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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

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Date:
November 16, 2022

TY:

Legend

X =
Members of =
X's CFC
Group

Tax Year 1 =
Tax Year 2 =
Tax Year 3 =
Date 1 =
Date 2 =

Dear _____ :

This letter responds to a letter dated July 15, 2022, submitted on behalf of X and the U.S. consolidated group of which it is the common parent, by its authorized representatives, requesting an extension of time under Treas. Reg. §301.9100-3 for X to make the 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 each controlled foreign corporation (as defined in section 957(a)) (CFC) that is a member of the CFC Group as defined in Treas. Reg. §1.951-A-2(c)(7)(viii)(E)(2)(i), for the CFC inclusion year (as defined in Treas. Reg. §1.951A-1(f)(1)) that ends 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, is the common parent of a U.S. consolidated group. Members of the U.S. consolidated group, of which X is the common parent, are the sole owners of numerous CFCs, the Members of X's CFC Group (each a "Member of X's CFC Group"), which comprise the entire CFC Group and X is the controlling domestic shareholder (as defined in Treas. Reg. §1.964-1(c)(5)) of each Member of X's CFC Group. X's federal tax compliance was the responsibility of its Senior Vice-President of Tax and X's accounting department, but X had engaged the tax consulting and tax return preparation services of an accounting firm to supplement its tax function. X timely filed (before the issuance of the final GILTI HTE Election regulations¹) a Form 1120 for Tax Year 1.

Prior to filing X's Form 1120 for Tax Year 1, but before the finalization of the GILTI HTE regulations, X's accounting firm informed X that the GILTI HTE was a potential topic to monitor during the Tax Year 1 return preparation process. However, X filed the Tax Year 1 return without making the GILTI HTE Election because the regulations had not been finalized at the time of filing. Shortly after the finalization of the GILTI HTE regulations, X and its accounting firm discussed the availability and benefit of making a GILTI HTE Election on an amended return for Tax Year 1. At this point (before the 24-month period described in Treas. Reg. §1.951A-2(c)(7)(viii)(A)(2)(ii) had expired), X directed its accounting firm to prepare the amended return.

Neither X nor its accounting firm team realized that X's amended return had to be filed within the 24-month period described in Treas. Reg. §1.951A-2(c)(7)(viii)(A)(2)(ii) for the GILTI HTE Election to be valid. X and its accounting firm mistakenly believed the Tax Year 1 Form 1120 could be amended any time before Date 2, which was the date that was 36 months after the date of the extended due date of the Tax Year 1 return. X's accounting firm discovered the error after Date 1, which was the date that was 24 months after the unextended due date for the Tax Year 1 return.

X has represented that it is not seeking to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662.

X was under audit for Tax Year 1 and Tax Year 2; however, the examination was closed prior to the filing of this request for relief. As of the date of the filing of the request, X

¹ T.D. 9902, 85 FR 44620.

had not received any correspondence from the IRS relating to the amended return or the GILTI HTE Election for Tax Year 1 or any other year.

X represents that granting the relief requested will not result in X having 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 represented that no taxable years affected by the election were closed and offered to further extend the assessment date for Tax Year 1 by consent pursuant to section 6501(c)(4) if requested. Further, the U.S. consolidated group of which X is the common parent wholly owns the CFC Group. There are no other U.S. shareholders (as defined in section 951(b)) of any CFC in the CFC group (as defined in Treas. Reg. §1.951A-2(c)(7)(viii)(E)(2)); and the X U.S. consolidated group is the only taxpayer affected by the GILTI HTE Election.

LAW AND ANALYSIS

Section 951A(a) provides that a 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 §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)(E)(1) provides that if a CFC is a member of a CFC group, the GILTI HTE Election is made with respect to all CFCs that are members of the CFC group.

Section 1.951A-2(c)(7)(viii)(E)(2) provides that a CFC group means an affiliated group as defined in section 1504(b)(1) through (6), except that section 1504(a) is applied by substituting “more than 50 percent” for “at least 80 percent” each place it appears, and section 1504(a)(2)(A) is applied by substituting “or” for “and.”

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 Treas. Reg. §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 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. A taxpayer is deemed to have acted reasonably and in good faith if, among other factors, the taxpayer requests relief before the failure to make the regulatory election is discovered by the IRS. Treas. Reg. §301.9100-3(b)(i). Alternatively, a taxpayer is deemed to have acted reasonably and in good faith if 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). A taxpayer is also deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election. Treas. Reg. §301.9100-3(b)(v).

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. X is hereby granted an extension of time of one hundred twenty (120) days to make a GILTI HTE Election with respect to each Member of X's CFC Group for the CFC inclusion year that ends 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
Associate Chief Counsel (International)

cc: