

Internal Revenue Service

Department of the Treasury

Index Number: 953.00-00
1503.03-00

Washington, DC 20224

Number: **199906016**
Release Date: 2/12/1999

Person to Contact:

Telephone Number:

Refer Reply To:
CC:INTL:BR3-PLR-115419-97
Date:
Nov. 9th 1998

TY: 1997

Corp A =

Corp B =

Country X =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

This is in response to a letter dated August 12, 1997, and subsequent correspondence, requesting a ruling regarding the application of sections 953 and 1503 of the Internal Revenue Code. The specific ruling requested is that the capital losses of a foreign insurance company that elects to be treated as a domestic corporation under section 953(d) are not dual consolidated losses.

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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, it is subject to verification on examination.

FACTS

Corp A is a publicly-traded domestic corporation and the common parent of a consolidated group filing life-nonlife consolidated Federal income tax returns pursuant to section 1504(c)(2). The returns are filed on an accrual accounting, calendar year basis. Corp A is a holding company whose holdings include domestic and foreign subsidiaries. The members of the Corp A group are primarily engaged in financial services businesses that include the issuance of life insurance and annuity contracts, reinsurance, property-casualty insurance, mutual funds and the provision of investment management services.

The Corp A group includes Corp B, a wholly-owned subsidiary of Corp A. Corp B is a Country X corporation. Corp B is a stock life insurance company whose primary business is the reinsurance of life, health and annuity contracts. Effective for its taxable year ended on Date 1 and all subsequent taxable years, Corp B elected, under section 953(d), to be treated as a domestic corporation for all purposes of the Internal Revenue Code. Corp B is a taxable life insurance company under Part I of Subchapter L and has no subsidiaries.

After meeting the five-year waiting period imposed by section 1504(c)(2)(A), Corp B became a member of the Corp A group for the taxable year ended on Date 2. Corp B continues to be an eligible corporation within the meaning of Treas. Reg. § 1.1502-47(d)(12).

In addition to other income, Corp B derives interest and dividend income, capital gains and losses, and other types of investment income from investment assets. For the first quarter of its taxable year ended on Date 4, Corp B realized a long-term capital loss within the meaning of section 1222(4). The Corp A consolidated group (without regard to Corp B) had capital gains during the first quarter of the same taxable year.

LAW AND ANALYSIS

Section 1503(d)(1) prohibits the use of a dual consolidated loss for any taxable year of any corporation to reduce the taxable income of any other member of the affiliated group for the taxable year or any other taxable year. Section 1503(d)(2)(A) generally defines a dual consolidated loss as any *net operating loss* of a domestic corporation which is subject to an income tax of a foreign country on its income on a worldwide or a residence basis.

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A domestic corporation can be a member of a consolidated group for both U.S. and foreign income tax purposes. Prior to the enactment of section 1503(d), if such a corporation had losses, it could use the losses to offset the income of both U.S. affiliates and foreign affiliates. Congress determined that the double use of these losses was inappropriate and enacted section 1503(d) to prevent it. Section 1503(d) provides that a “dual consolidated loss” shall not be allowed to reduce the taxable income of any other member of the U.S. affiliated group. However, to the extent provided in regulations, dual consolidated losses do not include losses which do not offset the income of any foreign corporation under foreign income tax laws. Section 1503(d)(2)(B).

Section 953(d)(1) allows a foreign insurance company that meets certain requirements to elect to be treated as a domestic corporation for all purposes of the Internal Revenue Code. Section 953(d)(3), however, states that if a foreign insurance company makes an election to be treated as a domestic corporation and is a member of an affiliated group, then “any loss of such corporation shall be treated as a dual consolidated loss for purposes of section 1503(d) without regard to paragraph (2)(B) thereof.”

Corp B is a foreign insurance company that made a section 953(d) election and is a member of an affiliated group. Therefore, Corp B’s losses shall be treated as dual consolidated losses. The issue we have been asked to address is whether Corp B’s capital losses are treated as dual consolidated losses under section 953(d)(3).

Section 1503(d)(2)(A) limits dual consolidated losses to net operating losses. However, section 953(d)(3) states that any loss of a 953(d) corporation is a dual consolidated loss. It is not clear whether the use of the phrase “any loss” expands the definition of dual consolidated loss to include capital losses for companies that make a section 953(d) election.

Section 953(d)(3), as originally enacted in 1988¹, read as follows:

(3) Treatment of Losses. – If any corporation treated as a domestic corporation under this subsection is treated as a member of an affiliated group for purposes of chapter 6 (relating to consolidated returns), any loss of such corporation shall be treated as a dual consolidated loss (as defined in section 1503(d)).

¹Section 953(d) was added to the Code in the Technical and Miscellaneous Revenue Act of 1988, Pub. L. No. 100-647, § 6135(a).

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Section 953(d)(3) was amended in 1989.² The amendment struck out the phrase “(as defined in section 1503(d))” and replaced it with the phrase “for purposes of section 1503(d) without regard to paragraph (2)(B) thereof.” The amendment was effective as if included in the 1988 legislation.

The language in the statute as originally drafted cross-references the statutory definition of dual consolidated loss in section 1503(d)(2)(A). The statutory definition of dual consolidated loss is limited to net operating losses and does not include capital losses. The legislative history to the original enactment of section 953(d) does not indicate any specific intent to expand the definition of dual consolidated losses to include capital losses for companies that make a section 953(d) election. H.R. Rep. No. 1104, 100th Cong., 2d Sess. (Oct. 21, 1988).

The amendment to section 953(d)(3) struck out the cross-reference to the statutory definition of dual consolidated loss. The statute, as amended, states that any loss of a company that makes a section 953(d) election is a dual consolidated loss notwithstanding any exceptions provided in section 1503(d)(2)(B). Section 1503(d)(2)(B) allows exceptions to the definition of dual consolidated loss for a loss that cannot be used to offset the income of any foreign corporation under foreign law, to the extent provided in regulations. The legislative history to the amendment states that the amendment was necessary to clarify that the “treatment of electing corporation losses as dual consolidated losses under section 953(d) precludes any contrary treatment under regulations that may provide exceptions from the definition of dual consolidated losses.” S. Rep. No. 56, 101st Cong., 1st Sess. (Oct. 12, 1989).

The legislative history to the amendment makes it clear that there can be no exceptions to the definition of a dual consolidated loss for companies that makes a section 953(d) election. However, the legislative history does not indicate that section 953(d)(3) expands the definition of dual consolidated loss. The legislative history actually uses the statutory definition of dual consolidated loss in its discussion relating to section 953(d)(3). Further, the amendment to section 953(d)(3) states that any loss of a company that makes a section 953(d) election is a dual consolidated loss for purposes of section 1503(d), without regard to section 1503(d)(2)(B). The cross reference to section 1503(d) and the specific language that section 1503(d) is to be applied without regard to section 1503(d)(2)(B) suggests that section 1503(d) is to be applied with regard to the other subsections. Therefore, the statutory definition of dual consolidated loss contained in section 1503(d)(2)(A) is incorporated into section 953(d)(3) and only net operating losses of a company that makes a section 953(d) election are dual consolidated losses. Accordingly, Corp B’s capital losses are not dual consolidated losses.

²Section 953(d)(3) was amended in the Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, § 7816(p).

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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.

A copy of this letter must be attached to any income tax return to which it is relevant.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(j)(3) of the Code 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 the taxpayer.

Sincerely,

Barbara A. Felker
Chief, Branch 3
Office of the Associate Chief Counsel
(International)