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PLR-150867-10

Date:

October 03, 2011

TY:

LEGEND:

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|---------------|---|
| Taxpayer | = |
| Corporation A | = |
| Corporation B | = |
| CFC1 | = |
| Sub | = |
| Partnership | = |
| Country C | = |
| Country D | = |
| Country E | = |
| Date 1 | = |
| Date 2 | = |
| Date 3 | = |
| Date 4 | = |
| Date 5 | = |
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Dear :

This is in response to a letter dated December 9, 2010, as supplemented by a letter dated February 14, 2011, each submitted on behalf of Taxpayer by its authorized

representative, requesting rulings with respect to the Federal income tax treatment under section 954(h)(2)(B)(i) of the Internal Revenue Code of gain attributable to a sale of assets that prior to the sale gave rise to gross income from a lending or finance business that was actively and regularly conducted by a controlled foreign corporation through transactions with unrelated customers.

The ruling contained in this letter is based upon information and representations submitted by 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 this request for a ruling, such material is subject to verification upon examination. The information submitted in the request is substantially as set forth below. Unless otherwise indicated, all Code and section references are to the Internal Revenue Code of 1986, as amended, and the regulations thereunder.

FACTS

Taxpayer is a domestic corporation and the common parent of an affiliated group (within the meaning of section 1504) which files a consolidated Federal income tax return. Taxpayer, through domestic and foreign affiliates, conducts a range of businesses within and without the United States. Taxpayer owns 100 percent of Corporation A, a domestic corporation. Corporation A owns 100 percent of Corporation B, a domestic corporation.

Corporation B indirectly, through a group of foreign affiliates and disregarded entities, owns 100 percent of CFC1, an entity organized under the laws of Country C and treated as a controlled foreign corporation for Federal income tax purposes. CFC1 owns 100 percent of Sub, an entity organized under the laws of Country D and treated as an entity disregarded from its sole owner for Federal income tax purposes. CFC1 owns y percent of Partnership, an entity organized under the laws of Country E and treated as a partnership for Federal income tax purposes. The remaining interests of Partnership are owned by various affiliates of Taxpayer. Sub employs approximately z individuals and is engaged in the active conduct of a lending or finance business. Sub engages in numerous lending and financing transactions with unrelated customers located primarily in Country D.

In a transaction that closed on Date 3, CFC1 sold all of the equity interests in Sub to an unrelated buyer in exchange for cash (the "Sale Transaction"). Because Sub is an entity disregarded from its sole owner, CFC1, for Federal income tax purposes, the Sale Transaction will be treated by CFC1 as an asset sale for Federal income tax purposes. CFC1 expects that the Sale Transaction will result in a gain for Federal income tax purposes of \$x. Taxpayer represents that the vast majority of such gain is attributable to goodwill or going concern value (as defined in Treas. Reg. § 1.1060-1(b)(2)(ii)) used or held for use in CFC1's trade or business

and most of the remaining gain is attributable to receivables resulting from loans made by Sub to its customers during the ordinary course of its lending or finance business.

In addition to the preceding facts and representations, Taxpayer represents the following for purposes of this request:

1. CFC1 has been an eligible controlled foreign corporation within the meaning of section 954(h)(2) for the tax years ended Date 1 and Date 2 and is expected to be an eligible controlled foreign corporation for the tax years ending Date 4 and Date 6 (without regard to the treatment of gain realized by CFC1 attributable to the Sale Transaction).
2. Sub is a qualified business unit of CFC1 within the meaning of section 954(h)(5)(D).
3. Substantially all of Sub's gross income for the tax years ended Date 1, Date 2, and Date 4 has been income which has qualified for the active financing exception under section 954(h)(3). Substantially all of the gross income of Sub is expected to qualify for the active financing exception for the period commencing on the first day of the tax year which begins on Date 5 and ending on the date of the Sale Transaction (which results in a divestiture of Sub).
4. Certain assets of Sub constitute receivables and other financial assets which produced, before the Sale Transaction, income which would be treated, absent application of the de minimis rule provided in Section 954(b)(3), as foreign personal holding company income under section 954(c)(1)(A). These assets comprise less than a% of the assets of Sub (the "Passive Assets"). No assets of Sub other than the Passive Assets produced, before the Sale Transaction, income which would be treated, absent application of the de minimis rule provided in Section 954(b)(3), as Subpart F income.
5. Substantially all of CFC1's gross income for the tax years ended Date 1, Date 2, and Date 4 has been income which has qualified for the active financing exception under section 954(h)(3).
6. None of the income of CFC1 (whether attributable to the businesses conducted by Sub or by Partnership) for the tax years ended Date 1, Date 2 or Date 4 has been includible by its U.S. shareholder under section 951 due to the application of the de minimis rule provided in section 954(b)(3).

7. If the gain realized by CFC1 attributable to the Sale Transaction is considered nonqualifying income for purposes of section 954(h)(2)(B)(i), CFC1 will fail to satisfy the 70 percent gross income test under such section, thereby failing to qualify for the active financing exception under section 954(h) for the tax year ended Date 6.
8. In the absence of the Sale Transaction, CFC1 is expected to be an eligible controlled foreign corporation under section 954(h)(2) for the tax year ended Date 6.

LAW

Section 951(a) provides that a United States shareholder (as defined in section 951(b)) of a controlled foreign corporation (as defined in section 957) must include in gross income its pro-rata share of the controlled foreign corporation's Subpart F income for each year.

Section 951(b) defines the term "United States shareholder" to mean any United States person (as defined in section 957(c)) who owns (within the meaning of section 958) 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation.

Section 957(a) defines a controlled foreign corporation to mean any foreign corporation if more than 50 percent of the total combined voting power of all classes of its stock or more than 50 percent of the total value of its stock is owned by United States shareholders on any day during the taxable year of such foreign corporation.

Section 952(a) sets forth several categories of income of a controlled foreign corporation that constitute Subpart F income, including foreign base company income.

Section 954(a)(1) defines the term foreign base company income to include foreign personal holding company income.

Section 954(c)(1) provides that foreign personal holding company income includes certain types of passive income and certain gains from the sale or exchange of property.

Under section 954(c)(1)(A), a controlled foreign corporation's gross income which consists of dividends, interest, royalties, rents and annuities constitutes foreign personal holding company income.

Under section 954(c)(1)(B)(i) foreign personal holding company income includes

the excess of gains over losses from the sale or exchange of property which gives rise to dividends, interest, royalties, rents and annuities.

Under section 954(c)(1)(B)(iii) foreign personal holding company income includes the excess of gains over losses from the sale or exchange of property which does not give rise to any income.

Treas. Reg. § 1.954-2(e)(3) provides that property that does not give rise to income includes all rights and interests in property (whether or not a capital asset), except as otherwise provided.

Treas. Reg. § 1.954-2(e)(3)(iv) provides that property that does not give rise to income shall not include intangible property (as defined in section 936(h)(3)(B)), goodwill or going concern value, to the extent used or held for use in the controlled foreign corporation's trade or business.

Section 954(h)(1) provides an exception from foreign personal holding company income for the income derived by a controlled foreign corporation in the active conduct of banking, financing or securities business. Under section 954(h)(1), provided that certain conditions are satisfied, foreign personal holding company income does not include the qualified banking or financing income of an eligible controlled foreign corporation (as such terms are defined in section 954(h)).

Section 954(h)(2)(A) defines an "eligible controlled foreign corporation" to mean a controlled foreign corporation which is predominantly engaged in the active conduct of a banking, financing, or similar business, and which conducts substantial activity with respect to such business.

Section 954(h)(2)(B)(i) provides that a controlled foreign corporation is predominantly engaged in the active conduct of a banking, financing, or similar business if more than 70 percent of the gross income of such controlled foreign corporation is derived directly from the active and regular conduct of a lending or finance business from transactions with customers which are not related persons.

Section 954(h)(4) provides that the term "lending or finance business" means the business of making loans, purchasing or discounting accounts receivable, notes, or installment obligations, engaging in leasing (including entering into leases and purchasing, servicing, and disposing of leases and leased assets), issuing letters of credit or providing guarantees, providing charge and credit card services, or rendering services or making facilities available in connection with such activities carried on by certain corporations.

Section 954(h)(3) provides that the term "qualified banking or financing income" means income of an eligible CFC which is: 1) derived in the active conduct of a

banking, financing, or similar business by such eligible CFC (or its qualified business unit); 2) derived from one or more transactions with customers located in a country other than the United States and substantially all of the activities in connection with which are conducted directly by the corporation or unit in its home country; and 3) is treated as earned by such corporation or unit in its home country for purposes of such country's tax laws.

RULINGS

Based solely on the information submitted and the representations made, we conclude that upon the sale of the assets of Sub, only the gain recognized by CFC1 from the sale of the Passive Assets will result in foreign personal holding company income. All remaining gain realized by CFC1 from the sale of the assets of Sub is not foreign personal holding company income. Further, for purposes of applying section 954(h) to CFC1, all gain recognized by CFC1 on the sale of Sub assets, except for gain recognized on the Passive Assets, will be treated as income described in section 954(h)(2)(B)(i).

The above ruling is only applicable with respect to the Code sections addressed herein. We do not express or imply an opinion on the federal tax consequences of any aspect of these transactions other than those expressed in the ruling above.

This private letter ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

You must attach to any income tax return to which it is relevant a copy of this letter or, if you file your returns electronically, a statement providing the date and control number of this letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Taxpayer's first and second representatives.

Sincerely,

Jeffery G. Mitchell
Branch Manager, Branch 2
(International)