

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

In re:

Refer Reply To:  
CC:INTL:PLR-120457-00  
Date:  
July 11, 2001

**LEGEND**

Taxpayer =

Entities =

Fiscal tax year ended on date A, B, C =

Fiscal year A, B, C =  
Individuals A, B, C =

CPA Firm =

Dear:

This replies to a letter dated October 11, 2000, in which Taxpayer requests an extension of time under Treas. Reg. § 301.9100-3 as follows (i) to file the elections, agreements and certifications required under § 1.1503-2(g)(2)(i) for the fiscal tax year ended on date A (related to the dual consolidated losses occurring in fiscal year A); (ii) to file the annual certifications required under § 1.1503-2(g)(2)(vi) for the fiscal tax year ended on date B (related to the fiscal year A dual consolidated losses); and (iii) to file annual certifications for the fiscal tax year ended on date C (related to the fiscal years A and B dual consolidated losses). The information submitted for consideration is 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.

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The facts state that all Entities are hybrid entity separate units as described in § 1.1503-2(c)(4); that, therefore, these Entities are dual resident corporations as described in § 1.1503-2(c)(2); and that the losses incurred by these Entities are dual consolidated losses under § 1.1503-2(c)(5).

All Entities incurred net operating losses for the fiscal tax year ended on date A. Taxpayer included the foreign losses in calculating its U.S. consolidated taxable income for fiscal year A. However, the dual consolidated loss elections, agreements and certifications required to be filed under § 1.1503-2(g)(2)(i) were inadvertently omitted. None of these foreign losses were used to offset taxable income in a foreign jurisdiction.

In fiscal year B, Entities generated additional losses. The elections, agreements and certifications related to the fiscal year B dual consolidated losses were properly included in Taxpayer's federal tax return for fiscal year B. However, the required annual certifications related to the fiscal year A dual consolidated losses were not included in the federal tax return for fiscal year B.

In fiscal year C, two of the Entities generated additional losses. The elections, agreements, and certifications related to the dual consolidated losses for fiscal year C were properly included in Taxpayer's federal tax return for fiscal year C. However, the required annual certifications related to the dual consolidated losses for fiscal years A and B were not included in the federal tax return for fiscal year C.

Individual A is the Tax Director of Taxpayer. Individual B is a tax partner with CPA Firm, and Individual C is a tax manager with CPA Firm. The affidavits of these Individuals describe the circumstances surrounding the failure to timely file the agreements and annual certifications, and establish that Taxpayer relied upon these Individuals to timely file the agreements and annual certifications.

The Internal Revenue Service has not discovered Taxpayer's failure to timely file the agreements and annual certifications

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

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acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

In the present situation, § 1.1503-2(g)(2)(i) fixes the time to file the election, agreement, and certification; and § 1.1503-2(g)(2)(vi) fixes the time to file the annual certification. Therefore, the Commissioner has discretionary authority under § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards set forth in § 301.9100-3(a).

Based on the facts and circumstances of this case, we conclude that Taxpayer satisfies § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time until 30 days from the date of this ruling letter (i) to file the elections, agreements and certifications required under § 1.1503-2(g)(2)(i) for the fiscal tax year ended on date A (related to the dual consolidated losses occurring in fiscal year A); (ii) to file the annual certifications required under § 1.1503-2(g)(2)(vi) for the fiscal tax year ended on date B (related to the fiscal year A dual consolidated losses); and (iii) to file annual certifications for the fiscal tax year ended on date C (related to the fiscal years A and B dual consolidated losses)

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

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.

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

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.

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

Sincerely,

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