

**Internal Revenue Service**

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:  
CC:INTL:B02  
PLR-104023-09  
Date:  
June 26, 2009

In Re:

LEGEND

- Corporation =
- A
- Corporation =
- B
- Corporation =
- C
- Corporation =
- D
- Corporation =
- E
- Corporation =
- F
- Corporation =
- G
- Corporation =
- H
- Corporation I =
  
- Partnership X =
  
- Partnership Y =
  
- Country J =
- Country K =
- State N =
- q =
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u =  
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Dear :

This is in response to a letter dated January 26, 2009 requesting certain rulings on behalf of Partnership X. The ruling contained in this letter is based upon information and representations submitted on behalf of the taxpayer by its authorized representative, 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 this request for ruling, such material is subject to verification upon examination. The information submitted in the request is substantially as set forth below.

## FACTS

Corporation A is a Country J corporation that is treated as a corporation for U.S. federal tax purposes. Corporation A directly wholly-owns Corporation B, a Country K corporation that is treated as a corporation for U.S. federal tax purposes.<sup>1</sup>

Corporation B directly wholly-owns Corporation C, a Country J limited liability company that is treated as a corporation for U.S. federal tax purposes. Corporation B additionally owns a q percent limited partnership interest in Partnership X, which is organized as a publicly traded limited partnership under the laws of Country J and is treated as a partnership for U.S. federal tax purposes. Corporation C holds an r percent general partnership interest in Partnership X. Public unitholders hold the remaining s percent limited partnership interests in Partnership X. Because Partnership X periodically issues new units to the public, it is anticipated that the percentage ownership by the public unitholders may increase in the future. The public unitholders are a combination of U.S. and foreign persons. The U.S. public unitholders are U.S. corporations and individuals who are citizens of the United States, U.S. residents who are not citizens of the United States, domestic partnerships, estates, and trusts with U.S. partners and beneficiaries, respectively ("Domestic Unitholders"). For purposes of this letter ruling, the limited partnership interests held by Corporation B and the public unitholders are referred to as "units." No Domestic Unitholder currently owns directly, indirectly, or constructively 10 percent or more of the total voting power of Partnership X (although a Domestic Unitholder conceivably could own such an amount in the future).

Partnership X wholly-owns Corporation D, a Country J corporation that is disregarded as separate from Partnership X for U.S. federal tax purposes. Corporation D wholly-owns Corporation E, a country J corporation that is disregarded as separate from Partnership X for U.S. federal tax purposes. Corporation C and Partnership X collectively wholly-own all of the

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<sup>1</sup> Corporation B plans to file for relief under Code section 9100 to make a late election to be treated as an entity that is disregarded as separate from its owner for U.S. federal tax purposes.

interests in Partnership Y, a State N limited partnership that is treated as a partnership for U.S. federal tax purposes. In this regard, Partnership X owns a t percent limited partnership interest in Partnership Y (through Corporation D), and a u percent general partnership interest in Partnership Y (through Corporation D and Corporation E, respectively). Corporation C owns a u percent limited partnership interest in Partnership Y. Partnership Y wholly-owns all of the stock of Corporation F, a Country J corporation that is treated as a corporation for U.S. federal tax purposes.

Partnership X intends to enter into certain transactions. Following these transactions, Corporation F will wholly-own Corporation G, Corporation H and Corporation I (collectively, the "LLCs"), which are all Country J corporations that each have elected to be a disregarded entity for U.S. federal tax purposes.

The LLCs will earn income that is expected to be passive income within the meaning of Internal Revenue Code ("Code") section 1297(a).

Corporation F qualifies as a controlled foreign corporation ("CFC"), as defined under Code section 957(a), because Partnership Y is a domestic partnership that owns 100 percent of the stock of Corporation F. In addition, Corporation F 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).

Following the proposed transaction, the Domestic Unitholders will own stock of Corporation F indirectly through Partnership X and Partnership Y, respectively. No Domestic Unitholder will own directly, indirectly, or constructively 10 percent or more of the total voting power of the stock of Corporation F (although a Domestic Unitholder conceivably could own such an amount in the future).

## RULING REQUESTED

Corporation F will not be treated as a PFIC with respect to Partnership Y or the Domestic Unitholders pursuant to Code section 1297(d) during the portion of Partnership Y's holding period that Partnership Y actually owns Corporation F stock, to the extent Corporation F qualifies as a CFC during such period.

## 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.

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 (as defined in Code section 951(b)) 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

After the proposed transactions, it is expected that Corporation F will qualify as a PFIC as defined under Code section 1297(a).

Partnership Y, a domestic partnership, is a U.S. person within the meaning of Code section 7701(a)(30). Partnership Y is the sole owner of Corporation F and thus is a U.S. shareholder within the meaning of Code section 951 with respect to Corporation F. Accordingly, Partnership Y will be subject to the subpart F rules with respect to Corporation F, and will not be subject to the PFIC regime with respect to Corporation F pursuant to the Overlap Rule. Partnership X,

through Corporation D and Corporation E, owns v percent of Partnership Y. The Domestic Unitholders, through their interests in Partnership X, will be subject to tax on their distributive shares of Partnership X's distributive share of Partnership Y's subpart F inclusion.

#### RULING

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

Corporation F will not be treated as a PFIC with respect to Partnership Y or the Domestic Unitholders pursuant to Code section 1297(d) during the portion of Partnership Y's holding period that Partnership Y actually owns Corporation F stock, to the extent Corporation F qualifies as a CFC during such period. This ruling does not apply with respect to a U.S. person who beneficially owns an interest in Partnership Y directly or indirectly through a CFC (see Notice 2009-7).

Except as specifically set forth above, no opinion is expressed or implied concerning the U.S. federal tax consequences of the facts described above under any other provision of the Code.

This private letter ruling is directed only to the taxpayer who requested it. Code section 6110(k)(3) 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, a statement that provides the date and control number of this letter ruling may be attached to a return filed electronically.

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

Sincerely,

Ethan A. Atticks  
Senior Technical Reviewer, Branch 2  
Associate Chief Counsel (International)

cc: