

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200923003**

Release Date: 6/5/2009

Index Number: 9100.22-00, 1503.04-00

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

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B04

PLR-140358-08

Date:

February 20, 2009

LEGEND

T =

T1 =

T2 =

T3 =

T4 =

T5 =

T6 =

T7 =

T8 =

T9 =

T10 =

Country A =

Country B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Amount 1 =

Dear :

This is in response to a letter dated October 12, 2007, requesting an extension of time under Treas. Reg. § 301.9100-3 to submit a request for T1 to enter into a closing agreement with the Internal Revenue Service pursuant to Rev. Proc. 2000-42, 2000-2 C.B. 394. Additional information was received in a letter dated November 26, 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 the taxpayers and accompanied by a penalty of perjury statement executed by the appropriate parties. 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.

T2, a domestic corporation, was a subsidiary of T3, a Country A corporation, prior to Date 1. On Date 1, T2 and T3 were acquired by T4, a Country A subsidiary of T5, a Country B corporation.

T2 was managed and controlled in Country A until Date 2. Therefore, T2 was subject to income tax on its worldwide income in Country A until Date 2, and was a “dual resident corporation” as defined in Treas. Reg. §§ 1.1503-2(c)(2) and 1.1503-2(b)(4) until Date 2. T2 incurred a net operating loss pursuant to section 172 for the tax year ending Date 3 of Amount 1. Except for the amount allocable to the period after Date 2 through Date 3, this was a “dual consolidated loss” as defined in Treas. Reg. § 1.1502-2(c)(5).

T2 failed to timely file an election pursuant to Treas. Reg. § 1.1503-2(g)(2) for tax year ending Date 3 with respect to the dual consolidated loss, but subsequently requested and was granted an extension of time pursuant to Treas. Reg. § 301.9100-3 to file a late election. Pursuant to that relief, an election under Treas. Reg. § 1503-2(G)(2) was filed.

In Date 4, T5 transferred the stock of T4 to T6, a Country A subsidiary of T5. This resulted in T5 owning the stock of T2 indirectly through T6. In Date 5, T2 merged into T7, a domestic corporation which was an indirect subsidiary of T5, in a transaction intended to qualify as a reorganization under section 368(a)(1) by virtue of section 368(a)(2)(D). T7 was owned by T8, a domestic corporation and parent of a consolidated group. The Date 5 merger resulted in the assets of T2 becoming part of T8's domestic consolidated group and was a triggering event pursuant to Treas. Reg. § 1.1503-2(g)(2)(iii)(A)(4). T7 and T8 later changed their names to T9 and T10, respectively, and both subsequently merged, through a series of transactions, into T1, which is owned by T.

To avoid the recapture of the dual consolidated loss incurred by T2, T9 and T10 were required to enter into a closing agreement with the Internal Revenue Service pursuant to Treas. Reg. § 1.1503-2(g)(2)(iv)(B)(3)(i).

Accordingly, T1, as successor in interest to both T9 and T10, and its consolidated parent T, are requesting relief under Treas. Reg. §§ 301.9100-1 and -3 to obtain an extension of time to enter into the closing agreement.

Section 3.02 of Rev. Proc. 2000-42 provides that a taxpayer must enter into a closing agreement with the Internal Revenue Service before the taxpayer files its tax return for the taxable year of a triggering event. Alternatively, the taxpayer may submit its request for a closing agreement by the due date of its return (including extensions) for the year of the triggering event. T9 and T10 neglected to enter into such agreement in a timely manner.

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 request to enter into a closing agreement is a regulatory election as defined in Treas. Reg. § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant an extension of time, provided the requirements set forth in Treas. Reg. § 301.9100-3(a) are satisfied.

Based on the facts and information submitted, we conclude that T1 and T have satisfied Treas. Reg. § 301.9100-3(a). Accordingly, T1, as the successor in interest to both T9 and T10, and T, T1's consolidated parent are granted an extension of time of 60 days from the date of this ruling letter to submit a request to enter into a closing agreement pursuant to Rev. Proc. 2000-42 with respect to the dual consolidated loss incurred by T2 in the tax year ending Date 3. In anticipation of being granted the extension request herein, T1 and T have already filed the request to enter into the closing agreement with the Internal Revenue Service. Based on the relief granted in this ruling, the request to enter into a closing agreement will now be considered.

The granting of an extension of time is not a determination that T1 is otherwise eligible to enter into a closing agreement. Treas. Reg. § 301.9100-1(a).

A copy of this ruling letter should be associated with the request to enter into the closing agreement previously filed.

This ruling is directed only to the taxpayers who requested it. Section 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 the taxpayers' authorized representatives.

Sincerely,

David B. Bailey
Senior Technical Reviewer, Branch 4
Office of Associate Chief Counsel (International)

Enclosure:
Copy for 6110 purposes

cc: