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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

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Date:
June 16, 2023

TY:

X	=
Members of X's CFC Group	=

Tax Year 1	=
Year 2	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Accounting Firm 1	=
Accounting Firm 2	=

Dear :

This letter responds to a letter dated February 21, 2023, submitted on behalf of X and the U.S. consolidated group of which X is the common parent, by its authorized representatives, requesting an extension of time under §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 §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 X's CFC Group as defined in Treas. Reg. §1.951A-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 ("X consolidated group"). X and the X consolidated group are the sole owners of CFCs, which comprise the X CFC Group (each a "Member of X's CFC Group"). X and the X consolidated group are the controlling domestic shareholders (as defined in Treas. Reg. §1.964-1(c)(5)) of each Member of X's CFC Group.

On Date 1, pursuant to an extension, X and the X consolidated group timely filed its original Form 1120 for Tax Year 1, which did not make the GILTI HTE Election under Treas. Reg. §1.951A-2(c)(7). The GILTI HTE Election was not made because former members of X's tax department had incorrectly calculated the

effective rate of foreign tax of the X CFC Group's relevant tentative tested income items and, thus, concluded that X and its CFC Group did not qualify for the GILTI HTE Election. In Year 2, X hired a new Senior Director of International Tax who conducted a review of Tax Year 1 GILTI calculations and concluded that the original calculation with respect to X's CFC Group was incorrect and that, in fact, X and the X CFC Group could have qualified to make a GILTI HTE Election for Tax Year 1. Therefore, X decided to file an amended tax return to make the GILTI HTE Election for Tax Year 1.

X had planned to make a retroactive GILTI HTE Election on an amended return before Date 2, which was the date that was 3 years after the due date of X's original Tax Year 1 Federal income tax return including extensions. X had informally consulted with Accounting Firm 1 who confirmed their mistaken understanding that a retroactive GILTI HTE Election, filed with an amended return, was due on Date 2. However, on Date 3, X consulted with an advisor at Accounting Firm 2 regarding the proper timing of the retroactive GILTI HTE Election on an amended return and the advisor explained that the election was due within 24 months after the unextended due date of the taxpayer's original federal income tax return for Tax Year 1, Date 4, which had already passed.

X and the X consolidated group is not currently under examination for Tax Year 1, or any other year in which any issue with respect to the election is presented on a return. 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 represents that no facts have changed that would indicate the use of hindsight and the election would have been beneficial from the beginning. X represents that each of X's affected tax years remain open for assessment as of the date of this letter. Further, X and the X consolidated group wholly owns the X CFC Group, therefore, X and the X consolidated group 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, 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 granting 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 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 from the date of this letter to make a GILTI HTE Election with respect to the X 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. Pounders

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

Cc: