



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR CHIEF, EXAMINATION BRANCH

FROM: Charles P. Besecky
Branch Chief CC:INTL:BR4

SUBJECT Treas. Reg. § 1.1503-2(g)(2)(iii): .

This Chief Counsel Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND:

A =

B =

C =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Country 1 =

DISCUSSION:

WTA-N-114438-99

This is to alert you that B, does not appear to have complied with the regulations under section 1503(d) for its tax year ended Date 1.

As a result of the merger on Date 1, of a wholly-owned subsidiary of A, with and into B, B became a wholly-owned subsidiary of A. B had been the common parent of an affiliated group filing a consolidated federal income tax return.

B had a wholly-owned domestic subsidiary, C, that markets the products of B in Country 1. C incurred "dual consolidated losses" ("DCLs") in Country 1 within the meaning of section 1503(d), that were utilized in the B consolidated tax returns filed for the tax years ending in Date 2.

When DCLs are utilized on a consolidated income tax return, the common parent of the consolidated return group is required to represent that it will recapture the DCLs upon the occurrence of certain events. The merger was an event requiring B to include in its taxable income the dual consolidated loss incurred by its subsidiary, C, for its taxable year in which the merger occurred. See Treas. Reg. § 1.1503-2(g)(2)(iii).

The recapture can be avoided if B and A enter into a closing agreement with the Service pursuant to Treas. Reg. § 1.1503-2(g)(2)(iv)(B). A closing agreement was requested in a letter dated Date 3. On Date 4, the taxpayer's representative was informed that we were not fully satisfied with the prior year filings by required to be filed with the tax return for each of the fifteen taxable years following the taxable year in which the dual consolidated loss was incurred pursuant to Treas. Reg. § 1.1503-2(g)(2)(vi) and that, before a request for a closing agreement would be considered by this office, appropriate filings would be required.

As of this date we are not aware of the taxpayer taking appropriate corrective actions with respect to the prior years filings, we are not presently considering any request for permission to take such corrective actions, nor are we presently considering entering into a closing agreement with B.

We are sending this to you so that your office may take appropriate action.

If you have any further questions, please call (202) 622-3860.