Internal Revenue Service

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Person To Contact:
, ID No.
Telephone Number:

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April 22, 2009

Legend

Company A
Company B

Company C

Company D

Company E
State F
State G

Dear :

This responds to a letter from your representative dated October 2, 2008, requesting a ruling concerning the 12-month stock ownership requirement in paragraph 3 of Article 10 (Dividends) of the United States-United Kingdom income tax treaty (the "Treaty").

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 B, the applicant, is a U.K. company indirectly owned by Company A, a U.K. publicly traded company. Company B owns Company C, a U.K. company treated as a disregarded entity for U.S. tax purposes, which in turn owns Company D, a U.S. company chartered in State F. In a proposed transaction, Company C will create Company E, a U.S. company chartered in State G. Company D then will merge into Company E in a tax-free reorganization under section 368(a)(1)(F) of the Internal Revenue Code. Company E will be the surviving entity in the merger, effectively changing the place of incorporation of Company C's U.S. subsidiary from State F to State G.

Company C owns 100 percent of the issued and outstanding capital stock of Company D, and has directly held such stock for a period of more than 12 months. Company C will own 100 percent of the issued and outstanding capital stock of Company E as a result of the proposed transaction. It is anticipated that Company E will declare a dividend on a date less than 12 months after the date of the transaction.

RULING REQUESTED

Company C will satisfy the 12-month stock ownership requirement in Article 10(3)(a) of the Treaty as to any dividend paid to Company C by Company E less than 12 months following the proposed transaction.

LAW AND ANALYSIS

Article 10(3)(a) of the Treaty provides that dividends are not taxable in the source State if the beneficial owner of the dividends is a company resident in the other Contracting State that has owned shares representing 80 percent or more of the voting power of the company paying the dividends for a 12-month period ending on the date the dividend is declared. In addition, if the beneficial owner of the dividends is a qualified person under the Treaty by reason of the safe harbor in Article 23(2)(f) (ownership/base erosion) or is entitled to benefits of the Treaty under Article 23(4) (active trade or business), it is required by Article 10(3)(a)(i) to have owned the dividend-paying company, directly or indirectly, since at least September 30, 1998. The requirement of Article 10(3)(a)(i) is inapplicable to a beneficial owner of dividends that is a qualified person by reason of Article 23(2)(c) (publicly traded company or its subsidiary) or is entitled to benefits under Article 23(3) (derivative benefits), or that obtains discretionary benefits from the competent authority under Article 23(6). *See* subparagraphs (ii) and (iii) of Article 10(3)(a); Joint Committee on Taxation Explanation of the Treaty, 4 CCH Tax Treaties para. 10,910.

Although subparagraph (i) of Article 10(3)(a) permits indirect ownership for purposes of the October 1, 1998, testing date, Article 10(3)(a) requires the beneficial owner of a dividend payment to have directly owned shares of the dividend-paying company for a 12-month period ending on the date the dividend is declared. *See* Treasury Department Technical Explanation of the Treaty, 4 CCH Tax Treaties para. 10,911. *See also* Rev. Rul. 84-21, 1984-1 C.B. 307 (interpreting the term “owned” in the dividend article of the 1968 U.S.-France income tax treaty as requiring direct ownership; under U.S. tax law, “own” generally is used “in the ordinary, common sense understanding of the term; namely, actual or outright ownership”); Rev. Rul. 81-132, 1981-1 C.B. 603 (holding, in the context of a section 351 transfer, that the transferee did not own the stock for the requisite period of time to claim a 5 percent dividend withholding rate under the 1966 U.S.-Netherlands supplementary income tax convention because the transferor’s period of ownership is not attributed to the transferee); G.C.M. 37865 (Feb. 22, 1979) and G.C.M. 38166 (Nov. 16, 1979) (discussing proposed revenue ruling [Rev. Rul. 81-132]).

A reorganization under subparagraph (F) of section 368(a)(1) is defined as “a mere change in identity, form, or place of organization of one corporation, however effected.” The legislative history to a 1982 amendment, which added the words “of one corporation” to the subparagraph (F) definition, includes the following:

> The conference agreement limits the F reorganization definition to a change in identity, form, or place of organization of a single operating corporation.
>
> This limitation does not preclude the use of more than one entity to consummate the transaction provided only one operating company is involved. The reincorporation of an operating company in a different State, for example, is an F reorganization that requires that more than one corporation be involved.

H.R. Rep. No. 97-760, at 541 (1982) (Conf. Rep.).

In a 1996 revenue ruling, a section 368(a)(1)(F) reorganization is described as unique among other forms of reorganization:

> The rules applicable to corporate reorganizations as well as other provisions recognize the unique characteristics of reorganizations qualifying under § 368(a)(1)(F). In contrast to other types of reorganizations, which can involve two or more operating corporations, a reorganization of a corporation under § 368(a)(1)(F) is treated for most purposes of the Code as if there had been no change in the corporation and, thus, as if the reorganized corporation is the same entity as the corporation that was in existence prior to the reorganization.

Rev. Rul. 96-29, 1996-1 C.B. 50, 51.

Based on the foregoing, Company C will satisfy the 12-month stock ownership requirement in Article 10(3)(a) of the Treaty as to any dividend paid to Company C by Company E less than 12 months following the proposed transaction. Company E, a State G corporation, generally will be treated for U.S. tax purposes as the same entity as Company D, a State F corporation that was in existence prior to the section 368(a)(1)(F) reorganization.[1] Thus, Company C, which has directly owned Company D for more than 12 months, will be treated for U.S. tax purposes as having directly owned Company E, the reorganized corporation, for the requisite period under Article 10(3)(a).

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.

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 your authorized representative.

Sincerely,

Elizabeth U. Karzon
Chief, Branch 1
Office of Associate Chief
Counsel (International)

[1] Note, however, that a foreign corporation that changes its place of organization in a reorganization described in section 368(a)(1)(F) is deemed under Treas. Reg. section 1.367(b)-2(f) to have transferred all of its assets to another corporation in exchange for stock of that corporation, regardless of whether the applicable foreign or domestic law treats the acquiring corporation as a continuation of the foreign corporate transferor. *See also* Rev. Rul. 88-25, 1988-1 C.B. 116 (the domestication of a foreign corporation is treated as an asset transfer to a new domestic corporation).