

## Internal Revenue Service

Number: **202310004**

Release Date: 3/10/2023

Index Number: 9100.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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CC:ITA:B2

PLR-111408-22

Date:

December 09, 2022

Attn:

### LEGEND:

Taxpayer =

Group =

Accounting Firm =

State =

Business =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear :

This letter is in response to a request for a private letter ruling (Request) submitted Date 1 by Taxpayer for an extension of time, pursuant to § 301.9100-3 of the Regulations on Procedure and Administration, to make elections under §§ 1.263(a)-1(f), 1.163(j)-7(e)(5), and 1.964-1(c)(3) of the Income Tax Regulations for the taxable year ending on Date 2. This Request is being issued electronically as permissible under sections 7.02(2) and 9.04(3) of Rev. Proc. 2022-1, 2022-1 I.R.B. 1, 33, 49.

### FACTS AND REPRESENTATIONS

Taxpayer represents the following:

Taxpayer is a corporation with its principal executive offices located in State. Taxpayer is the common parent of an affiliated group of subsidiaries that files a consolidated U.S. federal income tax return on a calendar year basis. Taxpayer's federal income tax return is prepared using an overall accrual accounting method. Taxpayer is engaged in Business. Taxpayer is the sole shareholder of Group which was incorporated on Date 3.

Taxpayer's consolidated federal income tax return for the taxable year ending on Date 2 was due on Date 5 (without extensions). Taxpayer planned to file Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns* (Form 7004), before Date 5, as it had done in previous years, to be able to file by Date 6.

Due to the extenuating circumstances related to the COVID-19 pandemic, Taxpayer's work operations from office closures became increasingly disruptive to workflow and communications between individuals responsible for its federal and state tax filings. Taxpayer's Tax Department's Lead was responsible for filing the Form 7004 every year, and she was in the process of leaving the company when the Form 7004 was due. Although Taxpayer timely remitted its estimated federal income tax liability, as reflected on a Form 7004, by Date 3, the Form 7004 was inadvertently not filed unbeknownst to Taxpayer. Taxpayer did not discover that the form had not been filed until around June 1, 2021. Taxpayer promptly informed Accounting Firm and asked that this relief request be prepared, which was prior to any contact by the Internal Revenue Service (Service). While also working with Accounting Firm to prepare this Request, Taxpayer filed its federal income tax return on Date 4 for taxable year ending on Date 2, pursuant to and consistent with the three elections subject to Request.

The federal income tax return for taxable year ending on Date 2 included three elections under §§ 1.263(a)-1(f), 1.163(j)-7(e)(5), and 1.964-1(c)(3), that are considered untimely because of Taxpayer's inadvertent failure to timely file a Form 7004 by Date 5, and thus, the subject of Request.

Specifically, for the taxable year ending on Date 2, Taxpayer sought to 1) elect to apply the de minimis safe harbor under § 1.263(a)-1(f), 2) make a group controlled foreign corporation ("CFC") election under § 1.163(j)-7(e)(5), and 3) file the statement described in § 1.964-1(c)(3)(i)(B) with respect to elections and method adoptions in determining earnings and profits ("E&P") for Group, a CFC.

## LAW AND ANALYSIS

Section 1.263(a)-1(f) provides that if a taxpayer elects to apply the de minimis safe harbor, then the taxpayer may not capitalize under §§ 1.263(a)-2(d)(1) or 1.263(a)-3(d) any amount paid in the taxable year for the acquisition or production of a unit of tangible property nor treat as a material or supply under § 1.162-3(a) any amount paid in the

taxable year for tangible property if the amount meets certain requirements specified in the regulations.

An annual election for Taxpayer to apply the de minimis safe harbor for capital expenditures for the taxable year ending on Date 2 was due on the last day prescribed by law for the filing of Taxpayer's return. The de minimis safe harbor election is a regulatory election as the time for filing is provided in § 1.263(a)-1(f).

Section 163(j)(1) generally limits the amount of business interest allowed as a deduction for a taxable year. Section 1.163(j)-7 provides rules for the application of the § 163(j) limitation to foreign corporations and U.S. shareholders, including rules and procedures for treating a specified group as a CFC group. Section 1.163(j)-7(e)(5) sets forth the procedures by which a taxpayer may make an election to treat a specified group as a CFC group for the purposes of applying § 163(j). To make a CFC group election for a specified period, each designated U.S. person must attach a statement to its relevant federal income tax or information return in accordance with publications, forms, instructions, or other guidance. Section 1.163(j)-7(e)(5)(iv). The election must be made no later than the due date (taking into account any extensions) of the original federal income tax return for the taxable year of each designated U.S. person in which or with which the specified period ends. Section 1.163(j)-7(e)(5)(iii). This election under § 1.163(j)-7(e)(5)(iv) is also a regulatory election.

Section § 1.964-1 provides rules for determining a foreign corporation's E&P. Under § 1.964-1(a)(1), for taxable years beginning after December 31, 1986, except as otherwise provided in the Internal Revenue Code (Code) and regulations, the E&P (or deficit in E&P) of a foreign corporation for its taxable year is computed for all federal income tax purposes substantially as if such corporation were a domestic corporation by

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- (i) Preparing a profit and loss statement with respect to such year from the books of account regularly maintained by the corporation for the purpose of accounting to its shareholders.
- (ii) Making the adjustments necessary to conform such statement to the accounting principles; and
- (iii) Making the further adjustments necessary to conform such statement to the tax accounting standards.

Section 1.964-1(c)(1)(i) describes the tax accounting standards to be applied in making the adjustments required to the profits and loss statements. Such standards include the accounting methods reflected in § 446 and the regulations. Further, § 1.964-1(c)(1)(vi) provides that any requirements imposed by the Code or applicable regulations with respect to making an election or adopting an accounting method must be satisfied by or on behalf of the foreign corporation just as though it were a domestic corporation if such election or such adoption of method is to be taken into account in the computation of its earnings and profits. Section 1.964-1(c)(3)(i) provides that an election is deemed made, or an adoption in accounting method deemed effected, on behalf of a foreign corporation only if the foreign corporation's controlling domestic shareholders (as

defined in § 1.964-1(c)(5)) satisfy certain criteria. One of the criteria is that the controlling domestic shareholders must file a statement with certain information including the elections and accounting methods adopted on behalf of the foreign corporation. Section 1.964-1(c)(3)(i)(B). Section 1.964-1(c)(3)(ii) provides the information that must be included on the statement. The statement is filed with the tax return for the shareholder's tax year with or within which the tax year of the foreign corporation for which the election is made or for which the method of accounting is adopted ends. However, in the case of a controlling domestic shareholder that is the sole shareholder of a CFC, a separate statement is not required if the information described in § 1.964-1(c)(3)(ii) is included on Form 5471 and Form 3115 or 1128, as applicable, filed with respect to the CFC with the shareholder's return for such tax year.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make certain regulatory elections. Section 301.9100-1(b) defines a "regulatory election" as an election with a due date that is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(b)(1) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer—

- (i) Requests relief before the failure to make the regulatory election is discovered by the Service;
- (ii) Failed to make the election because of intervening events beyond the taxpayer's control;
- (iii) Failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election;
- (iv) Reasonably relied on the written advice of the Service; or
- (v) Reasonably relied on a qualified tax professional, and the professional failed to make, or advise the taxpayer to make, the election.

Under § 301.9100-3(b)(3), a taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer—

(i) Seeks to alter a return position for which an accuracy-related penalty could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires a regulatory election for which relief is requested;

(ii) Was fully informed of the required election and related tax consequences, but chose not to file the election; or

(iii) Uses hindsight in requesting relief. If specific facts have changed since the original deadline that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief.

Section 301.9100-3(a) provides that requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

Section 301.9100-3(c) provides that the Service will grant a reasonable extension of time only when the interests of the Government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(1) provides that the interests of the Government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made. The interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made, or any taxable years that would have been affected by the election had it been timely made, are closed by the period of limitations on assessment.

## CONCLUSION

Based on the facts and information submitted and the representations made, Taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the Government. Accordingly, Taxpayer has satisfied the requirements of §§ 301.9100-1 and 301.9100-3 and is granted an extension of time for making the three elections subject to Request for the taxable year ending on Date 2. Therefore, Taxpayer is granted an extension of time to make an election under § 1.263(a)-1(f) to apply the de minimis safe harbor for capital expenditures, under § 1.163(j)-7(e)(5) to treat a specified group as a CFC group for the purposes of applying § 163(j), and to provide the information described in § 1.964-1(c)(3)(ii) for Group.

Having made these elections on Taxpayer's late filed consolidated federal income tax return for the taxable year ending on Date 2, these elections are hereby deemed to be timely made for Taxpayer. It is further noted that because Taxpayer is the sole shareholder of Group, any elections or accounting methods adopted include those on the statement referenced in § 1.964-1(c)(3)(i)(B) and those on the Form 5471, *Information Return of U.S. Persons With Respect to Certain Foreign Corporations*, Schedule H, *Current Earnings and Profits*, for its CFC.

Notwithstanding the grant of an extension of time to provide the information described in § 1.964-1(c)(3)(ii) with respect to Group's E&P, the extension of time to provide the information described in § 1.964-1(c)(3)(ii) with respect to Group's E&P is based on Taxpayer's representations. This letter ruling does not constitute a ruling on the permissibility of any accounting method adopted by Taxpayer. These determinations are to be made in connection with the examination of Taxpayer's federal tax returns.

The ruling contained in this letter is based on information and representations submitted by 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 Request, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment or consequences of any aspect of any transaction or item discussed or referenced in this ruling under the provisions of any other sections of the Code or regulations that may be applicable. For example, no opinion is expressed or implied concerning whether Taxpayer meets the substantive requirements of § 1.263(a)-1(f). This letter ruling does not imply approval of any tax treatment when the Code, Treasury Regulations, or other published guidance provides specific limitations and/or prohibitions.

This ruling is directed only to Taxpayer. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney, a copy of this letter ruling is being sent electronically to Taxpayer's authorized representatives below. A copy is also being sent to the appropriate operating division.

Sincerely yours,

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Bridget Tombul  
Chief, Branch 2  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

Enclosure:

Copy for § 6110 purposes

cc: