

In re: PLR-113521-06

- Year 8 =
- aa =
- bb =
- cc =
- dd =
- ee =
- ff =
- gg =
- Firm =
- Country A =
- Country B =
- Country C =
- Country D =
- Country E =
- Country F =

Dear

This is in response to a letter dated January 31, 2006, requesting an extension of time under Treas. Reg. § 301.9100-3 to file certain elections under Treas. Reg. § 1.1503-2(g)(2)(i) or Treas. Reg. § 1.1503-2T(g)(2)(i), as applicable and annual certifications under Treas. Reg. § 1.1503-2(g)(2)(vi)(B) or Treas. Reg. § 1.1503-2T(g)(2)(vi)(B) as applicable, for Years 1 through 8. Additional information was received in letters dated March 29, June 5, June 19 and September 21 and 25, and November 3, 2006. The information submitted for consideration is substantially as set forth below.

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The ruling contained in this letter is predicated upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

During Years 1 and 2, Firm was engaged to review the federal corporate tax return of Taxpayer. Firm failed to advise Taxpayer of the need to make the required elections under Treas. Reg. § 1.1503-2(g)(2)(i) for the losses incurred by Entities 1, 2 and 3 in Year 1 or for the loss incurred by Branch 1 in Year 2. As a consequence of such failure, the required elections were not made for Entities 1, 2 and 3 in Year 1 or for Branch 1 in Year 2.

Taxpayer's Director, Tax failed to advise Taxpayer to make the required elections under Treas. Reg. § 1.1503-2(g)(2)(i) with respect to the losses incurred by Branches 1 and 2 in Year 5. As a consequence of such failure, the required elections were not made for Branches 1 and 2 in Year 5.

Taxpayer submitted its ruling request concerning the loss incurred by Entity 4 in Year 8 before the Service had discovered that the required election under Treas. Reg. § 1.1503-2T(g)(2)(i) had not been made.

Branch 1 is a foreign branch (within the meaning of Treas. Reg. § 1.367(a)-6T(g)) of a domestic subsidiary of Taxpayer and a separate unit described in Treas. Reg. § 1.1503-2(c)(3)(i)(A) located in Country A. Dual consolidated losses of amount aa and bb were incurred by Branch 1 in Country A in Years 2 and 5, respectively.

Branch 2 is a foreign branch (within the meaning of Treas. Reg. § 1.367(a)-6T(g)) of a domestic subsidiary of Taxpayer and a separate unit described in Treas. Reg. § 1.1503-2(c)(3)(i)(A) located in Country C. Dual consolidated losses of amount dd were incurred by Branch 2 in Year 5.

Entity 1 is disregarded as an entity separate from its owner. The interest in Entity 1 is a hybrid entity separate unit as described in Treas. Reg. § 1.1503-2(c)(4). Entity 1 has activities in Country B that constitute a foreign branch ("Entity 1 Branch") within the meaning of Treas. Reg. § 1.367(a)-6T(g). Entity 1 Branch is a separate unit described in Treas. Reg. § 1.1503-2(c)(3)(i)(A). Dual consolidated losses of amount cc for Year 1 are attributable to Entity 1 Branch. No dual consolidated losses are attributable to the interest in Entity 1.

Entity 2 is disregarded as an entity separate from its owner. The interest in Entity 2 is a hybrid entity separate unit as described in Treas. Reg. § 1.1503-2(c)(4). Entity 2 has activities in Country D that constitute a foreign branch ("Entity 2 Branch") within the

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meaning of Treas. Reg. § 1.367(a)-6T(g). Entity 2 Branch is a separate unit described in Treas. Reg. § 1.1503-2(c)(3)(i)(A). Dual consolidated losses of amount ee for Year 1 are attributable to Entity 2 Branch. No dual consolidated losses are attributable to the interest in Entity 2.

Entity 3 is disregarded as an entity separate from its owner. The interest in Entity 3 is a hybrid entity separate unit as described in Treas. Reg. § 1.1503-2(c)(4). Entity 3 has activities in Country E that constitute a foreign branch ("Entity 3 Branch") within the meaning of Treas. Reg. § 1.367(a)-6T(g). Entity 3 Branch is a separate unit described in Treas. Reg. § 1.1503-2(c)(3)(i)(A). Dual consolidated losses of Amount ff for Year 1 are attributable to Entity 3 Branch. No dual consolidated losses are attributable to the interest in Entity 3.

Entity 4 is disregarded as an entity separate from its owner. The interest in Entity 4 is a hybrid entity separate unit as described in Treas. Reg. § 1.1503-2(c)(4). Entity 4 has activities in Country F that constitute a foreign branch ("Entity 4 Branch") within the meaning of Treas. Reg. § 1.367(a)-6T(g). Entity 4 Branch is a separate unit described in Treas. Reg. § 1.1503-2(c)(3)(i)(A). Dual consolidated losses of Amount gg for Year 8 are attributable to Entity 4 Branch. No dual consolidated losses are attributable to the interest in Entity 4.

The income tax laws of Country C and Country D do not deny the use of losses, expenses, or deductions of Branch 2 and Entity 2 to offset income of another person because the dual resident corporation or separate unit is also subject to income taxation by another country on its worldwide income or on a residence basis.

Treas. Reg. § 301.9100-1(b) provides that an election includes an application for relief in respect of tax, and defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant a taxpayer a reasonable extension of time, under the rules set forth in Treas. Reg. § 301.9100-3, to make a regulatory election under all subtitles of the Internal Revenue Code, except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) 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.

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In the present situation, the filings described in Treas. Reg. § 1.1503-2(g)(2) or Treas. Reg. § 1.1503-2T(g)(2), as applicable, are regulatory elections as defined in Treas. Reg. § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the rules set forth in Treas. Reg. § 301.9100-3(a).

Based on the facts and information submitted, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file the elections for the dual consolidated losses described in this letter attributable to Branch 1 and Branch 2, and Entity 1 Branch, Entity 2 Branch, Entity 3 Branch and Entity 4 Branch for Years 1 through 8. Taxpayer is not required to file Annual Certifications under the facts described herein because the Taxpayer's dual consolidated losses are attributable to separate units described in Treas. Reg. § 1.1503-2(c)(3)(i)(A) and, therefore, an extension of time is not necessary in this regard. Treas. Reg. § 1.1503-2(g)(2)(vi)(C).

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to file the election agreements. Treas. Reg. § 301.9100-1(a). For example, a taxpayer that is subject to mirror legislation enacted by a foreign country may be ineligible to file election agreements pursuant to Treas. Reg. § 1.1503-2(c)(15)(iv).

A copy of this ruling letter should be associated with the election agreements that are the subject of this ruling.

This ruling is directed only to the taxpayer who requested it. I.R.C. § 6110(k)(3) provides that it may not be used or cited as precedent. No ruling has been requested, and none is expressed, as to the application of any other section of the Code or regulations to the facts presented.

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Pursuant to a power of attorney on file in this office, a copy of this ruling letter is being furnished to Taxpayer's authorized representative.

Sincerely,

Michael A. DiFronzo
Deputy Associate Chief Counsel
(International)

Enclosure:
Copy for 6110 purposes