

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Person To Contact: _____, ID No. _____

Telephone Number: _____

Refer Reply To:
CC:INTL:01
PLR-102029-05

Date:
July 22, 2005

In Re:

Legend

Company X =
Country Y =
Date 1 =
Date 2 =
Date 3 =

Dear _____ :

This is in response to a letter dated December 31, 2004, requesting a ruling under section 1(h)(11) of the Internal Revenue Code (Code).

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

Company X is a Country Y limited liability company that maintains an office in the United States. It maintains its financial books and files its income tax returns using the accrual method of accounting on the basis of a fiscal year ending on Date 1.

Company X intends to make a quarterly distribution during the period between Date 2 and Date 3. Date 2, which is after Date 1, is the first day of the first taxable year of Company X beginning after December 31, 2004. Company X may have current earnings and profits in its taxable year that begins on Date 2. If so, these distributions would be treated as dividends for federal income tax purposes.

Prior to the 2004 repeal of sections 551 through 558, the Code's foreign personal holding company (FPHC) provisions, by the American Jobs Creation Act of 2004, Pub. L. No. 108-357 (AJCA), Company X was an FPHC within the meaning of section 552(a)). In the taxable years at issue, Company X was neither a foreign investment company as defined in section 1246(b) (FIC) nor a passive foreign investment company as defined in section 1297 (PFIC).

RULING REQUESTED

Provided that Company X is not a PFIC in the taxable year beginning on Date 2 and was not a PFIC in the preceding taxable year, section 1(h)(11)(C)(iii), as in effect prior to its amendment by section 413 of the AJCA, will no longer apply to exclude distributions made by Company X to any shareholder on or after Date 2, from the definition of "qualified dividend income" on the grounds that Company X was formerly an FPHC.

LAW AND ANALYSIS

Section 1(h)(11) generally provides that a dividend paid to an individual shareholder from either a domestic corporation or a "qualified foreign corporation" is subject to tax at the reduced rates applicable to certain capital gains.

Prior to its amendment in 2004 by the AJCA, section 1(h)(11)(C) defined the term "qualified foreign corporation" as excluding any foreign corporation which for the taxable year of the corporation in which the dividend was paid, or the preceding taxable year, was a FPHC, a FIC, or a PFIC.

Section 413(c)(1)(B) of the AJCA amended section 1(h)(11)(C)(iii) by striking "a foreign personal holding company (as defined in section 522), a foreign investment company (as defined in section 1246(b)), or" from that provision.

Section 413(d) of the AJCA provides that the amendments made by section 413 shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

With respect to the amendment of section 1(h)(11)(C)(iii) by the AJCA, the relevant taxable year is that of the foreign corporation. Because the taxable year of Company X beginning on Date 2 is its first taxable year beginning after December 31, 2004, as of Date 2, Company X's status as a former FPHC is not relevant for purposes of section 1(h)(11)(C)(iii).

Accordingly, provided that Company X is not a PFIC in the taxable year beginning on Date 2 and was not a PFIC in the preceding taxable year, section 1(h)(11)(C)(iii), as in effect prior to its amendment by section 413 of the AJCA, will no longer apply to exclude distributions made by Company X to any shareholder on or after Date 2, from the definition of "qualified dividend income" on the grounds that Company X was formerly an FPHC.

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. In particular, no opinion is expressed or implied concerning whether distributions made by Company X will be "qualified dividend income" to the shareholders.

Additionally, a separate letter ruling is pending with respect to the issue of whether certain types of shares issued by Company X are "readily tradable on an established securities market" within the meaning of section 1(h)(11)(C)(ii). No opinion is expressed or implied in this ruling as to whether Company X shares are considered readily tradable under section 1(h)(11)(C)(ii).

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

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

A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely,

Karen A. Rennie
Senior Technical Reviewer, Branch 1
Office of Associate Chief Counsel
(International)