Code (REIT). Entity A is a United States real property holding corporation (USRPHC) within the meaning of section 897(c)(2).

Entity A's shareholder equity consists of shares of preferred stock and shares of common stock. All of Entity A's preferred stock is owned by United States shareholders none of whom are foreign persons. Entity A's common stock is owned by Entity B and Entity E.

Entity B owns a V percent common stock interest in Entity A. Entity B is a fully taxable domestic Subchapter C corporation which will file a U.S. federal income tax return on Form 1120. Entity B's preferred stock is owned by Entity C. All of Entity B's common stock is owned by Entity G, a foreign partnership. Entity G's partners include, through various foreign entities, Entity D, a publicly traded foreign corporation. Entity B is a USRPHC within the meaning of section 897(c)(2).

Entity E, a domestic limited liability company that is disregarded as an entity separate from its owner, owns W percent of Entity A's common stock. Entity C wholly owns Entity E and therefore is treated as owning the Entity A common stock owned by Entity E. Entity C is a fully taxable domestic Subchapter C corporation which has and will continue to file U.S. federal income tax returns on Form 1120. Entity C is wholly owned by a lower tier foreign subsidiary of Entity D. Entity C is a USRPHC within the meaning of section 897(c)(2).

It is anticipated that Entity E will sell a portion of its common stock interest in Entity A for cash to Entity F, a domestic partnership. Limited partnership units in Entity F will be syndicated to domestic and foreign investors. After the sale to Entity F, the common stock ownership of Entity A will be: Entity B (domestic Subchapter C corporation) V percent, Entity C (domestic Subchapter C corporation) approximately Y percent, and Entity F (domestic partnership) approximately Z percent. All shares of Entity A preferred stock will continue to be owned by United States shareholders none of whom

are foreign persons. In addition, Entity B and Entity C will own more than 50 percent in the value of the common stock of Entity A.

Entity A has represented that Entity B and Entity C are each fully taxable domestic Subchapter C corporations for U.S. federal income tax purposes and are not otherwise a REIT, RIC, hybrid entity, conduit, disregarded entity, or other flow-through or look-through entity.

Entity A requests a ruling whether stock “held directly or indirectly by foreign persons” includes the Entity A stock held by Entity B and Entity C for purposes of determining whether Entity A will be domestically controlled under section 897(h)(4)(B).

Section 897(a)(1) provides that gain or loss of a nonresident alien individual or a foreign corporation from the disposition of a United States real property interest (USRPI) is taken into account under section 871(b)(1) or 882(a)(1) as if the nonresident alien individual or foreign corporation, respectively, were engaged in a trade or business within the United States during the taxable year and as if such gain or loss were effectively connected with such trade or business. Under section 897(c)(1)(A), a USRPI includes any interest (other than an interest solely as a creditor) in any domestic corporation that is a USRPHC.

Section 897(h)(2) provides that a USRPI does not include any interest in a domestically controlled qualified investment entity (QIE). As defined by section 897(h)(4), a QIE includes any REIT. Accordingly, gain on the sale of stock in a domestically controlled QIE is generally not subject to taxation under section 897(a). However, distributions from a domestically controlled QIE attributable to sales or exchanges of USRPIs are generally subject to taxation under section 897(a) pursuant to section 897(h)(1). H.R. Conf. Rep. No. 4297, 109th Cong., 2d Sess. 288 (2006).

Section 897(h)(4)(B) defines a domestically controlled QIE as any QIE in which at all times during the testing period (as defined in section 897(h)(4)(D)) less than 50 percent in value of the stock was held directly or indirectly by foreign persons. Treas. Reg. § 1.897-1(c)(2)(i) provides that “[f]or purposes of this determination the actual owners of stock, as determined under § 1.857-8, must be taken into account.” Treas. Reg. § 1.857-8(b) provides that the actual owner of stock of a real estate investment trust is the person who is required to include in gross income in his return the dividends received on the stock.

As fully taxable domestic Subchapter C corporations, Entity B and Entity C are the entities which include in income in their returns and actually pay U.S. tax on any distributions from Entity A.

Based solely on the information and representations submitted, and on the facts and circumstances of this case, including the representation that Entity B and Entity C are each fully taxable domestic Subchapter C corporations for U.S. federal income tax purposes and are not otherwise a REIT, RIC, hybrid entity, conduit, disregarded entity, or other flow-through or look-through entity, we conclude that Entity B and Entity C will be considered domestic holders of their respective Entity A stock for purposes of determining whether Entity A is a domestically controlled QIE within the meaning of section 897(h)(4)(B).

This ruling is directed 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. No opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

A copy of this letter must be attached to any income tax return to which it is relevant. Pursuant to a power of attorney on file with this office, a copy of this letter will be sent to your authorized representative.

Sincerely,

Charles P. Besecky
Chief, Branch 4
Associate Chief Counsel
(International)

cc: