



You represent the facts to be as follows. Taxpayer is a publicly traded Country 1 corporation and holds all the ownership interests in Disregarded Entity, a Country 1 entity which is disregarded for U.S. tax purposes. Immediately prior to the merger transaction that necessitated this request for relief under Treas. Reg. § 301.9100-3, Taxpayer, or Disregarded Entity, owned Type 1 shares representing y% of the value, and z% of the voting rights<sup>1</sup> of U.S. Subsidiary 1, a domestic corporation. The remaining shares of U.S. Subsidiary 1 were held by U. S. Subsidiary 2, a lower tier domestic subsidiary indirectly held by U.S. Parent. As part of the transactions to simplify the ownership structure of Taxpayer's U.S. holdings, U.S. Subsidiary 1 redeemed the shares held by U. S. Subsidiary 2 for \$x million.

U.S. Subsidiary 1's only assets were preferred shares and Type 2 shares of U.S. Parent, a domestic corporation which is the parent of a domestic affiliated group that files consolidated federal income tax returns. Disregarded Entity also owns all the Type 1 shares of U.S. Parent.

To simplify the U.S. ownership structure, U.S. Subsidiary 1 merged into U.S. Parent under State 1 law, with U.S. Parent as the surviving entity. Taxpayer represents that the merger was a reorganization under section 368(a)(1)(A) and that the shares of both U.S. Subsidiary 1 and U.S. Parent were not US real property interests as defined in section 897(c)(1). Accordingly, Taxpayer's exchange of U.S. Subsidiary 1 shares for the shares of U.S. Parent would not be subject to tax under section 897, assuming the procedural requirements of Treas. Reg. §§ 1.897-2(g) and (h) were met. In addition, under Treas. Reg. § 1.1445-2(c)(1), U.S. Parent would not be required to withhold under section 1445(a) if Taxpayer provided U.S. Parent a copy of the statement required under Treas. Reg. § 1.1445-2(c)(3). However, Taxpayer neglected to request the requisite statement from U.S. Subsidiary 1, and accordingly did not provide a copy of the statement to U.S. Parent. As a further result, U.S. Subsidiary 1 did not provide notice to the Internal Revenue Service pursuant to Treas. Reg. § 1.897-2(h). Taxpayer therefore seeks relief under Treas. Reg. § 301.9100 to obtain a statement from U.S. Subsidiary 1 and provide a copy to U.S. Parent, and allow U.S. Parent (on behalf of U.S. Subsidiary 1) to provide notice to the Internal Revenue Service.

Taxpayer's U.S. Tax Group is a subgroup of its Tax Group. The U.S. Tax Group is headed by the Senior Vice President Tax, USA, who is a certified public accountant. The Senior Vice President Tax, USA was responsible for proper and timely filing of returns and payments regarding U.S. federal income tax. Accordingly, the Senior Vice President Tax, USA was responsible for filing all federal income tax returns related to

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<sup>1</sup> Initially, Taxpayer, rather than Disregarded Entity, owned the shares of U.S. Subsidiary 1. As part of the transactions to simplify the ownership structure of Taxpayer's U.S. holdings, Taxpayer transferred the shares it held in U.S. Subsidiary 1 to its Disregarded Entity.

the merger. The Senior Vice President Tax, USA was unaware that U.S. Subsidiary 1 shares were not U.S. real property interests as of the date of the merger or that that Taxpayer was required to obtain a statement from U.S. Subsidiary 1 and provide a copy to U.S. Parent under Treas. Reg. § 1.1445-2(c)(3), or that U.S. Subsidiary 1 was required to provide notice of this statement to the IRS as required by Treas. Reg. § 1.897-2(h)(2).

In February 2005, while Accounting Firm A, the group's auditor, was reviewing the relevant U.S. income tax returns for U.S. Parent and U.S. Subsidiary 1, it discovered that the statement and notice had not been filed. After the Senior Vice President Tax, USA was informed that a statement and notice under Treas. Reg. §§ 1.1445-2(c)(3) and 1.897-2(h)(2) should have been filed, and were not filed, he requested that Accounting Firm B seek relief under Treas. Reg. § 301.9100-3.

No transferee is under audit for the tax year at issue, and the transferees are not aware of any knowledge of the Internal Revenue Service of the failure to provide a statement or file a notice under Treas. Reg. §§ 1.1445-2(c)(3) and 1.897-2(h)(2).

Treas. Reg. § 301.9100-1(b) 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 Taxpayer a reasonable extension of time under the rules set forth in § 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 interest of the Government.

In the present situation, Treas. Reg. §§ 1.1445-2(c)(3) and 1.897-2(h)(2) provide the time to file a statement to the transferee and a notice of the statement to the Internal Revenue Service. 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 standards set forth in Treas. Reg. § 301.9100-3(a).

Based on the facts and circumstances of this case, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time until 60 days from the date of this ruling letter to provide a statement to U.S. Parent pursuant to Treas. Reg. § 1.1445-2(c)(3), and a notice from U.S. Parent (on behalf of

U.S. Subsidiary 1) to the Internal Revenue Service pursuant to Treas. Reg. § 1.897-2(h)(2).

The granting of an extension of time is not a determination that the interests in U.S. Parent or U.S. Subsidiary 1 are not U.S. real property interests. Proof of this representation is subject to verification upon 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 ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, Taxpayer's filing a return electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Thomas D. Beem  
Senior Technical Reviewer, Branch 4  
(International)

Copy of this letter  
Copy for section 6110 purposes