

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202240009**

Release Date: 10/7/2022

Index Number: 9100.00-00, 9100.22-00,
951A.00-00, 951A.02-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:INTL:B02
PLR-104938-22

Date:
July 6, 2022

TY:

Legend

X =
CFC1 =
CFC2 =
CFC3 =
Partnership Representative =
Company =
Tax Year =

Dear :

This letter responds to a letter dated March 2, 2022 and subsequently furnished additional information, submitted on behalf of X by its authorized representatives, requesting an extension of time under Treas. Reg. §301.9100-3 of the Procedure and Administration Regulations for X to file a global intangible low-taxed income (GILTI) high-tax exclusion election (GILTI HTE Election) under Treas. Reg. §1.951A-2(c)(7)(viii) with respect to its controlled foreign corporations (as defined in section 957(a)) (CFCs) CFC1, CFC2, and CFC3 for the CFC inclusion years (as defined in Treas. Reg. §1.951A-1(f)(1)) that end with or within X's U.S. shareholder inclusion year (as defined in Treas. Reg. §1.951A-1(f)(7)), Tax Year.

FACTS

X is a domestic partnership and a controlling domestic shareholder (as defined in Treas. Reg. §1.964-1(c)(5)) of CFC1, CFC2, and CFC3. In Tax Year, X timely filed (before the issuance of the final GILTI HTE Election regulations¹) Form 1065 for Tax Year. X is

¹ T.D. 9902, 85 FR 44620.

subject to the centralized partnership audit regime in Subchapter C of Chapter 63 of the Code.

After X's Form 1065 for Tax Year was filed, Partnership Representative decided to make a GILTI HTE Election for Tax Year with respect to CFC1, CFC2, and CFC3. This was necessary because Company, a domestic corporation that indirectly owns a majority interest in X, chose to make for the CFC inclusion years that end with or within Company's U.S. shareholder inclusion year a GILTI HTE Election for CFCs with respect to which it is a controlling domestic shareholder, which are in the same CFC group (as defined in Treas. Reg. §1.951A-2(c)(7)(viii)(E)(2)) as CFC1, CFC2, and CFC3. However, during the preparation of Company's amended return for Tax Year, it was discovered that the 24-month period described in Treas. Reg. §1.951A-2(c)(7)(viii)(A)(2)(ii) for X to make the GILTI HTE Election for Tax Year with respect to CFC1, CFC2, and CFC3 on an administrative adjustment request (AAR) (as described in section 6227 and Treas. Reg. §301.6227-1) had expired.

X represents that granting the relief requested will not result in X or its partners having a lower tax liability in the aggregate for all affected years than X or its partners would have had if the election had been timely made. X further represents that the granting of relief will not result in any deficiency in tax that the government would be precluded from assessing.

LAW AND ANALYSIS

Section 951A(a) provides that every person that is a United States shareholder (as defined in section 951(b)) (U.S. shareholder) of any CFC for any taxable year of the U.S. shareholder must include in gross income the shareholder's GILTI for that taxable year.

Section 951A(b) provides that the term GILTI means, with respect to any U.S. shareholder for any taxable year of such U.S. shareholder, the excess (if any) of such shareholder's net CFC tested income for such taxable year, over such shareholder's net deemed tangible income return for such taxable year.

Section 951A(c)(1) generally provides that the term "net CFC tested income" means, with respect to any U.S. shareholder for any taxable year of such U.S. shareholder, the excess (if any) of the aggregate of such shareholder's pro rata share of the tested income of each CFC with respect to which such shareholder is a U.S. shareholder for such taxable year of such U.S. shareholder, over the aggregate of such shareholder's pro rata share of the tested loss of each CFC with respect to which such shareholder is a U.S. shareholder for such taxable year of such U.S. shareholder.

Section 951A(c)(2)(A) provides that the term "tested income" means, with respect to any CFC for any taxable year of such CFC, the excess (if any) of the gross income of such corporation determined without regard to certain items of income, including any gross

income excluded from the foreign base company income (as defined in section 954) and the insurance income (as defined in section 953) of such corporation by reason of section 954(b)(4), over the deductions (including taxes) properly allocable to such gross income under rules similar to the rules of section 954(b)(5) (or to which such deductions would be allocable if there were such gross income).

Section 1.951A-2(c)(7)(i) generally provides that for purposes of determining the tested income of a CFC, a tentative gross tested income item (determined under Treas. Reg. §1.951A-2(c)(7)(ii)(A)) qualifies for the exception described in section 954(b)(4) only if a GILTI HTE Election is effective with respect to the CFC for the CFC inclusion year (as defined in Treas. Reg. §1.951A-1(f)(1)) and the tentative tested income item with respect to the tentative gross tested income item was subject to an effective rate of foreign tax that is greater than 90 percent of the maximum rate of tax specified in section 11.

Section 1.951A-2(c)(7)(viii) provides that the GILTI HTE Election is made by the controlling domestic shareholder with respect to a CFC for a CFC inclusion year by filing the statement required under Treas. Reg. §1.964-1(c)(3)(ii) with a timely filed original federal income tax return, or with an amended federal income tax return, for the U.S. shareholder inclusion year of each controlling domestic shareholder in which or with which such CFC inclusion year ends; providing any notices required under Treas. Reg. §1.964-1(c)(3)(iii); and providing any additional information required by applicable administrative pronouncements.

Section 1.951A-2(c)(7)(viii)(A)(2)(i) generally provides that a controlling domestic shareholder may make the election with an amended federal income tax return, duly filed within 24 months of the unextended due date of the original federal income tax return for the U.S. shareholder inclusion year with or within which the CFC inclusion year ends.

Section 1.951A-2(c)(7)(viii)(A)(2)(ii) provides that in the case of an election filed with an amended return, each U.S. shareholder that owns within the meaning of section 958(a) stock of the CFC as of the end of the CFC's taxable year to which the election relates must file an amended federal income tax return reflecting the effect of such election for the U.S. shareholder inclusion year with or within which the CFC inclusion year ends as well as for any other taxable year in which the U.S. tax liability of the U.S. shareholder would be increased by reason of the election within a single period no greater than six months within the 24-month period starting with the unextended due date of the original income tax return of the controlling domestic shareholder for the U.S. shareholder inclusion year with or within which the CFC inclusion year ends.

Section 1.951A-2(c)(7)(viii)(A)(2)(iii) provides that each U.S. shareholder in the CFC as of the end of the CFC's taxable year to which the election relates must pay any tax due as a result of such adjustments within a single period no greater than six months within the 24-month period starting with the unextended due date of the original income tax

return for the U.S. shareholder's inclusion year with or within which the CFC inclusion year ends.

Section 1.951A-2(c)(7)(viii)(A)(3) provides that in applying Treas. Reg. §1.951A-2(c)(7)(viii)(A)(2) to a U.S. shareholder that is a domestic partnership, references to a "federal income tax return" are replaced with "Form 1065 (or successor form)" and references to an "amended federal income tax return" are replaced with "amended Form 1065 (or successor form) or administrative adjustment request (as described in Treas. Reg. §301.6227-1), as applicable."

Section 1.951A-2(c)(7)(viii)(D) provides that a GILTI HTE election is valid only if all of the requirements in Treas. Reg. §1.951A-2(c)(7)(viii)(A) are satisfied.

Section 1.951A-2(c)(7)(viii)(E)(1) provides that the GILTI HTE Election must be made with respect to all CFCs that are members of a CFC group (as determined under Treas. Reg. §1.951A-2(c)(7)(viii)(E)(2)).

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code, except subtitles E, G, H, and I.

Section 301.9100-1(b) defines the term "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-2 provides automatic extensions of time for making certain elections.

Section 301.9100-3 provides rules for requesting extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. §301.9100-2. It provides that these requests for relief are granted when the taxpayer provides the evidence (including affidavits) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government. It also provides that a taxpayer is deemed to have acted reasonably and in good faith if, among other reasons, the taxpayer failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election. Treas. Reg. §301.9100-3(b)(iii).

Section 301.9100-1(a) provides that the granting of an extension of time for making an election is not a determination that a taxpayer is otherwise eligible to make the election or that a taxpayer has complied with the other requirements for a valid election.

CONCLUSION

Based on the facts provided and representations made, we conclude that the requirements of Treas. Reg. §§301.9100-1 and 301.9100-3 have been satisfied. Therefore, X is granted an extension of time of one hundred twenty (120) days from the date of this letter to make a GILTI HTE Election with respect to CFC1, CFC2, and CFC3 for the CFC inclusion year that ends with or within X's U.S. shareholder inclusion year, Tax Year, on a timely filed AAR.

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.

Except as expressly provided herein, no opinion, or determination is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

A copy of this 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 return that provides the date and control number of the letter ruling.

Sincerely,

/s/ Larry R. Ponders

Larry R. Ponders
Senior Counsel, Branch 2
(International)

cc: