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**From:** [REDACTED]

**Sent:** Wednesday, June 17, 2015 3:35:50 PM

**To:** [REDACTED]

**Cc:** [REDACTED]

**Bcc:**

**Subject:** case

and ,

We understand that the exam team for . intends to challenge the taxpayer's reporting of a deemed distribution to its new parent corporation under Treas. Reg. section 1.367(b)-10 in connection with combination with . In this transaction, a newly formed domestic subsidiary of the parent acquired . in exchange for stock of the parent. The taxpayer's position is that only the current earnings and profits of the acquiring corporation for the taxable year ending December 31, are taken into account in determining the amount of the deemed distribution that is a dividend. The exam team intends to challenge the taxpayer's position under the "anti-abuse" rule of Treas. Reg. section 1.367(b)-10(d). Treas. Reg. section 1.367(b)-10(d) provides in part that "[a]ppropriate adjustments shall be made pursuant to this section if, in connection with a triangular reorganization, a transaction is engaged in with a view to avoid the purpose of this section." The exam team intends to assert that the accumulated earnings and profits of the target ( .) also must be taken into account in determining the amount of the deemed distribution that is a dividend.

As our attorneys have indicated previously, ACCI supports Exam's proposed application of the anti-abuse rule in Treas. Reg. section 1.367(b)-10(d), under which the amount of the parent's deemed dividend (and withholding tax) would be measured taking into account all of U.S. earnings and profits (including the accumulated earnings and profits of the target). ACCI will assist the exam team and field counsel in drafting the NOPA that describes this adjustment, and will support them if the taxpayer challenges it.

Please let us know if you would like to discuss further.

Thanks,