

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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CC:INTL:B03

PLR-166151-04

Date:

September 08, 2005

TY:

Legend

Corp A =

Corp B =

Corp C =

Corp D =

Country E =

Country F =

Entity 1 =

Entity 2 =

Entity 3 =

Individual M =

Individual N =

Individual O =

Law Firm =

Date X =

Tax Year Y =

Tax Year Z =

Dear :

This replies to a letter dated December 29, 2004, in which Corp A and Corp B request an extension of time under Treas. Reg. §301.9100-3 to file elections and agreements under Treas. Reg. §1.1503-2(g)(2)(i) ("Elections") and annual certifications under Treas. Reg. §1.1503-2(g)(2)(vi)(B) ("Annual Certifications") relating to the reporting of dual consolidated losses as defined in Treas. Reg. §1.1503-2(c)(5) with respect to interests in Entity 1 and Entity 3 for Tax Year Y and Tax Year Z. 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 taxpayers 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.

For Tax Years Y and Z, Corp B, a domestic corporation, was the common parent of an affiliated group of corporations that filed a consolidated federal income tax return (“the Corp B Group”). For Tax Years Y and Z, the Corp B Group’s consolidated federal income tax returns were filed taking into account dual consolidated losses incurred with respect to interests in Entity 1, a Country E partnership, and with respect to interests in Entity 3, a Country F corporation treated for United States tax purposes as a disregarded entity (a foreign branch) of a member of the Corp B Group. Entity 2, a Country E partnership, and Corp C were the partners in Entity 1. Corp C and Corp D, both domestic corporations that were members of the Corp B Group, were the partners in Entity 2. Elections and Annual Certifications were either not filed or filed incorrectly with respect to the dual consolidated losses incurred with respect to interests in Entity 1 and Entity 3.

For Tax Year Y, the Election and Annual Certification with respect to interests in Entity 1 were filed but were not signed by the person who files the federal income tax return, as required by Treas. Reg. §§ 1.1503-2(g)(2)(i) and (g)(2)(vi)(B). For Tax Year Y, the Election with respect to interests in Entity 3 was not filed (no Annual Certification for interests in Entity 3 was required because no losses were incurred by Entity 3 for previous tax periods).

For Tax Year Z, the Election with respect to interests in Entity 1 was filed but was not signed, while the Annual Certification was filed and signed by Individual M, who signed the Corp B consolidated federal income tax returns for Tax Years Y and Z. Both the Election and Annual Certification with respect to interests in Entity 3 were filed and signed by Individual M for Tax Year Z.

On Date X, Corp A, a domestic corporation, acquired the stock of Corp B. Prior to the acquisition, Corp A’s tax advisor, Law Firm, performed due diligence on Corp B and discovered the failure to file an Election with respect to interests in Entity 3 and the failure to sign the Elections and Annual Certifications with respect to interests in Entity 1. Law Firm also determined that Individual M did not have authority to sign Corp B’s consolidated federal income tax return under section 6062 because he was not an officer of Corp B (only Individuals N and O had such authority). As a result, Individual M did not have the authority to sign the Elections and Annual Certifications. The affidavits of Individuals M, N, and O provide that Individual M signed these Elections and Annual Certifications in good faith reliance on Delegations of Authority from Individual N and Individual O that were ineffective with respect to such signings. Once this discrepancy

was discovered by Law Firm, which led to the conclusion that these Elections and Annual Certifications were not in compliance with the dual consolidated loss regulations, this request for relief under Treas. Reg. §310.9100 was initiated.

The taxpayers have represented that the income tax laws of Country E do not deny the losses, expenses, or deductions with respect to interests in Entity 1 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 in 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 Elections and the Annual Certifications 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 B satisfies Treas. Reg. §301.9100-3(a). Accordingly, Corp B is granted an extension of time of 45 days from the date of this ruling letter to file the Elections and the Annual Certifications for Tax Year Y and Tax Year Z. The Elections and Annual Certifications must be attached to Corp B's consolidated federal income tax returns for Tax Year Y and Z, and such Elections, Annual Certifications, and tax returns must be signed by the appropriate person under section 6062. See §§1.1503-2(g)(2)(i) and (g)(2)(vi)(B) and §1.6062-1.

The granting of an extension of time is not a determination that Corp B is otherwise eligible to file the Elections 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 Elections 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 taxpayer 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,

Robert W. Lorence, Jr.
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(International)

cc: