

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:INTL:PLR-119816-00

Date:

September 5, 2001

**LEGEND**

Taxpayer =

Subsidiary 1 =

Subsidiary 2 =

Date 1, 2, 3, 4, 5, 6, 7, 8 =

Country Y =

Individuals A, B, C, D =

CPA Firm =

Dear :

This replies to a letter dated September 27, 2000, in which Taxpayer requests an extension of time under Treas. Reg. § 301.9100-3 as follows: (i) to file the agreements described in § 1.1503-2A(c)(3) with respect to the dual consolidated losses of Subsidiary 1 incurred in tax years ended on Dates 1, 2 and 3, which will allow the filing of agreements for the tax years ended on Dates 1, 2 and 3, for which such agreements were not previously filed; (ii) to replace the agreements described in § 1.1503-2A(c)(3) with respect to the dual consolidated losses of Subsidiary 1 incurred in tax years ended on Dates 1, 2 and 3 with the agreements described § 1.1503-2(g)(2)(i), pursuant to the transitional rule described in § 1.1503-2(h)(2)(ii); and (iii) to file the agreements described in § 1.1503-2(g)(2)(i), with respect to the dual consolidated losses of Subsidiary 1 incurred in tax years ended on Dates 4, 5 and 6, which will allow the filing of agreements for Subsidiary 1 for the tax years ended on Dates 4, 5 and 6, for which such agreements were not previously filed; and with respect to the dual consolidated losses of Subsidiary 2 incurred in tax years ended on Dates 6 and 7, which will allow the filing of agreements for Subsidiary 2 for the tax years for which such agreements were not previously filed. Supplemental information was submitted in letters dated April

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5, June 18 and 22, and August 29, 2001. The facts submitted for consideration are substantially as set forth below.

The ruling contained in this letter is predicated upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

Subsidiary 1 and Subsidiary 2 are both separate units within the meaning of § 1.1503-2(c)(3)(i)(A), and neither is a hybrid entity separate unit within the meaning of § 1.1503-2(c)(4). Subsidiary 1 and Subsidiary 2 satisfy § 1.1503-2A(c)(3)(i)(A) and are not described in § 1.1503-2(d)(1).

Subsidiary 1 is a dual resident corporation within the meaning of § 1.1503-2A(b)(3) by reason of having a business operation that constitutes a separate unit within the meaning of § 1.1503-2A(b)(4)(i). Subsidiary 1 is also a dual resident corporation within the meaning of § 1.1503-2(c)(2) by reason of having a business operation that constitutes a separate unit within the meaning of § 1.1503-2(c)(3)(i)(A).

For the tax years ended on Dates 1, 2 and 3, Subsidiary 1 incurred dual consolidated losses as described in § 1.1503-2(A)(b)(2) (and also as defined in § 1.1503-2(c)(5)). For the tax years ended on Dates 4, 5 and 6, Subsidiary 1 incurred dual consolidated losses as defined in § 1.1503-2(c)(5). None of the losses for any of those tax years have been used to offset the income of any other person under the income tax laws of Country Y or any foreign country.

Subsidiary 2 is a dual resident corporation within the meaning of § 1.1503-2(c)(2) by reason of having a business operation that constitutes a separate unit within the meaning of § 1.1503-2(c)(3)(i)(A).

For the tax years ended on Dates 6 and 7, Subsidiary 2 incurred dual consolidated losses as defined in § 1.1503-2(c)(5). None of those losses have been used to offset the income of any other person under the income tax laws of Country Y or any foreign country.

Individuals A, B, C and D were employed as tax professionals by Taxpayer and were responsible, at various times, for Taxpayer's consolidated federal income tax returns for the tax years ended on Dates 1 through 7.

During the tax year ended on Date 8, Taxpayer engaged CPA Firm to review Taxpayer's consolidated federal income tax returns, including the tax returns ended

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on Dates 6 and 7. As part of that review, it was discovered that Taxpayer had not filed the agreements under § 1.1503-2(g)(2) for the dual consolidated losses incurred by Subsidiary 2 in the tax years ended on Dates 6 and 7. After the failure to file the required elections and agreements with respect to dual consolidated losses of Subsidiary 2 were identified, it was realized that elections and agreements were also required for the dual consolidated losses of Subsidiary 1 incurred in the tax years ended on Dates 1, 2, 3, 4, 5, and 6.

The affidavits submitted by Individuals A, B, C, and D establish that Taxpayer relied on these tax professionals, and these tax professionals failed to advise Taxpayer of the requirements to file the elections and agreements in order to deduct the dual consolidated losses.

Treas. Reg. § 301.9100 -1(b) 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 § 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 § 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 agreement is a regulatory election as defined in § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the rules set forth in § 301.9100-3(a).

Based on the facts and circumstances of this case, we conclude that Taxpayer satisfies the standards of § 301.9100-3. Accordingly, Taxpayer is granted an extension of time until 30 days from the date of this ruling letter as follows: (i) to file the agreements described in § 1.1503-2A(c)(3) with respect to the dual consolidated losses of Subsidiary 1 incurred in tax years ended on Dates 1, 2, and 3, which will allow the filing of agreements for the tax years ended on Dates 1, 2 and 3, for which such agreements were not previously filed; (ii) to replace the agreements described in § 1.1503-2A(c)(3) with respect to the dual consolidated losses of Subsidiary 1 incurred in tax years ended on Dates 1, 2 and 3 with the agreements described in § 1.1503-2(g)(2)(i), pursuant to the transitional rule described in § 1.1503-2(h)(2)(ii);

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and (iii) to file the agreements described in § 1.1503-2(g)(2)(i), with respect to the dual consolidated losses of Subsidiary 1 incurred in tax years ended on Dates 4, 5 and 6, which will allow the filing of agreements for Subsidiary 1 for the tax years ended on Dates 4, 5 and 6, for which such agreements were not previously filed; and with respect to the dual consolidated losses of Subsidiary 2 incurred in tax years ended on Dates 6 and 7, which will allow the filing of agreements for Subsidiary 2 for the tax years for which such agreements were not previously filed.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to file the elections and agreements. § 301.9100 -1(a).

No ruling has been requested, and none is expressed, as to the application of any other section of the Code or regulations to the facts presented.

A copy of this ruling letter should be associated with the elections and agreements.

This ruling is directed only to the taxpayer who requested it. I.R.C. § 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to Taxpayer and the other authorized representative.

Sincerely,

Allen Goldstein  
Reviewer  
Office of the Associate Chief Counsel (International)