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TY:

Legend

Taxpayer =

CFC =

Year A =

Attorney J =

Year B =

Dear :

This replies to your December 12, 2011 letter requesting an extension of time under Treas. Reg. § 301.9100-3 to file a Treas. Reg. § 1.954-2(g)(3) foreign currency gain or loss election on behalf of a CFC for Year A (the "-2(g)(3) election").

FACTS

Taxpayer, a U.S. corporation, is the common parent of a U.S. affiliated group of corporations that files a consolidated return. Taxpayer seeks to make the Treas. Reg. § 1.954-2(g)(3) election on behalf of CFC, a foreign corporation wholly owned by Taxpayer.

Taxpayer represents that in Year A it inadvertently failed to make the -2(g)(3) election. Taxpayer explains that it determined in Year A that an election under Treas. Reg. § 1.954-2(g)(3) to offset net currency losses against interest income for CFC would significantly improve its position with respect to the application of the section 952(c) recapture rule. Accordingly, Attorney J, a senior tax attorney in Taxpayer's tax

department, drafted the -2(g)(3) election statement and provided it to a member of Taxpayer's tax reporting group for inclusion in the Year A return. Attorney J provided an affidavit verifying these facts.

Taxpayer filed its Year A return in accordance with the belief and understanding that the -2(g)(3) election statement was included as part of the Year A consolidated federal income tax return. Taxpayer also filed all subsequent consolidated returns in accordance with this understanding.

In Year B, as part of its documentation review in evaluating potential organizational restructurings, Taxpayer sought a copy of the -2(g)(3) election statement. After review of the filed return and extensive inquiries, Taxpayer concluded that the election statement had been erroneously omitted from the filed return. Taxpayer submitted documentation verifying these facts.

Taxpayer asserts that the following reasons show it acted reasonably and in good faith under Treas. Reg. § 301.9100-3, and should, therefore, be granted an extension of time to file the Treas. Reg. § 1.954-2(g)(3) election on behalf of CFC for Year A:

- (i) It requested relief before its failure to make the election was discovered by the Service;
- (ii) It is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 (no alteration to the returns are necessary);
- (iii) It did not affirmatively choose not to file the -2(g)(3) election after having been informed in all material respects of the required election and related tax consequences; and
- (iv) It has not used hindsight in requesting relief (no facts have changed since the due date for making the election that make the election more advantageous to Taxpayer).

Taxpayer further asserts that granting the extension will not prejudice the interests of the government because it will not result in Taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than they would have had if the election had been timely made (taking into account the time value of money). In addition, Taxpayer represents that the taxable year in which the -2(g)(3) election should have been made or any taxable years that would have been affected by the election had it been timely made are not closed by the period of limitations on assessment under section 6501(a). Finally, Taxpayer represents it has satisfied the procedural requirements of Treas. Reg. § 301.9100-3(e).

LAW

Treas. Reg. § 1.954-2(g)(3)(i) provides that a controlled foreign corporation may elect to exclude certain foreign currency gain or loss from foreign personal holding company income and, instead, include such foreign currency gain or loss in the category (or categories) of subpart F income (described in section 952(a), or, in the case of foreign base company income, described in Treas. Reg. § 1.954-1(c)(1)(iii)(A)(1) or (2)) to which such gain or loss relates.

Treas. Reg. § 1.954-2(g)(3)(ii) provides that the controlling United States shareholders, as defined in Treas. Reg. § 1.964-1(c)(5), make the election on behalf of the controlled foreign corporation by filing a statement with their original income tax returns for the taxable year of such United States shareholders ending with or within the taxable year of the controlled foreign corporation for which the election is made, clearly indicating that such election has been made. An election made pursuant to Treas. Reg. § 1.954-2(g)(3) is effective for the taxable year of the controlled foreign corporation for which it is made and all subsequent taxable years of such corporation unless revoked by or with the consent of the Commissioner. See Treas. Reg. § 1.954-2(g)(3)(iii).

Treas. Reg. § 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-3 sets forth the conditions that must be satisfied to obtain an extension of time to make a regulatory election that is not listed as automatic in Treas. Reg. § 301.9100-2(a)(2).

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 such relief will be granted when the taxpayer provides evidence (including affidavits described in § 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.

Treas. Reg. § 301.9100-3(b)(1) provides that, except as provided in Treas. Reg. § 301.9100-3(b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief under this section before the failure to make the regulatory election is discovered by the Internal Revenue Service.

Treas. Reg. § 301.9100-3(b)(3) provides that a taxpayer is deemed not to have acted reasonably and in good faith if the taxpayer:

(i) Seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief (and the new position requires or permits a regulatory election for which relief is requested);

(ii) Was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or

(iii) Uses hindsight in requesting relief. In this regard, if specific facts have changed since the due date for making the election that make the election advantageous to a taxpayer, the Internal Revenue Service will not ordinarily grant relief unless the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

Treas. Reg. § 301.9100-3(c)(1)(i) provides that the interests of the government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). In addition, Treas. Reg. § 301.9100-3(c)(1)(i) states that if the tax consequences of more than one taxpayer are affected by the election, the government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made.

Treas. Reg. § 301.9100-3(c)(1)(ii) provides that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made, or any taxable years that would have been affected by the election had it been timely made, are closed by the period of limitations on assessments under section 6501(a) before the taxpayer's receipt of a ruling granting relief.

ANALYSIS

In this case, Treas. Reg. § 1.954-2(g)(3) prescribes the time for making the election; therefore, it is a regulatory election pursuant to Treas. Reg. § 301.9100-1(b). It is not, however, listed as an automatic election in Treas. Reg. § 301.9100-2(a)(2). As a non-automatic regulatory election, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-3 to grant Taxpayer a reasonable extension of time to make the election, provided Taxpayer satisfies the standards set forth in Treas. Reg. § 301.9100-3. Based upon the facts and representations of Taxpayer and the accompanying affidavits, we conclude that Taxpayer satisfies the requirements set forth in Treas. Reg. § 301.9100-3.

CONCLUSION

Taxpayer is granted an extension of time until ninety days from the date of this ruling letter to file a Treas. Reg. § 1.954-2(g)(3) election on behalf of CFC for Year A.

No ruling has been requested, and none is expressed or implied, regarding the application of any other section of the Code or regulations to the facts presented. As provided in Treas. Reg. § 301.9100-1(a), the granting of an extension of time is not a determination that Taxpayer is otherwise eligible to file the election statement.

The extension of time granted in this letter is a letter ruling pursuant to Treas. Reg. § 301.9100-3(e)(5). This ruling is based upon the information and representations submitted by 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 ruling request; it is subject to verification upon examination.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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