Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:

,

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Telephone Number:

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CC:INTL:B04
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Date:
December 14, 2020

LEGEND

Parent =

Entity 1 =

Entity 2 =

Entity 3 =

a =
b =
Country A =
Country B =
Date 1 =
Date 2 =
Date 3 =
Date 4 =

Year 1 =

Dear :

This is in response to your letter dated August 7, 2020, and additional correspondence dated October 8, 2020 and December 8, 2020, submitted on behalf of Parent by its authorized representative, requesting a private letter ruling regarding the application of the exception to foreign use described in Treas. Reg. § 1.1503(d)-3(c)(7).

The ruling contained in this letter is based upon information and representations submitted by Parent and accompanied by penalties of perjury statements executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination. Information submitted in the request is set forth below. Unless otherwise provided, all Code and section references are to the Internal Revenue Code of 1986, as amended.

Summary of Facts

Parent is a domestic corporation and the common parent of an affiliated group of corporations that files a consolidated return for federal income tax purposes based on the calendar year. Parent wholly owns Entity 1, a domestic limited liability company that is disregarded as an entity separate from its owner for federal income tax purposes. Entity 1 wholly owns Entity 2, a foreign corporation formed in Country A. Entity 2 owns a equity interests of Entity 3, a foreign corporation formed in Country B. Parent owns the remaining b equity interests of Entity 3.

Almost all of Entity 3's assets are used or held for use in Entity 3's trade or business operations, and such trade or business assets are located in Country B. Entity 3 is subject to Country B corporate income tax and files a Country B corporate income tax return.

Proposed Transaction

Parent intends to implement, or cause its affiliates to implement, the following steps (collectively, the "Proposed Transaction"):

Step 1. On Date 1, Parent will transfer to Entity 2 its rights and obligations with respect to the ownership of the b equity interests of Entity 3 in exchange for cash. In order to comply with the requirements of Country B law, and pursuant to a nominee agreement between Parent and Entity 2, Parent will retain legal title of the b equity interests of Entity 3.

Step 2. Effective as of Date 2, Entity 1 will make an entity classification election to be treated as a corporation for federal income tax purposes.

Step 3. Effective as of Date 3, Entity 3 will make an entity classification election to be treated as a disregarded entity for federal income tax purposes.

Step 4. On Date 4, Entity 2 will transfer to Entity 1 a equity interests of Entity 3 and the rights and obligations with respect to the b equity interests of Entity 3 (which were acquired in Step 1) in exchange for cash.

Representations

Parent has made the following representations in connection with the requested ruling:

a) Step 1 will be treated as the transfer of the benefits and burdens of the ownership of b equity interests of Entity 3 to Entity 2 in exchange for cash, and thus Entity 2 will be treated as the sole owner of all equity interests in Entity 3 immediately after Step 1.

b) As a result of Entity 1's entity classification election in Step 2, Parent will be treated as contributing all of the assets and liabilities of Entity 1 to a domestic corporation in exchange for stock of the domestic corporation immediately before the close of the day before Date 2.

c) As a result of Entity 3's entity classification election in Step 3, Entity 3 will be treated as distributing all of its assets and liabilities to Entity 2 in liquidation of Entity 3 immediately before the close of the day before Date 3.

d) As a result of Entity 2's transfer of the equity interests of Entity 3 to Entity 1 in exchange for cash in Step 4, Entity 1 will be treated as acquiring all the assets of Entity 3 and assuming all of Entity 3's liabilities. Entity 1's adjusted basis in the assets acquired in Step 4 will not be determined in whole, or in part, by reference to the adjusted basis of such transferred assets in the hands of Entity 2.

e) Beginning on Date 4, Entity 1's interest in Entity 3 will be a Country B hybrid entity separate unit as defined in Treas. Reg. § 1.1503(d)-1(b)(4)(i)(B) (the "Entity 3 HESU") and Entity 3's business operations in Country B will be a foreign branch separate unit for purposes of Treas. Reg. § 1.1503(d)-1(b)(4)(i)(A) (the "Entity 3 FBSU"). The Entity 3 HESU and the Entity 3 FBSU will become part of Parent's existing Country B combined separate unit (as defined in Treas. Reg. § 1.1503(d)-1(b)(4)(ii)) beginning on Date 4.

f) Parent anticipates that, in Year 1 (and in certain future years), its Country B combined separate unit will incur a dual consolidated loss ("DCL") as defined in Treas. Reg. § 1.1503(d)-1(b)(5)(ii) (any such DCL, a "Country B DCL"). Parent intends to file a domestic use election and agreement under Treas. Reg. § 1.1503(d)-6(d) with respect to any such Country B DCL if the domestic use election and agreement is available (for example, if a foreign use (as described in Treas. Reg. § 1.1503(d)-3) of the DCL has not occurred).

g) Parent anticipates that certain Country B DCLs will be composed of U.S. tax items of deduction or loss attributable to one or more liabilities assumed by Entity 1 in Step 4, and that (i) all or a portion of such U.S. tax items of deduction or loss will correspond to items of deduction or loss under Country B income tax law attributable to such liabilities, and (ii) all or a portion of such Country B income tax items were made available under the income tax laws of Country B to offset or reduce, directly or indirectly, an item that is recognized as income or gain of Entity 3 under Country B income tax law for a taxable year that includes a day on which, for federal income tax purposes, Entity 3 was classified as a foreign corporation (such liabilities, "Timing Difference Liabilities").

h) The Timing Difference Liabilities were incurred in the ordinary course of Entity 3's trade or business.

i) The Timing Difference Liabilities have not created, and will not create, items of deduction or loss under the tax laws of any country other than Country B and the United States.

Ruling

Based solely on the information submitted, and on the representations set forth above, we rule as follows:

No foreign use is considered to occur with respect to a Country B DCL solely as a result of an item of deduction or loss attributable to the Timing Difference Liabilities. Treas. Reg. § 1.1503(d)-3(c)(7).

Caveats

No opinion is expressed as to the tax treatment of the Proposed Transaction under other provisions of the Code and regulations, and no opinion is expressed about the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by this ruling.

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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.

Sincerely,

/s/ Kenneth Jeruchim

Kenneth A. Jeruchim
Senior Technical Reviewer, Branch 4
(International)

cc: