

Internal Revenue Service

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Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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Date:
October 15, 2012

Legend

Taxpayer =

Parent =

Affiliate =

State =

Country =

Entity =

Region =

X =

Courts =

Dear :

This letter responds to a letter, dated September 30, 2011, written by Taxpayer's authorized representative on behalf of Taxpayer, requesting a private letter ruling

concerning the classification for federal tax purposes of a joint venture between Taxpayer and Affiliate.

According to the information submitted, Taxpayer is a corporation organized under the laws of State, and is a wholly-owned subsidiary of Parent. Affiliate is an Entity organized under the laws of Country A and is wholly owned by Taxpayer.

Taxpayer intends to enter into a joint venture with Affiliate by executing a Profit Participation Agreement (the "Agreement") under which Affiliate will acquire a X% interest in the capital of all of Taxpayer's branches in Region in return for a cash investment equal to X% of the overall fair market value of the Region branches. Affiliate will also acquire a X% interest in the profits and losses from all business operations of the branches in the Region.

No separate juridical legal entity will be created as a result of the agreement and thus Taxpayer will retain legal ownership of all assets, liabilities, and contractual obligations of the Region branches.

Taxpayer has provided the following representations in connection with its request for a private letter ruling.

- (a) The Agreement will be signed outside the United States.
- (b) The Agreement will provide that it will be governed by the laws of Country (the "Governing Law Provision").
- (c) The Agreement will provide that Taxpayer and the Affiliate consent to the exclusive jurisdiction of Courts with respect to any matter or action arising out of or in connection with the Agreement (the "Exclusive Jurisdiction Provision").
- (d) The rights and obligations of Taxpayer and the Affiliate under the Agreement will be legally binding under the laws of Country and will be enforceable in Courts. The performance of such obligations will not conflict with the laws of Country.
- (e) The Governing Law Provision will be valid and legally binding under the law of Country and would be recognized by the courts of Country in a legal action brought by Taxpayer or Affiliate against the other party.
- (f) The Exclusive Jurisdiction Provision will be valid and legally binding under the law of Country and would be recognized by the courts of Country in a legal action brought by Taxpayer or Affiliate against the other party.
- (g) The Affiliate will be entitled to nominate one member of a 10-member committee that will oversee the operations and management of the Region branches (the

“Management Committee”). All meetings of the Management Committee will take place outside of the United States.

- (h) Taxpayer will elect to treat the resulting separate business entity as a corporation pursuant to § 301.7701-3(c).
- (i) For all applicable federal tax purposes, Taxpayer will report the formation of the resulting separate business entity and its ongoing operations in a manner consistent with the rulings set forth below, including, but not limited to, the filing of, and furnishing of all required information on, Form 926 (Return by a U.S. Transferor of Property to a Foreign Corporation) and Form 5471 (Information Return of U.S. Persons with Respect to Certain Foreign Corporations).

Section 301.7701-1(a)(1) provides, in part, that whether an organization is an entity separate from its owners for federal tax purposes is a matter of federal tax law and does not depend on whether the organization is recognized as an entity under local law.

Section 301.7701-1(a)(2) provides, in part, that a joint venture or other contractual arrangement may create a separate entity for federal tax purposes if the participants carry on a trade, business, financial operation, or venture and divide the profits therefrom.

Section 301.7701-2(a) provides in part, that a business entity is any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner under § 301.7701-3) that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Internal Revenue Code.

Section 301.7701-5(a) provides in part, that a business entity (including an entity that is disregarded as separate from its owner under § 301.7701-2(c)) is domestic if it is created or organized as any type of entity (including, but not limited to, a corporation, unincorporated association, general partnership, limited partnership, and limited liability company) in the United States, or under the law of the United States or of any State. A business entity that is created or organized both in the United States and in a foreign jurisdiction is a domestic entity. A business entity (including an entity that is disregarded as separate from its owner under § 301.7701-2(c)) is foreign if it is not domestic. The determination of whether an entity is domestic or foreign is made independently from the determination of its corporate or non-corporate classification.

A joint venture or separate business entity may exist for federal tax purposes where business is not carried out in the name of the separate entity, property of the business is not held in the name of the separate entity, and one of the participants in the venture is not disclosed to third parties. Taxpayer and Affiliate plan to execute the Agreement in

order to engage in an active business in Region, sharing in the profits and losses as well as the management of all activities in Region.

Accordingly, based solely on the facts submitted and the representations made, we find that:

1. The Agreement between Taxpayer and Affiliate will create a separate business entity within the meaning of § 301.7701-2.
2. All items of income and expense properly allocable to the business carried on by the separate business entity created by the Agreement will be treated as the income and expense of the separate business entity for federal income tax purposes.
3. The separate business entity created by the Agreement will be a foreign business entity within the meaning of § 301.7701-5.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed above under any other provision of the Internal Revenue Code and the regulations thereunder. Specifically, no opinion is expressed as to: (1) how § 367 of the Code and the regulations thereunder apply to the facts described in this ruling or (2) whether the separate business entity created by the Agreement is an eligible entity under § 301.7701-3.

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,

David R. Haglund

David R. Haglund
Branch Chief, Branch 1
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes