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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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CC:INTL:B02
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Date:
December 27, 2022

TY:

Legend

| | |
|---|---|
| X | = |
| Y | = |
| Tax Year 1 | = |
| Tax Year 2 | = |
| Tax Year 3 | = |
| Date 1 | = |

Dear :

This letter responds to a letter dated August 29, 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 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 Y, X's controlled foreign corporation (as defined in section 957(a)) (CFC), 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. A member of the U.S. consolidated group, of which X is the common parent, is the sole owner of Y and X is the controlling domestic shareholder (as defined in Treas. Reg. §1.964-1(c)(5)) of Y. X's federal tax compliance was the responsibility of its Chief

Financial Officer, but X did not have an internal tax department. X engaged the tax consulting and tax return preparation services of an accounting firm to advise the Chief Financial Officer and prepare necessary tax documents. X timely filed (before the issuance of the final GILTI HTE Election regulations[1]) a Form 1120 for Tax Year 1.

During the preparation of X's Form 1120 for Tax Year 2 and after the release of the final GILTI HTE regulations, X's accounting firm informed X of the availability and benefit of making a GILTI HTE Election 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 make the election on the Tax Year 2 return and noted its intent to make the election for Tax Year 1. However, the Tax Year 1 election, including any discussion of the requirements to make such an election, was deferred until after the Tax Year 2 return was filed. Before the engagement team could address the Tax Year 1 GILTI HTE election, the international tax partner assigned to the engagement team left the firm and was not immediately replaced.

The remaining engagement team was unaware of the specific process and timing required to claim the benefit for the GILTI HTE Election, and a member of the engagement team incorrectly advised X that because the Tax Year 1 election would merely increase the amount of a consolidated net operating loss (CNOL), X could make the election via a revised CNOL carryforward reported on X's Year 3 income tax return. At no point did the accounting firm advise X that an amended return was required by the end of the 24-month period described in Treas. Reg. §1.951A-2(c)(7)(viii)(A)(2)(ii). The plan to revise the CNOL carryforward was discussed with X's Chief Financial Officer, and it was contemplated that the GILTI HTE Election for Tax Year 1 would be completed as part of the Tax Year 3 return.

After Date 1 (the date that was 24 months after the unextended due date for the Tax Year 1 return) a new international tax partner was added to X's engagement team for the preparation of the Tax Year 3 return. She reviewed the issue and informed the engagement team of the specific requirements of the election, including the fact that the regulatory time for making the election had expired.

X is not under examination for Tax Year 1 or any other year in which the election is relevant.

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 represents that the effect of the election is an increase to the amount of its CNOL carryforward into open tax years and the election does not produce any underpayment (or overpayment) in any closed year. X represents that no facts have changed that would indicate the use of hindsight and that the election would have been beneficial from the beginning. Further, the U.S. consolidated group, of which X is the common parent, wholly owns Y; therefore, X and the U.S. consolidated group of

[1] T.D. 9902, 85 FR 44620. Before the filing of X's original Form 1120 for Tax Year 1, X could not make the GILTI HTE Election because the GILTI HTE Regulations had not been finalized and the election was not available. As such, X had not discussed the effect of the election with its accounting firm.

which it is the common parent are the only taxpayers 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)(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 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). 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 Y 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. Pounders

Larry R. Pounders
Senior Counsel, Branch 2
Associate Chief Counsel (International)

cc: