

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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CC:PSI:B01

PLR-105058-18

Date:

February 28, 2018

LEGEND

X =

A =

B =

C =

D =

E =

State =

n =

Date 1 =

Date 2 =

Dear :

This letter responds to a letter dated February 13, 2018, submitted on behalf of X by its authorized representative, requesting a ruling under § 7704(e) of the Internal Revenue Code (Code).

FACTS

The information submitted states that X was organized on Date 1 as a limited partnership under the laws of State and is classified as a partnership for Federal income tax purposes. X is a publicly traded partnership.

X has a controlling indirect equity interest in A, B, C, D, and E, entities organized under the laws of a foreign country that are classified as corporations for U.S. federal tax purposes (the "Foreign Entities"). X represents that the Foreign Entities are controlled foreign corporations and recent changes to § 965(a) (discussed below) could cause a one-time subpart F income inclusion for X's taxable year ending Date 2 that may cause X to fail to satisfy the 90 percent qualifying income test in § 7704(c). X further represents that, without regard to any potential income inclusions pursuant to § 965, over n% of X's income is considered qualifying income under § 7704(d).

LAW AND ANALYSIS

Section 951 provides, in pertinent part, that if a foreign corporation is a controlled foreign corporation for an uninterrupted period of 30 days or more during any taxable year, every person who is a United States shareholder (as defined in § 951(b)) of such corporation and who owns (within the meaning of § 958(a)) stock in such corporation on the last day, in such year, on which such corporation is a controlled foreign corporation shall include in his gross income, for his taxable year in which or with which such taxable year of the corporation ends, his pro-rata share of the corporation's subpart F income.

On December 22, 2017, § 965 was amended by "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018," P.L. 115-97, to provide that, for the last taxable year of a deferred foreign income corporation that begins before January 1, 2018, the subpart F income of the corporation (as otherwise determined for such taxable year under § 952) shall be increased by the greater of (1) the accumulated post-1986 deferred foreign income of such corporation determined as of November 2, 2017, or (2) the accumulated post-1986 deferred foreign income of such corporation determined as of December 31, 2017.

Section 7704(a) provides that, except as provided in § 7704(c), a publicly traded partnership will be treated as a corporation.

Section 7704(b) provides that the term "publicly traded partnership" means any partnership if (1) interests in that partnership are traded on an established securities market, or (2) interests in that partnership are readily tradable on a secondary market (or the substantial equivalent thereof).

Section 7704(c)(1) provides that § 7704(a) does not apply to a publicly traded partnership for any taxable year if such partnership meets the gross income

requirements of § 7704(c)(2) for the taxable year and each preceding taxable year beginning after December 31, 1987, during which the partnership (or any predecessor) was in existence.

Section 7704(c)(2) provides, in relevant part, that a partnership meets the gross income requirements of § 7704(c)(2) for any taxable year if 90 percent or more of the gross income of the partnership for the taxable year consists of qualifying income.

Section 7704(e) provides that if a partnership fails to meet the gross income requirements of § 7704(c)(2), the Secretary determines that such failure was inadvertent, no later than a reasonable time after the discovery of such failure, steps are taken so that such partnership once more meets such gross income requirements, and such partnership agrees to make such adjustments (including adjustments with respect to the partners) or to pay such amounts as may be required by the Secretary with respect to such period, then, notwithstanding such failure, such entity shall be treated as continuing to meet such gross income requirements for such period.

CONCLUSION

Based on the facts submitted and the representations made, we conclude that if X failed to meet the gross income requirements of § 7704(c)(2) for its period ending Date 2 solely because of the § 965 subpart F income inclusion, then such failure was inadvertent within the meaning of § 7704(e). Therefore, pursuant to § 7704(e), X will be treated as continuing to meet such gross income requirements for the period ending Date 2, and thereafter, provided X otherwise does not fail the requirements of § 7704(c)(2).

Except as expressly provided herein, no opinion is expressed or implied concerning the Federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed as to whether X otherwise meets the 90 percent gross income requirement of § 7704(c)(2) in any taxable year for which this ruling may apply. Furthermore, no opinion is expressed as to whether the § 965 subpart F income inclusion is qualifying income under § 7704(d).

The ruling contained in this letter is based upon information and representations submitted by the 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 ruling, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that this letter 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 representatives.

Sincerely,

/s/

Caroline E. Hay
Assistant to the Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes