Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
CC:INTL:BR5
PLR-112566-04

Date:
September 02, 2005

In Re:

LEGEND

Company	=
Parent	=
Operating Partnership	=
Investors	=
Holding Partnership	=
Trustee	=
Trust	=
Year 1	=
State 1	=
State 2	=
Country 1	=
Currency 1	=
Project 1	=
A Percent	=
B Percent	=
X Percent	=
Y percent	=

Dear :

This is in response to your letter dated March 2, 2004 in which you request a ruling under Treas. Reg. § 1.985-1(b)(1)(iii) that Company, Holding Partnership, GP, Trust, Joint Venture and Master Lessee may use a currency other than the U.S. dollar as their functional currency. Specifically, you request a ruling that permits Company, Holding Partnership, GP, Trust, Joint Venture and Master Lessee each to determine their functional currency by applying the principles used to determine the functional currency of a qualified business unit that is not required to use the dollar as set forth in Treas. Reg. § 1.985-1(c).

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

FACTS:

Parent is a U.S. Corporation that has elected to be taxed as a real estate investment trust ("REIT") under subchapter M of the Internal Revenue Code. Parent holds a majority of the interests in Operating Partnership, a U.S. partnership and the sole shareholder in Company. Parent conducts Business 1 through Operating Partnership and Operating Partnership's subsidiaries.

Company was organized in Year 1 as a State 1 entity and is currently treated as a disregarded entity for federal income tax purposes. However, Company intends to qualify as a real estate investment trust under subchapter M of the Internal Revenue Code.

Following Company's qualification as a real estate investment trust:

(a) Company will own an A Percent limited partnership interest in Holding Partnership, a State 2 limited partnership. A U.S. limited liability company that is solely owned by Company ("GP") will own a B Percent general partnership interest in Holding Partnership. GP and Holding Partnership will be treated as disregarded entities for federal income tax purposes.

(b) Holding Partnership will own all of the beneficial interests in Trust, which will be treated as a grantor trust and a disregarded entity for federal income tax purposes. Trustee, an entity wholly owned by Parent and which meets the definition of a "qualified REIT subsidiary" under section 856(i)(2), will serve as

trustee of Trust pursuant to an agreement between Trustee and Holding Partnership (the "Trust Agreement").

(c) Trustee, on behalf of Trust, will own a X Percent undivided interest and an unrelated third party ("JV Partner") will own a Y Percent undivided interest as tenants-in-common in Project 1 and both parties have agreed to treat their co-ownership in Project 1 as a partnership for federal income tax purposes (the "Joint Venture").

(d) Pursuant to a leasing agreement (the "Master Lease"), the land and improvements associated with Project 1 will be leased to a Country 1 unlimited liability company ("Master Lessee"), which will owned by JV Partner and Trust in the same proportions as JV Partner and Trust own Joint Venture. Master Lessee, which will be treated as a disregarded entity of the Joint Venture for federal tax purposes, will sublease the space in Project 1 to unrelated parties.

Company represents that the majority of the activities of Company, GP, Holding Partnership, Trust, Joint Venture and Master Lessee will be conducted in Currency 1. Company represents that the following will be denominated in Currency 1: contributions, distributions, invoice payments, borrowing and lending of funds, acquisition of assets, the master lease, and subleases. Additionally, Company represents that all significant revenues and expenses will be denominated in Currency 1. Company also represents that a small amount of administrative expenses may be satisfied in the U.S. dollar.

Company, Holding Partnership, and Trust will not have any employees. Master Lessee will have only Country 1 employees. Neither Master Lessee, Joint Venture, Trust, Holding Partnership, GP, nor Company will conduct a trade or business with in the United States. These entities will maintain separate books and records in Currency 1.

LAW:

In general, section 985 provides that all determinations for Federal income tax purposes shall be made in the taxpayer's functional currency. Section 985(a). Treas. Reg. § 1.985-1(b)(1) provides that except as otherwise provided by ruling or administrative pronouncement, the U.S. dollar shall be the functional currency of a QBU that has the United States as its residence as defined in section 988(a)(3)(B). Treas. Reg. § 1.989(a)-1(b)(2)(i) provides that a corporation is a QBU; a partnership is a QBU of a partner; and a trust is a QBU of a beneficiary.

An eligible entity that files an election under section 856(c)(1) to be treated as a real estate investment trust is treated as having made an election to be classified as an association as of the first day the entity is treated as a real estate investment trust. Treas. Reg. §301.7701-3(c)(1)(v)(B). An association as determined under Treas. Reg. §301.7701-3 is a corporation. Treas. Reg. §301.7701-2(b)(2).

Section 988(a)(3)(B)(i)(II) provides that the United States shall be the residence of a corporation, partnership or trust which is a United States person. Section 988(a)(3)(B)(i)(III) states that generally the residence of a corporation or partnership which is not a United States person shall be a country other than the United States. Section 988(a)(3)(B)(ii) states an exception to the above rule, that in the case of a QBU of any taxpayer, the residence of such unit shall be the country in which the principal place of business of the QBU is located.

Section 7701(a)(30) provides, in part, that the term “United States person” means a domestic corporation. Section 7701(a)(4) provides that the term “domestic,” as applied to a corporation, means created or organized in the United States or under the law of the United States or any State. See also Treas. Reg. § 1.988-4(d)(1)(ii).

Treas. Reg. § 1.985-1(c)(1) provides that if a QBU is not required to use the dollar as its functional currency, then its functional currency shall be the currency of the economic environment in which a significant part of the QBU's activities are conducted, if the QBU keeps, or is presumed to keep, its books and records in such currency. Treas. Reg. § 1.985-1(c)(2) provides that the economic environment in which a significant part of the QBU's activities are conducted shall be determined by taking into account all the facts and circumstances. Treas. Reg. § 1.985-1(c)(2)(i) sets forth a non-inclusive list of facts and circumstances which are considered when determining the economic environment in which a significant part of the QBU's activities are conducted.

The General Explanation of the Tax Reform Act of 1986 states that "[i]n appropriate circumstances, a domestic QBU (such as a regulated investment company organized to invest in securities denominated in a specific currency) may have a foreign currency as the functional currency." Staff of the Joint Committee on Taxation, 100th Cong., 1st Sess., General Explanation of the Tax Reform Act of 1986, at 1093-94 (Comm. Print 1987).

ANALYSIS:

If Company is required to use the U.S. dollar as its functional currency pursuant to Treas. Reg. § 1.985-1(b)(1)(iii), it would recognize foreign currency gain or loss on every section 988 transaction because such transactions would be denominated in Currency 1, which would be a non-functional currency to it. See section 988 and Treas. Reg. § 1.988-1(a). Moreover, any QBU of Taxpayer with a currency other than the dollar as its functional currency would generally be subject to section 987. Since foreign currency gain or loss is not expressly listed as qualifying income in sections 856(c)(2) or

856(c)(3), and since currency fluctuations could affect the valuation of assets under section 856(c)(4), Taxpayer risks losing its REIT status if it is not permitted to adopt Currency 1 currency as its functional currency.

If the ruling requested herein is issued, the functional currency of Company, GP, Holding Partnership, Trust, Joint Venture and Master Lessee would be determined by applying the principles of Treas. Reg. § 1.985-1(c). Under these principles, Company, GP, Holding Partnership, Trust, Joint Venture and Master Lessee would each be eligible to adopt Currency 1 as their functional currency. This conclusion is consistent with the language contained in the General Explanation of the Tax Reform Act of 1986 as set forth above.

Based solely on the facts and representations submitted, Company may apply the principles of Treas. Reg. § 1.985-1(c)(2) to determine its functional currency. GP, Holding Partnership, Trust, Joint Venture and Master Lessee may also apply the principles of Treas. Reg. § 1.985-1(c)(2) to determine their functional currency. Should each of the above entities properly adopt Currency 1 as its functional currency, it will compute taxable income or loss in that currency and translate taxable income into dollars using the average exchange rate for the taxable year.

No opinion is expressed regarding the proper functional currency of Company, GP, Holding Partnership, Trust, Joint Venture or Master Lessee under the principles of Treas. Reg. § 1.985-1(c).

No opinion is expressed whether Company or any entity referred to herein qualifies as a real estate investment trust under section 856.

No opinion is expressed regarding the character of dividends or other income distributed by Company to U.S. investors, or the character of income or loss realized on the sale by investors of their ownership interests in Company.

No opinion is expressed regarding the treatment of foreign currency received as dividends in the hands of the shareholders of Company.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

It is important that a copy of this letter be attached to the Federal income tax return of the taxpayers involved for the taxable year in which the determination covered by this letter is made.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the representatives below.

Sincerely,

_____
Theodore David Setzer
Senior Counsel, Branch 5
(International)

CC: