

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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November 08, 2010

TY:

### Legend

Partnership X =

EIN =

Corporation A =

Corporation B =

Country =

State =

s =

t =

Dear :

This is in response to a letter dated June 3, 2010 requesting certain rulings on behalf of Partnership X. The rulings contained in this letter are 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.

### FACTS

Partnership X is a limited liability company formed under the laws of State and treated as a partnership for U.S. federal tax purposes. Partnership X has s members, t of which are U.S. persons ("US Members"). The US Members consist of U.S. individuals and a domestic corporation (collectively, "Non-Partnership Members") that each own less than 10 percent of Partnership X, and domestic partnerships ("Partnership Members") that each own more than 10 percent of Partnership X. Taxpayer has represented that Notice 2010-41, 2010-22 I.R.B. 715, does not apply to Partnership X's structure.

Partnership X wholly-owns Corporation A, a limited liability company formed under the laws of State that is disregarded as an entity separate from Partnership X for U.S. federal tax purposes. Corporation A, in turn, wholly-owns Corporation B, an entity formed under the laws of Country, which is treated as a corporation for U.S. federal tax purposes.

Corporation B will earn income that is expected to be passive income within the meaning of Internal Revenue Code (“Code”) section 1297(a).

Corporation B qualifies as a controlled foreign corporation (“CFC”), as defined under Code section 957(a), because Partnership X is a domestic partnership that wholly owns Corporation B for U.S. federal tax purposes. In addition, Corporation B expects to qualify as a passive foreign investment company (“PFIC”) (without taking into account the application of Code section 1297(d)), as defined under Code section 1297(a).

#### RULING REQUESTED

Corporation B will not be treated as a PFIC with respect to Partnership X, the Non-Partnership Members or any direct or indirect owner of a Partnership Member pursuant to Code section 1297(d) during the portion of Partnership X’s holding period that Partnership X is a U.S. Shareholder (within the meaning of Code section 951(b)) with respect to Corporation B and Corporation B is a CFC.

#### LAW

Code section 957 defines a CFC as a foreign corporation with regard to which more than 50 percent of the total combined voting power of all classes of stock entitled to vote or the total value of the stock of the corporation is owned (directly, indirectly, or constructively) by U.S. shareholders.

Code section 951(b) defines a U.S. shareholder for CFC purposes as a U.S. person who owns (directly, indirectly, or constructively) 10 percent or more of the total combined voting power of all classes of stock entitled to vote of the foreign corporation. (“U.S. Shareholder”).

Code section 7701(a)(30) defines a U.S. person as a U.S. citizen or resident, a domestic partnership, a domestic corporation and any domestic estate or trust.

Code section 702(a) provides generally that each partner in a partnership takes into account a distributive share of the partnership’s income or gain in determining the partner’s income tax.

Code section 702(b) provides that the character of an item of income or gain included in a partner’s distributive share is determined as if such item were realized directly from

the source from which realized by the partnership, or incurred in the same manner as incurred by the partnership.

Code section 1297(a) defines a PFIC as any foreign corporation if either: (1) at least 75 percent of the corporation's income for the taxable year is passive income; or (2) the average percentage of assets held by the corporation during the taxable year that produce, or are held for the production of, passive income is at least 50 percent.

Code section 1297(b) defines passive income for purposes of the PFIC income test as income which is of a kind which would be foreign personal holding company income as defined in Code section 954(c), subject to certain exceptions.

Code section 1298(b)(1) provides that a foreign corporation is treated as a PFIC with respect to a U.S. shareholder, and the U.S. shareholder is subject to the excess distribution regime, if the foreign corporation qualified as a PFIC, but not a Qualified Electing Fund, at any point during the U.S. shareholder's holding period.

Code section 1297(d)(1) provides that a corporation shall not be treated with respect to a shareholder as a PFIC during the qualified portion of such shareholder's holding period with respect to the stock in such corporation. ("Overlap Rule").

Code section 1297(d)(2) defines "qualified portion" to mean the portion of a shareholder's holding period which is after December 31, 1997 and during which the shareholder is a U.S. Shareholder of the corporation and the corporation is a CFC.

The legislative history to Code section 1297(d) provides that the Overlap Rule was enacted because of a concern about the unnecessary complexity caused by the application of the subpart F and PFIC regimes to the same shareholders. To address this concern, the legislative history to Code section 1297(d) states that "a shareholder that is subject to current inclusion under the subpart F rules with respect to stock of a PFIC that is also a CFC generally is not subject also to the PFIC provisions with respect to the same stock."

## ANALYSIS

It is expected that Corporation B will qualify as a PFIC as defined under Code section 1297(a). Partnership X, a domestic partnership, is a U.S. person within the meaning of Code section 7701(a)(30). Partnership X is the sole owner of Corporation B for U.S. federal tax purposes and thus is a U.S. Shareholder with respect to Corporation B. Accordingly, Partnership X will be subject to the subpart F rules with respect to Corporation B, and will not be subject to the PFIC regime with respect to Corporation B pursuant to the Overlap Rule. The Non-Partnership Members will take into account their distributive shares of Partnership X's income, including any section 951 inclusion with respect to Corporation B. The partners in the Partnership Members will take into

account their distributive share of their respective Partnership Member's distributive share of Partnership X's income, including any section 951 inclusion with respect to Corporation B.

## RULING

Based on the information submitted and the representations made, we rule as follows:

Corporation B will not be treated as a PFIC with respect to Partnership X, the Non-Partnership Members or the direct or indirect owners of the Partnership Members pursuant to Code section 1297(d) during the qualified portion (within the meaning of Code section 1297(d)) of Partnership X's holding period that Partnership X is a U.S. Shareholder of Corporation B and Corporation B is a CFC. Taxpayer has represented that Notice 2010-41 does not apply to Partnership X's structure. In the event a U.S. person does beneficially own an interest in Partnership X directly or indirectly through a CFC as described in Notice 2010-41, this ruling does not apply to such U.S. person.

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 ruling.

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

A copy of this letter ruling must be attached to any federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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

Sincerely,

Jeffery Mitchell  
Branch Chief, Branch 2  
Associate Chief Counsel (International)