

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Index Numbers 1501.00-00, 1502.75-00

Third Party Communication: None
Date of Communication: Not Applicable

Number: **202234012**
Release Date: 8/26/2022

Person to Contact:
***, ID No. ***

Telephone:

Date: May 26, 2022

UIL: 1501.00-00, 1502.75-00

Legend

Taxpayer 1 (Parent) = ***

Taxpayer 2 (Subsidiary) = ***

Parent CFC 1 = ***

Parent CFC 2 = ***

Parent CFC 3 = ***

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Parent CFC 4 = ***

Parent CFC 5 = ***

Subsidiary CFC 1 = ***

Subsidiary CFC 2 = ***

Subsidiary CFC 3 = ***

Subsidiary CFC 4 = ***

State 1 = ***

Country 1 = ***

Date 1 = ***

Date 2 = ***

Date 3 = ***

Date 4 = ***

Date 5 = ***

Date 6 = ***

Date 7 = ***

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Date 8 = ***

Date 9 = ***

Date 10 = ***

Date 11 = ***

Dear ***:

This letter responds to the letters dated Date 1 and Date 2 submitted on behalf of Parent and Subsidiary (the “affiliated group” for purposes of this letter and to the extent these entities meet the definition provided by Section 1504(a)), requesting that the Commissioner make a determination regarding the failure of Parent’s wholly-owned Subsidiary to have consented to the filing of a consolidated return with Parent pursuant to, and in the manner provided by, Treas. Reg. §§ 1.1502-75(a)(1), 1.1502-75(b)(1) and 1.1502-75(h)(2) for the taxable year ended Date 3.

The determination contained in this letter is based upon facts and representations submitted by the taxpayers and accompanied by a penalties of perjury statement executed by an appropriate party.

SUMMARY OF FACTS

Subsidiary was incorporated as a wholly-owned limited liability company organized under the laws of State 1 on Date 4 for the purpose of effectuating the acquisition of Subsidiary CFC 2 and its two subsidiaries, Subsidiary CFC 3 and Subsidiary CFC 4. Subsidiary CFC 1 was incorporated under the laws of Country 1 on Date 5. Parent CFC 1, Parent CFC 2, Parent CFC 3, Parent CFC 4, and Parent CFC 5 are also wholly-owned subsidiaries of the Parent. Parent has been the sole and controlling shareholder of Subsidiary for the entire time that Subsidiary has been in existence.

On Date 6, Parent contributed all of the shares of Subsidiary CFC 1 to Subsidiary. Subsequently, on Date 6, Subsidiary CFC 1 acquired Subsidiary CFC 2.

On Date 7, Subsidiary filed Form 8832, *Entity Classification Election*, electing to be classified as an association taxable as a C corporation for U.S. federal tax purposes effective as of Date 4.

On Date 8, the Service notified Subsidiary that its entity classification election was accepted and that it would be classified as a C corporation for U.S. federal tax purposes effective as of Date 4.

On Date 9, Parent filed a Form 1120 for the taxable year ended Date 3 as a stand-alone corporation. Subsidiary did not file a Form 1120 for the taxable year ended Date 3 as a stand-alone corporation. Parent erroneously treated Subsidiary as a disregarded entity for U.S. federal

tax purposes. Parent fully reflected the activities of Subsidiary including all items of income, gain, deductions, loss, and credit of Subsidiary, which relate solely to its ownership of Subsidiary CFC 1, Subsidiary CFC 2, Subsidiary CFC 3, and Subsidiary CFC 4, on its Form 1120 for the taxable year ended Date 3, although Parent did not include the separate schedules and statements required. Parent has consistently treated Subsidiary for financial and operational purposes as a holding company, and Subsidiary has not engaged in any operations.

Parent and Subsidiary did not satisfy the requirements for filing a consolidated return when Parent filed its U.S. income tax return for the taxable year ended Date 3. In particular, Parent did not attach a Form 851, *Affiliations Schedule*, did not attach a Form 1122, *Authorization and Consent of Subsidiary to Be Included in a Consolidated Income Tax Return*, and Parent did not check the “consolidated return” box on the face of the return. Subsidiary was not specifically identified or referenced on Parent’s return.

Subsidiary has not filed a separate stand-alone U.S. federal income tax return for any taxable year.

At the time the affiliated group filed the request letter dated Date 1, and at the time additional information was provided on Date 2, the identical issue was not under examination or in litigation.

REPRESENTATION

Parent represents that its U.S. income tax return for its taxable year ended Date 3 and all subsequent years contained all of items of income, gain, deductions, loss, and credit of Subsidiary.

LAW

Internal Revenue Code (“IRC”) § 1501 provides (in part) that “An affiliated group of corporations shall ... have the privilege of making a consolidated return with respect to the income tax imposed by chapter 1 for the taxable year in lieu of separate returns. The making of a

consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to all the consolidated return regulations prescribed under section 1502 prior to the last day prescribed by law for the filing of such return. The making of a consolidated return shall be considered as such consent.”

IRC § 1504(a) defines the term “affiliated group” as follows:

- (a) Affiliated group defined
For purposes of this subtitle –

(1) In general

The term “affiliated group” means –

(A) 1 or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation, but only if –

(B) (i) the common parent owns directly stock meeting the requirements of paragraph (2) in at least 1 of the other includible corporations, and

(ii) stock meeting the requirements of paragraphs (2) in each of the includible corporations (except the common parent) is owned directly by 1 or more of the other includible corporations.

(2) 80-percent voting and value test

The ownership of stock of any corporation meets the requirements of this paragraph if it –

(A) possesses at least 80 percent of the total voting power of the stock of such corporation, and

(B) has a value equal to at least 80 percent of the total value of the stock of such corporation.

Treas. Reg. § 1.1502-75(a)(1) provides (in part) that “A group which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member during any part of the taxable year for which the consolidated return is to be filed consents (in the manner provided in paragraph (b) of this section) to the regulations under section 1502.”

Treas. Reg. § 1.1502-75(b)(1) provides that “The consent of a corporation referred to in paragraph (a)(1) of this section shall be made by the corporation joining in the making of the consolidated return for such year. A corporation shall be deemed to have joined in the making of a consolidated return if it files a Form 1122 in the manner specified in paragraph (h)(2) of this section.”

Treas. Reg. § 1.1502-75(b)(2) provides that “If a member of the group fails to file Form 1122, the Commissioner may under the facts and circumstances determine that such member has joined in the making of a consolidated return by such group. The following circumstances, among others, will be taken into account in making this determination:

- (i) Whether or not the income and deductions of the member were included in the consolidated return;
- (ii) Whether or not a separate return was filed by the member for that tax year; and
- (iii) Whether or not the member was included in the affiliations schedule, Form 851.”

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If the Commissioner determines that the member has joined in the making of the consolidated return, such member shall be treated as if it had filed a Form 1122 for such year for purposes of Treas. Reg. § 1502-75(h)(2).

Treas. Reg. § 1.1502-75(b)(3) provides that “If any member has failed to join in the making of a consolidated return under either subparagraph (1) or (2) of this paragraph, then the tax liability of each member of the group shall be determined on the basis of separate returns unless the common parent corporation establishes to the satisfaction of the Commissioner that the failure of such member to join in the making of the consolidated return was due to a mistake of law or fact, or to inadvertence. In such case, such member shall be treated as if it had filed a Form 1122 for such year for purposes of paragraph (h)(2) of this section, and thus joined in the making of the consolidated return for such year.”

Treas. Reg. § 1.1502-75(h)(2) provides that “If, under the provisions of paragraph (a)(1) of this section, a group wishes to file a consolidated return for a taxable year, then a Form 1122 (“Authorization and Consent of Subsidiary Corporation to Be Included in a Consolidated Income Tax Return”) must be executed by each subsidiary... For taxable years beginning after December 31, 2002, the group must attach either executed Forms 1122 or unsigned copies of the completed Forms 1122 to the consolidated return... Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.”

Rev. Proc. 2014-24 allows an affiliated group that satisfies certain requirements to obtain an automatic determination to treat a subsidiary member of the affiliated group as if it filed a Form 1122, even though it failed to do so. Rev. Proc. 2014 24, Section 1.03 provides that if an affiliated group cannot satisfy such requirements, a determination by the Commissioner under Treas. Reg. § 1.1502-75(b) is available only pursuant to a determination letter issued by a Director.

In this case, the affiliated group does not satisfy the requirements to obtain automatic relief under Rev. Proc. 2014-24 to treat Subsidiary as having filed Form 1122 and thus as having joined in the making of a consolidated return by the affiliated group. However, the Service may act on behalf of the Commissioner to treat Subsidiary as if it had filed such Form 1122 for purposes of Treas. Reg. § 1.1502-75(h)(2) under the provisions of Treas. Reg. §§ 1.1502-75(b)(2) or (3).

DETERMINATION

Based on the information submitted and the representations made in the letters dated Date 1 and Date 2, we have determined that Treas. Reg. § 1.1502-75(b)(2) can be applied in this case.

Parent’s Forms 1120 for taxable years prior to the taxable year ended Date 11 failed to reference Subsidiary on the Form 851 or reference it in any other way. Nonetheless, all items of income,

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gain, deductions, loss, and credit of Subsidiary have been included in Parent's Forms 1120. Subsidiary never filed a separate return.

Accordingly, based solely on facts and representations submitted in the letters dated Date 1 and Date 2, the Service shall treat Subsidiary as if it had filed a Form 1122 for the taxable year ended Date 3 for purposes of Treas. Reg. § 1.1502-75(h)(2) and thus joined in the making of a consolidated return by the affiliate group, notwithstanding that it failed to actually file Form 1122.

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the U.S. income tax consequences of any aspect of any transaction or item discussed or referenced in this letter or about the tax treatment of any condition existing at the time of, or effects resulting from, any transaction or item that is not specifically covered by the above determination. The determination contained in this letter is based upon information and representations submitted by the taxpayers and accompanied by a penalty of perjury declaration executed by an appropriate party.

PROCEDURAL MATTERS

This determination is directed only to the taxpayers who requested it. IRC § 6110(k)(3) provides that it may not be used or cited as precedent.

This office will associate a copy of this determination letter with the Parent's U.S. income tax returns. A copy of this determination letter should be kept in the Parent's permanent records.

A copy of this determination letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their returns that provides the date and control number of the determination letter.

Sincerely,

Acting Director, Field Operations (North Atlantic)

cc: ***