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Date:
August 31, 2015

Attn: Director, Income Tax

DO:

LEGEND:

Foreign Parent =

Taxpayer =

CPA Firm =

Nationality =

Product =

Number 1 =

Number 2 =

Geographic =

SegmentYear =Report =Reporting =

Authority

Stock =

Exchange

Link 1 =

Link 2 =

Report Type 1 =

Report Type 2 =

Dear _____ :

We received CPA Firm's letter of May 12, 2015, which notes Taxpayer's request for three rulings on behalf of Foreign Parent. Taxpayer, a domestic corporation, is a wholly owned subsidiary of Foreign Parent. Taxpayer manufactures and wholesales a variety of Product. For federal income tax purposes, Taxpayer uses the last-in, first-out ("LIFO") method of accounting for the majority of its inventories.

Foreign Parent is a Nationality corporation that produces a wide range of products. Foreign Parent has Number 1 operating segments and Number 2 geographic segments. Foreign Parent is engaged in "substantial foreign operations" within the meaning of Rev. Rul. 78-246, 1978-1 C.B. 146.

Foreign Parent issues audited worldwide consolidated financial statements to its shareholders and creditors prepared on the basis of Nationality Generally Accepted Accounting Principles ("Nationality GAAP"). These consolidated financial statements provide worldwide consolidated operating income that includes Taxpayer's operating income on a LIFO basis.

Before Year, Foreign Parent was required to report sales, operating income, and operating assets for each geographic segment in its consolidated financial statements under Nationality GAAP. Foreign Parent filed Report in Nationality with the Reporting Authority, filed consolidated financial statements in Nationality with the Stock Exchange, and posted consolidated financial statements in English on its global website. These consolidated financial statements included the required geographic segment reporting and the operating income of Geographic Segment, including Taxpayer's operating income on a LIFO basis.

Beginning in Year, Nationality GAAP only required Foreign Parent to report sales and operating assets for each geographic segment. Thus, Foreign Parent filed a Report in Nationality with the Reporting Authority, which included the geographic segment reporting. Foreign Parent also filed a condensed version of the consolidated financial statements in Nationality with the Stock Exchange, which excluded geographic segment reporting. Foreign Parent also removed geographic segment reporting from the consolidated financial statements that were translated into English and posted on its global website.

Foreign Parent issues its worldwide consolidated financial statements in connection with its annual earnings release. Foreign Parent posts the English version and the condensed Nationality version of its consolidated financial statements on its global website the day of the earnings release, and the Stock Exchange posts the condensed Nationality version of Foreign Parent's consolidated financial statements on its global website the same day or shortly thereafter.

Foreign Parent also issues supplementary information and meeting materials in connection with its annual earnings release, which provide financial results for the financial statement year, including the reporting of operating income by geographic segment. Foreign Parent posts the worldwide consolidated financial statements, supplementary information, and meeting materials on the Investor Relations page of its global website, which is accessed using the link on Foreign Parent's global homepage. The consolidated financial statements, supplemental information, and meeting materials are accessed through separate, individual links under Latest Financial Results on the Investor Relations page.

Foreign Parent also posts consolidated sales and income, sales and income by operating segment, sales and income by geographic segment, and other financial data in a simplified format on the Investor Relations page. The consolidated sales and income data are accessed through the Link 1 link under Financial Data on the Investor Relations page. The segment sales and income data are accessed through the Link 2 link under Financial Data on the Investor Relations page.

Foreign Parent also issues two Annual Reports to shareholders and investors: the Report Type 1 and the Report Type 2. The Report Type 1 and the Report Type 2 provide worldwide consolidated operating income that includes Taxpayer's operating income on a LIFO basis. The Report Type 1 reports sales by geographic segment, but does not report operating income by geographic segment. The Report Type 2 reports sales and operating assets by geographic segment, but does not report operating income by geographic segment. These Annual Reports are accessed through the Annual Reports link on the Investor Relations page.

Though Foreign Parent discontinued providing operating income by geographic segment in the consolidated financial statements filed with the Reporting Authority and discontinued geographic segment reporting in the consolidated financial statements filed with the Stock Exchange and the consolidated financial statements posted on its global website after the change in Nationality GAAP in Year, Foreign Parent continued to provide operating income by geographic segment in the supplemental information provided in connection with its annual earnings release to maintain continuity of reporting to shareholders and investors.

Foreign Parent's subsidiaries provide financial information to Foreign Parent in electronic form that Foreign Parent uses to prepare its worldwide consolidated financial statements. Foreign Parent's subsidiaries maintain separate electronic general ledgers that are assigned an entity code. Taxpayer maintains its general ledger on a U.S. GAAP basis, and the income statement, balance sheet, statement of changes in equity, and other financial information is computed on a LIFO basis. Foreign Parent uploads financial information from each general ledger monthly. Foreign Parent consolidates the uploaded financial information quarterly and prepares the worldwide consolidated financial statements on a Nationality GAAP basis.

Foreign Parent is considering adopting International Financial Reporting Standards (“IFRS”). If Foreign Parent adopts IFRS, Foreign Parent will be required to report Taxpayer’s results of operations on a non-LIFO basis in its worldwide consolidated financial statements. Specifically, operating income in the consolidated income statement, consolidated statement of changes in equity, and in the segment reporting of Product will include Taxpayer’s operating income on a non-LIFO basis. Though IFRS will not require Foreign Parent to report operating income by geographic segment, Foreign Parent will continue to report operating income by geographic segment in the supplemental disclosures made in connection with its annual earnings release. The segment reporting of Geographic Segment will include Taxpayer’s operating income on a non-LIFO basis.

After adopting IFRS, Taxpayer will modify the reporting of its financial information to Foreign Parent as follows. Taxpayer will continue to maintain its electronic general ledger on a U.S. GAAP and LIFO basis. Taxpayer will provide Foreign Parent an electronic upload in Excel format that includes a single workbook with two tabs. The first tab will be labeled “PRIMARY” and will include Taxpayer’s consolidated financial statements on a U.S. GAAP and LIFO basis. The second tab will be labeled “SUPPLEMENTAL” and will include Taxpayer’s consolidated financial statements on an IFRS (non-LIFO) basis.

RULINGS REQUESTED

- (1) Foreign Parent’s posting of its consolidated financial statements and the supplemental disclosures on its global website, which will include Taxpayer’s earnings on a non-LIFO basis, will not violate the LIFO conformity requirement under section 472(c) and (e)(2) of the Internal Revenue Code.
- (2) Foreign Parent’s supplemental disclosures of operating income by geographic segment for Geographic Segment in connection with its annual earnings release, which will include Taxpayer’s earnings on a non-LIFO basis, will not violate the LIFO conformity requirement under section 472(c) and (e)(2).
- (3) Taxpayer’s electronic reporting of earnings to Foreign Parent in an Excel workbook that contains a tab labeled “PRIMARY,” which will include financial statements prepared on a U.S. GAAP and LIFO basis, and a tab labeled “SUPPLEMENTAL,” which will include financial statements prepared on an IFRS (non-LIFO) basis, will not violate the LIFO conformity requirement under section 472(c) and (e)(2).

LAW AND ANALYSIS

Applicable Law

Section 472(c) provides that a taxpayer who elects to use the LIFO inventory method for federal income tax purposes must establish to the satisfaction of the Secretary that it has used no method other than LIFO in inventorying such goods to

ascertain the income, profit, or loss of the first taxable year for which LIFO is to be used, for the purpose of a report or statement covering such taxable year to shareholders, partners, or other proprietors, or to beneficiaries, or for credit purposes.

Section 472(e)(2) imposes a requirement similar to that contained in section 472(c) for taxable years subsequent to the year of the LIFO election.

Section 472(g) provides that all members of the same group of financially related corporations shall be treated as one taxpayer for purposes of the LIFO conformity requirements contained in subsections (c) and (e)(2). The term “group of financially related corporations” means any affiliated group as defined in section 1504(a), determined by substituting “50 percent” for “80 percent” each place it appears and without regard to section 1504(b), and any other group of corporations that consolidate or combine for purposes of financial statements.

Section 1.472-2(e)(1) of the Income Tax Regulations provides, in part, that the taxpayer must establish to the satisfaction of the Commissioner that the taxpayer, in ascertaining the income, profit, or loss for the taxable year for which the LIFO inventory method is first used, or for any subsequent taxable years, for credit purposes or for purposes of reports to shareholders, partners, or other proprietors, or to beneficiaries, has not used any inventory method other than that referred to in § 1.472-1 or at variance with the requirements of § 1.472-2(c).

Section 1.472-2(e)(1)(i) provides that the taxpayer’s “use of an inventory method other than LIFO for purposes of ascertaining information reported as a supplement to or explanation of the taxpayer’s primary presentation of the taxpayer’s income, profit, or loss, for a taxable year in credit statements or financial reports” is not considered at variance with the requirements § 1.472-2(e)(1).

Section 1.472-2(e)(1)(ii) provides that the “use of an inventory method other than LIFO to ascertain the value of the taxpayer’s inventory of goods on hand for purposes of reporting the value of such inventories as assets” is not considered at variance with the requirements of § 1.472-2(e)(1).

Section 1.472-2(e)(1)(iii) provides that the taxpayer’s “use of an inventory method other than LIFO for purposes of ascertaining information reported in internal management reports” is not considered at variance with the requirements § 1.472-2(e)(1).

Section 1.472-2(e)(4) provides that under paragraph (e)(1)(ii) of this section, the use of an inventory method other than LIFO to ascertain the value of the taxpayer’s inventories for purposes of reporting the value of the inventories as assets is not considered the ascertainment of income, profit, or loss and therefore is not considered at variance with the requirement of paragraph (e)(1) of this section. Therefore, a taxpayer may disclose the value of inventories on a balance sheet using a method other than LIFO to identify the inventories, and such a disclosure will not be considered at

variance with the requirement of paragraph (e)(1) of this section. However, the disclosure of income, profit, or loss for a taxable year on a balance sheet issued to creditors, shareholders, partners, other proprietors, or beneficiaries is considered at variance with the requirement of paragraph (e)(1) of this section if such income information is ascertained using an inventory method other than LIFO and such income information is for a taxable year for which the LIFO method is used for Federal income tax purposes. Therefore, a balance sheet that discloses the net worth of a taxpayer, determined as if income had been ascertained using an inventory method other than LIFO, may be at variance with the requirement of paragraph (e)(1) of this section if the disclosure of net worth is made in a manner that also discloses income, profit, or loss for a taxable year.

However, a disclosure of income, profit, or loss using an inventory method other than LIFO is not considered at variance with the requirement of paragraph (e)(1) of this section if the disclosure is made in the form of either a footnote to the balance sheet or a parenthetical disclosure on the face of the balance sheet. In addition, an income disclosure is not considered at variance with the requirement of paragraph (e)(1) of this section if the disclosure is made on the face of a supplemental balance sheet labelled as a supplement to the taxpayer's primary presentation of financial position, but only if, consistent with the rules of paragraph (e)(3) of this section, such a disclosure is clearly identified as a supplement to or explanation of the taxpayer's primary presentation of financial income as reported on the face of the taxpayer's income statement.

Section 1.472-2(e)(3) provides specific rules related to the exception of the conformity requirement for supplemental or explanatory information.

Section 1.472-2(e)(3)(i) provides that information reported on the face of a taxpayer's financial income statement for a taxable year is not considered a supplement to or explanation of the taxpayer's primary presentation of the taxpayer's income, profit, or loss for the taxable year in credit statements or financial reports. For purposes of paragraph (e)(3) of this section, the face of an income statement does not include notes to the income statement presented on the same page as the income statement, but only if all notes to the financial income statement are presented together.

Section 1.472-2(e)(3)(ii) provides, in part, that information reported in notes to a taxpayer's financial income statement is considered a supplement to or explanation of the taxpayer's primary presentation of income, profit, or loss for the period covered by the income statement if all notes to the financial income statement are presented together and if they accompany the income statement in a single report.

Section 1.472-2(e)(3)(iii) provides that information reported in an appendix or supplement to a taxpayer's financial income statement is considered a supplement to or explanation of the taxpayer's primary presentation of income, profit, or loss for the period covered by the income statement if the appendix or supplement accompanies the income statement in a single report and the information reported in the appendix or supplement is clearly identified as a supplement to or explanation of the taxpayer's

primary presentation of income, profit, or loss as reported on the face of the taxpayer's income statement. . . . For purposes of paragraph (e)(3)(iii) of this section, information is considered to be clearly identified as a supplement to or explanation of the taxpayer's primary presentation of income, profit, or loss as reported on the face of the taxpayer's income statement if the information either--

(A) Is reported in an appendix or supplement that contains a general statement identifying all such supplemental or explanatory information;

(B) Is identified specifically as supplemental or explanatory by a statement immediately preceding or following the disclosure of the information;

(C) Is disclosed in the context of making a comparison to corresponding information disclosed both on the face of the taxpayer's income statement and in the supplement or appendix; or

(D) Is a disclosure of the effect on an item reported on the face of the taxpayer's income statement of having used the LIFO method.

For example, a restatement of cost of goods sold based on an inventory method other than LIFO is considered to be clearly identified as supplemental or explanatory information if the supplement or appendix containing the restatement contains a general statement that all information based on such inventory method is reported in the appendix or supplement as a supplement to or explanation of the taxpayer's primary presentation of income, profit, or loss as reported on the face of the taxpayer's income statement.

Section 1.472-2(e)(5), which is supposed to provide specific rules related to the exception of the conformity requirement for internal management reports, has been reserved.

Rev. Rul. 78-246 holds that it is inappropriate to impose the LIFO method of inventory valuation upon a foreign parent corporation with respect to the inventory of any subsidiary that uses the LIFO method of inventory valuation for Federal income tax purposes when the group is engaged in substantial foreign operations. Accordingly, the LIFO method of inventory valuation need not be used in the consolidated financial statements of the foreign parent if it owns, either directly or through members of its consolidated group, operating assets of substantial value which are used in foreign operations. In making this determination operating assets regardless of their physical location will be treated as used in foreign operations if they are owned by, and used in the business of, corporations that: (1) are members (including the parent) of the consolidated group; (2) are foreign corporations; (3) do not use the LIFO method of accounting for Federal income tax purposes; and (4) engage in a business outside the United States. A corporation is considered a member of the consolidated group if it is a consolidated member for financial accounting purposes. Operating assets for purposes of this test are all of the assets necessary for the conduct of an active operating

company. Operating assets will be considered of substantial value if they constitute 30 percent or more of the total operating assets of the consolidated group. This determination will be made annually and normally will be made on the basis of the asset valuation reflected in the consolidated financial statements of the group for the year. However, a corporation that uses the LIFO method for Federal income tax purposes must otherwise comply with the conformity requirements of section 472(c) and (e)(2) of the Code in inventorying its goods to ascertain income, profit, or loss for the purposes of a report or statement (covering the taxable year for which the LIFO method is used) to shareholders, partners, other proprietors, or beneficiaries, or for credit purposes.

Analysis

Taxpayer elected the LIFO method of accounting for federal income tax purposes and became subject to the LIFO conformity requirement. See section 472(c), (e)(2); § 1.472-2(e)(1). When a taxpayer using the LIFO method is a member of a group of financially related corporations, however, the LIFO conformity requirement is applied on a group basis. For example, a parent corporation (including a foreign corporation) and a 50 percent owned subsidiary are considered to be one taxpayer for the purposes of the LIFO conformity requirement. Section 472(g). Thus, the LIFO conformity requirement will not be violated if Taxpayer issues financial statements prepared on a non-LIFO basis to Foreign Parent, but the LIFO conformity requirement will be violated if Taxpayer issues financial statements prepared on a non-LIFO basis to Foreign Parent's shareholders, to any of its own shareholders, or to any creditor, potential creditor, etc., other than Foreign Parent and other members of the same group of financially related corporations.

When approving section 472(g) in the Deficit Reduction Tax Bill of 1984 (P.L. 98-369), the Senate expressed its intent to overturn *Insilco Corp. v. Commissioner*, 73 T.C. 589 (1980), *aff'd in an unreported decision* (2d Cir. 1980). However, the Senate also expressed its intent that limited exceptions to the conformity requirement provided under present law (or the similar limited exceptions provided by the Treasury, if appropriate, in the future) should be allowed. Cited as an example of "present law" is Rev. Rul. 78-246. S. REP. NO. 98-169, at 486-7 (1984). *See also* H.R. REP. NO. 98-861, at 897 (1984) (Conf. Rep.).

Under Rev. Rul. 78-246, a foreign corporation engaged in "substantial foreign operations" is not required to issue consolidated financial statements prepared on a LIFO basis. Because Foreign Parent and its group of financially related corporations are engaged in substantial foreign operations, Foreign Parent may issue IFRS-based consolidated financial statements, including the supplemental information provided in connection with its annual earnings release, without violating the LIFO conformity requirement. Nevertheless, under section 472(g), neither Foreign Parent nor any member of its group of financially related corporations may issue separate non-LIFO financial statements on Taxpayer's behalf.

RULINGS

- (1) Foreign Parent's posting of its consolidated financial statements and the supplemental disclosures on its global website, which will include Taxpayer's earnings on a non-LIFO basis, will not violate the LIFO conformity requirement under section 472(c) and (e)(2).
- (2) Foreign Parent's supplemental disclosures of operating income by geographic segment for Geographic Segment in connection with its annual earnings release, which will include Taxpayer's earnings on a non-LIFO basis, will not violate the LIFO conformity requirement under section 472(c) and (e)(2).
- (3) Taxpayer's electronic reporting of earnings to Foreign Parent in an Excel workbook that contains a tab labeled "PRIMARY," which includes financial statements prepared on a U.S. GAAP and LIFO basis, and a tab labeled "SUPPLEMENTAL," which includes financial statements prepared on an IFRS (non-LIFO) basis, will not violate the LIFO conformity requirement under section 472(c) and (e)(2).

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 Taxpayer's authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, if Taxpayer files its returns electronically, this requirement may be satisfied by attaching a statement that provides the date and control number of the letter ruling to its return.

The rulings contained in this letter are 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 the request for rulings, it is subject to verification on examination.

Sincerely,

Roy A. Hirschhorn
Chief, Branch 6
(Income Tax & Accounting)

cc: