

## Internal Revenue Service

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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:

Refer Reply To:

CC:INTL:B02

PLR-110617-23

Date:

September 18, 2023

TY:

X =  
Members of X's CFC Group =



|                 |   |
|-----------------|---|
| Tax Year 1      | = |
| A               | = |
| B               | = |
| Date 1          | = |
| Date 2          | = |
| Accounting Firm | = |

Dear :

This letter responds to a letter dated April 13, 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 wholly own A of the B CFCs in the X CFC Group (each a "Member of X's CFC Group"). There are no U.S. shareholders of any CFC in the X CFC group that are not members of the X consolidated group. X and members of the X consolidated group are controlling domestic shareholders (as defined in Treas. Reg. §1.964-1(c)(5)) for each CFC in the X CFC Group.

X and the X consolidated group timely filed its original Form 1120 for Tax Year 1 and did not make the GILTI HTE Election under Treas. Reg. §1.951A-2(c)(7) with that filing. In addition, a retroactive GILTI HTE Election was not timely made. Prior to Date 1, which was the date that was 24 months after the unextended due date of X's original federal income tax return, X had consulted with Accounting Firm which had prepared its original Federal income tax return for Tax Year 1 and

determined to make a retroactive GILTI HTE Election for Tax Year 1 with an amended tax return.

Even though members of X's tax department and advisors at Accounting Firm started the process of preparing an amended return for Tax Year 1 to make the GILTI HTE Election, due to a combination of circumstances, the due date for the GILTI HTE Election was overlooked, such that X's tax department believed that the due date of the election was three years after the extended due date of the Tax Year 1 return. These circumstances included the departure of a key member of X's tax department who was responsible for preparing the Forms 5471 and 8992 for Tax Year 1. In addition, around the time that X's tax department and the Accounting Firm considered whether to make the GILTI HTE Election, X completed the acquisition of another company and devoted a significant portion of its personnel, including members of its tax department, to integrating the business operations of that company with X's business operations. About one month after Date 1, the leadership of X's tax department was made aware of the missed filing date by a member of X's tax department who had read an article regarding the GILTI HTE final regulations, which explained that an amended return making a retroactive GILTI HTE Election would need to be filed within 24 months of the unextended due date of the original return.

X and the X consolidated group are 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 making the GILTI HTE Election for Tax Year 1 will not result in any additional tax liability for Tax Year 1 or any other year for which assessment is barred under section 6501(a), such that there would be a tax liability that could not be assessed or collected as a result of the GILTI HTE Election. Further, X and the X consolidated group comprise all of the U.S. shareholders that directly or indirectly own stock in each member of 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 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)(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).

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 3  
Associate Chief Counsel (International)

Cc: