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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:INTL:B02
PLR-108708-22

Date:
August 29, 2022

Legend

X =
US Sub =
CFC1 =
CFC2 =
CFC3 =
CFC4 =
Tax Year 1 =
Tax Year 2 =
Tax Year 3 =
Date 1 =
Date 2 =

Dear :

This letter responds to a letter dated April 27, 2022, submitted on behalf of X and its wholly-owned subsidiaries by its authorized representatives, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations for X to make the global intangible low-taxed income (GILTI) high-tax exclusion election (GILTI HTE Election) under § 1.951A-2(c)(7)(viii) with respect to CFC1, CFC2, CFC3, and CFC4 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 1.

FACTS

X, a domestic corporation and the controlling domestic shareholder (as defined in §1.964-1(c)(5)) of CFC1, CFC2, CFC3, and CFC4 (each a controlled foreign corporation

(CFC) as defined in section 957(a)), timely filed a Form 1120 for Tax Year 1. Its return included a GILTI inclusion attributable to CFC1,¹ which is a member of the CFC Group (as determined under §1.951A-2(c)(7)(viii)(E)(2)) that also includes CFC2, CFC3, and CFC4. While X discussed internally the possibility of making the GILTI HTE Election on its original return for Tax Year 1, X was unable to make the election because the GILTI HTE Election regulations² had not yet been finalized and the election was still not available when X filed its return for Tax Year 1.

During the preparation of X's Form 1120 for Tax Year 2, X and an accounting firm it had engaged for tax consulting and tax return preparation services discussed the GILTI HTE Election and its benefits. X expressed that it intended to make the GILTI HTE Election for Tax Year 1 by amending its return for Tax Year 1 after it made the GILTI HTE Election on its Form 1120 for Tax Year 2 (taking into account the adjustments and effects of making the GILTI HTE Election in Tax Year 1). The accounting firm did not inform X that it was required to amend its return for Tax Year 1 by Date 1 so X's understanding was that the amended return for Tax Year 1 was due on Date 2.

At the time of the preparation of X's Form 1120 for Tax Year 3, the accounting firm realized that the amended return required for X to make a GILTI HTE Election for Tax Year 1, which was due on Date 1 (within 24 months of the unextended due date of X's original return for Tax Year 1), had not been filed.

This discovery was made after Date 1, but prior to the expiration of the assessment or refund statutes of limitations for Tax Year 1. As of the filing of this request, X has not received any correspondence from the IRS relating to the GILTI HTE election for Tax Year 1 and Tax Year 1 is not under audit.

X represents that granting the relief requested will not result in a lower tax liability in the aggregate for all affected years than X would have had if the election had been timely made. X also represents that no material facts have changed that would indicate the use of hindsight in its decision to make the GILTI HTE election. Further, X is the only U.S. shareholder (as defined in section 951(b)) of each of the CFCs in the CFC group; it is the only taxpayer affected by the GILTI HTE Election; and each of X's affected tax years remain open for assessment as of the date of this letter.

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

¹ X indirectly owns CFC1, CFC2, and CFC3 through US Sub, a member of its consolidated group.

² T.D. 9902, 85 FR 44620.

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

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 § 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. § 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 §§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, CFC3, and CFC4 for the CFC inclusion years that end with or within X's U.S. shareholder inclusion year, Tax Year 1. X should make the election in a written statement attached to a duly filed Form 1120X for Tax Year 1.

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 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

/s/ Larry R. Ponders

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

cc: