

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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PLR-123791-05

Date:
July 15, 2005

TYs:

Legend

Corp A =

Corp B =

Country C =

DRC =

Individual D =

Date 1 =

Firm X =

Firm Y =

Tax Year M =

Tax Year N =

Tax Year O =

Tax Year P =

Tax Year Q =

Tax Year R =

Tax Year S =

Dear _____ :

This is in response to a letter dated April 28, 2005, in which Corp A and Corp B request an extension of time under Treas. Reg. §301.9100-3 to file: (1) the election statements described in Treas. Reg. §1.1503-2(g)(2)(i), in accordance with Exhibit A, which is attached to and made part of this ruling letter; (2) annual certification statements described in Treas. Reg. §1.1503-2(g)(2)(vi)(B) in accordance with Exhibit B, which is attached to and made part of this ruling letter; and (3) the agreement described in Treas. Reg. §1.1503-2(g)(2)(iv)(B)(2)(iii). The information submitted for consideration is substantially as set forth below.

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 rulings, it is subject to verification on examination.

Subsequent to Date 1, Corp A is the parent of an affiliated group of corporations that files consolidated federal income tax returns (the "Corp A Group"). The Corp A Group includes both Corp B and DRC which is 100 percent owned by Corp B and which is a Country C corporation that has elected to be treated as a disregarded entity for United States tax purposes. Prior to Date 1, Corp B was the parent of an affiliated group of corporations that filed consolidated federal income tax returns. On Date 1, Corp A acquired all of Corp B. DRC had dual consolidated losses as described in Treas. Reg. §1.1503-2(c)(5) ("DCLs") for Tax Years M through P and for Tax Years R and S.

Individual D had the responsibility for the review of the preparation process and the final review of Corp A's and Corp B's federal income tax returns for Tax Years M through S. As a result of a lack of understanding of the DCL rules, Corp B did not file an election and agreement described in Treas. Reg. §1.1503-2(g)(2)(i) for losses in Tax Year M and it did not file the required annual certification described in Treas. Reg. §1.1503-2(g)(2)(iv)(B) for subsequent Tax Years. Also, as a result of short Tax Years O and P and the change of accounting firms from Firm Y to Firm X, necessary election and agreement described in Treas. Reg. §1.1503-2(g)(2)(i) were not timely filed for Tax Years O and P. Finally, the election described in Treas. Reg. §1.1503-2(g)(2)(iv)(B)(2)(iii), as in effect for the period that includes Date 1, that should have been filed as a result of the acquisition of Corp B by Corp A on Date 1, was inadvertently not made.

Once Individual D was informed of these errors by Firm X, Corp A and Corp B initiated this request for relief for an extension of time under Treas. Reg. §301.9100-3 to file the elections and agreements in accordance with Exhibit A; the annual certifications in accordance with Exhibit B; and the election described in Treas. Reg. §1.1503-2(g)(2)(iv)(B)(2)(iii).

The taxpayers have represented that the income tax laws of Country C do not deny the losses, expenses, or deductions of DRC to offset income of another person because the dual resident corporation or separate unit is also subject to the 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.

In the present situation, the election statements described in Treas. Reg. §1.1503-2(g)(2)(i), the annual certification statements described in Treas. Reg. §1.1503-2(g)(2)(vi)(B), and the agreement described in Treas. Reg. §1.1503-2(g)(2)(iv)(B)(2)(iii) are regulatory elections as defined in Treas. Reg. §301.9100-1(b). Therefore, the Commissioner has the discretionary authority under Treas. Reg. §301.9100-1(c) to grant an extension of time, provided that the taxpayer satisfies the rules set forth in Treas. Reg. §301.9100-3(a).

Based upon the facts and circumstances submitted, we conclude that Corp A and Corp B satisfy Treas. Reg. §301.9100-3(a). Accordingly, Corp A and Corp B are granted an extension of time of 45 days from the date of this ruling letter to file: the elections and agreements in accordance with Exhibit A; the annual certifications in accordance with Exhibit B; and the agreement described in Treas. Reg. §1.1503-2(g)(2)(iv)(B)(2)(iii) with respect to the DRC losses that should have been included in the Corp A federal income tax return for the tax year that included Date 1.

The granting of an extension of time is not a determination that Corp A or Corp B is otherwise eligible to file the elections and agreements, and annual certifications. See

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).

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 taxpayers requesting it. Section 6110(k)(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 your authorized representative.

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

Sincerely,

Thomas Beem
Senior Technical Reviewer, Branch 4
Office of the Associate Chief Counsel
(International)

EXHIBIT A

Extension of time to file the Election and Agreement described in Treas. Reg. §1.1503-2(g)(2)(i) has been requested as indicated:

Name of Entity	Tax Year for which an Election and Agreement is Requested
DRC	Tax Year M
DRC	Tax Year O
DRC	Tax Year P

EXHIBIT B

Extension of time to file the Annual Certification described in Treas. Reg. §1.1503-2(g)(2)(iv)(B) has been requested as indicated:

Name of Entity	Tax Year for which an Annual Certification is requested
DRC	Tax Year N
DRC	Tax Year O
DRC	Tax Year P
DRC	Tax Year Q
DRC	Tax Year R
DRC	Tax Year S