Internal Revenue Service

Department of the Treasury
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Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:INTL:B02
PLR-118120-22

Date:
January 23, 2023

TY:

X	=
Disregarded Entity	=
Individual A	=
S corporation	=
Y	=
Tax Year 1	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=

Dear :

This letter responds to a letter dated September 12, 2022, submitted on behalf of X 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 Y, X's controlled foreign corporation (as defined in section 957(a)) (a CFC), 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 is a partnership with two partners—Disregarded Entity and S corporation. Individual A is the sole owner of Disregarded Entity and the sole shareholder of S corporation. X is the sole owner and the controlling domestic shareholder (as defined in Treas. Reg. §1.964-1(c)(5)) of Y. X engaged an accounting firm to prepare its Tax Year 1 Form

1065, *U.S. Return of Partnership Income*. X timely filed its Form 1065 on Date 1. X's originally filed Form 1065 did not make the GILTI HTE Election under Treas. Reg. §1.951A-2(c)(7). After Date 1 but before Date 2, the regulatory deadline to file the retroactive GILTI HTE Election, X contacted the accounting firm and inquired as to why the GILTI HTE had not been made for X on the originally filed Form 1065 and instructed the accounting firm to prepare and file the necessary forms to retroactively make the GILTI HTE Election for X for Tax Year 1. The accounting firm prepared the initial draft of the AAR forms to make the GILTI HTE Election, but the AAR forms were not filed at that time. On Date 3, the accounting firm incorrectly advised X that the AAR electing the GILTI HTE Election was not due until Date 4 (the date three years after the extended due date for X's original tax return for Tax Year 1), which was 18-months after Date 2 (the regulatory deadline to file the retroactive GILTI HTE Election). X relied on the accounting firm's advice as to the election, which was given by tax professionals with substantial experience in sophisticated tax matters and who were familiar with X's circumstances.

Shortly after Date 2, the AAR had still not been filed and the accounting firm discovered that the deadline to file the AAR had passed. The accounting firm informed X that its GILTI HTE Election would be late.

X is not currently under examination for Tax Year 1, or any other year in which the election is relevant. 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. Further, X represents that each of X's affected tax years remain open for assessment as of the date of this letter.

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 of such U.S. shareholder, 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)(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)(A)(3) provides that for U.S. shareholders that are partnerships, Treas. Reg. §1.951A-2(c)(7)(viii)(A)(1) and (2) and (c)(7)(viii)(C) are applied by substituting “Form 1065 (or successor form)” for “federal income tax return” and by substituting “amended Form 1065 (or successor form) or administrative adjustment request (as described in §301.6227-1), as applicable,” for “amended federal income tax return,” each place that it appears.

Section 1.951A-2(c)(7)(viii)(A)(4) provides that a U.S. shareholder that is a partner in a partnership that is also a U.S. shareholder in the CFC must generally file an amended return, as required under Treas. Reg. §1.951A-2(c)(7)(vii)(B)(2), and must generally pay any additional tax owed as required under Treas. Reg. §1.951A-2(c)(7)(viii)(B)(3). However, if a U.S. shareholder is a partner in a partnership that duly files an AAR under Treas. Reg. §1.951A-2(c)(7)(viii)(A)(2), that partner is treated as having satisfied the

requirements of Treas. Reg. §1.951A-2(c)(7)(viii)(A)(2)(ii) and (iii) with respect to the interest held through that partnership if:

(i) The partnership timely files an AAR as described in Treas. Reg. §1.951A-2(c)(7)(viii)(A)(1)(i) or (ii) as applicable; and

(ii) Both the partnership and its partners timely comply with the requirements of section 6227 with respect to the AAR.

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, the taxpayer requests relief under Treas. Reg. §301.9100-3 before the failure to make the regulatory election is discovered by the IRS. Treas. Reg. §301.9100-3(b)(i). 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 301.9100-3(b)(3)(ii) provides that a taxpayer is not deemed to have acted reasonably and in good faith if the taxpayer was informed in all material aspects of the required election and related tax consequences but chose not to file the election.

Section §301.9100-1(a) provides that the granting of 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 has 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 to make a GILTI HTE Election with respect to Y 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 AAR 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: