Internal Revenue Service

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Department of the Treasury
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TY:

Legend

Taxpayer 1 =
Taxpayer 2 =
Taxpayer 3 =
Shareholder 1 =
Shareholder 2 =
Year 1 =
Year 2 =
Year 3 =
Year 4 =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
a =
b =
c =
d =
e =
f =

Dear :

This is in response to the letter dated July 19, 2010, submitted on your behalf by your authorized representative. In the letter you request an extension of time for

Taxpayer 2 and its common shareholder and Taxpayer 3 and its common shareholder to agree to treat an additional amount as a dividend distributed by Taxpayer 2 and Taxpayer 3 to its respective common shareholder pursuant to the consent dividend procedure of section 565 of the Internal Revenue Code. The request is made in accordance with sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

FACTS

Taxpayer 1 is the parent of a consolidated group of corporations that operate a around the world. Taxpayer 1's operations are comprised of three business segments: b, c and d. For almost fifteen years, Taxpayer 1 has owned the majority of its e real estate through two real estate owning subsidiaries that are organized as real estate investment trusts (REIT) within the meaning of section 856 of the Code, namely Taxpayer 2 and Taxpayer 3. Taxpayer 1 is the parent of Shareholder 1 which owns the common voting stock in Taxpayer 2. Taxpayer 1 is also the parent of Shareholder 2 which owns the common voting shares in Taxpayer 3. The real estate owned by Taxpayer 2 and Taxpayer 3 is leased to the relevant operating affiliates in the Taxpayer 1 group. Taxpayer 1, through its subsidiaries, controls Taxpayer 2 and Taxpayer 3 and owns the vast majority of the equity interests in Taxpayer 2 and Taxpayer 3. However, Taxpayer 2 and Taxpayer 3 each also have a significant number of other shareholders consistent with the REIT qualifications of section 856 of the Code.

Taxpayer 2 and Taxpayer 3 are corporations for federal income tax purposes. Taxpayer 1, Taxpayer 2 and Taxpayer 3 use an accrual method of accounting as their overall method of accounting. Taxpayer 1 has a taxable year ending Date 1. Taxpayer 2 and Taxpayer 3 file their tax returns on a calendar year basis. Taxpayer 2 and Taxpayer 3 do not file a consolidated return with Taxpayer 1. As a result of the distribution requirements under section 857 of the Code, Taxpayer 1 includes substantially all of the net income of Taxpayer 2 and Taxpayer 3 in its taxable income.

Taxpayer 2 and Taxpayer 3 generally distribute to shareholders, as dividends, 100% of net taxable income each year by December 31 in order to eliminate all federal income tax liability of Taxpayer 2 and Taxpayer 3 for that taxable year. Taxpayer 2 and Taxpayer 3 accomplish this through three separate processes undertaken on an annual basis:

1. Actual distributions are paid with respect to REIT equity that carries a fixed distribution preference;
2. Actual distributions are paid to Taxpayer 1 by Date 1 with respect to Date 2 operations of each of Taxpayer 2 and Taxpayer 3. This is done to minimize any federal income tax deferral that would arise as a result of the Taxpayer 1 taxable year ending on Date 1; and
3. Consent dividends are paid pursuant to section 565 of the Code. The consent dividends are calculated as of December 31 and the attachment to Form 972, Consent of Shareholder to Include Specific Amount in Gross

> Income, and the Form 973, Corporation Claim for Deduction for Consent Dividends, are filed with the tax return of Taxpayer 2 and Taxpayer 3 for each taxable year. The elected consent dividend amount is the amount of taxable income of Taxpayer 2 and Taxpayer 3, less amounts actually paid out as dividend distributions during the year.

For the taxable year of Taxpayer 2 and Taxpayer 3 ended Date 3, Taxpayer 2 and Taxpayer 3 filed the attachments to Forms 972 and the Forms 973 on Date 4 with their timely filed Forms 1120-REIT, U.S. Income Tax Return for Real Estate Investment Trusts. Taxpayer 1 included substantially all of the net taxable income of Taxpayer 2 and Taxpayer 3, including the consent dividends, in its consolidated taxable income for its tax year ending Date 5. In preparing these forms, Taxpayer 1, Taxpayer 2, and Taxpayer 3 followed the processes described above, but clerical and transcription mistakes were committed. Taxpayer 1 discovered these mistakes as a result of internal reviews in connection with its financial statement preparation after the Year 1 Forms 1120-REITs were filed. These mistakes resulted in an incorrect dollar amount being used for the section 565 consent dividends and a net understatement of dividend income to Taxpayer 1 in the amount of $f. The errors consisted of a transcription error for Taxpayer 3, as well as coding and sorting errors for Taxpayers 2 and 3 as a result of the transition to a new software program. In addition, adjustments to cost segregations were entered as negative where positive and positive where negative for both Taxpayer 2 and Taxpayer 3, and an incorrect number was transcribed from the tax accrual work papers for both Taxpayer 2 and Taxpayer 3.

Taxpayer 1 conducted an extensive investigation of taxable years 2, 3 and 4 to ensure there were no similar mistakes. Taxpayer 1 implemented changes to the tax department's systems to ensure that the reconciliations that resulted in the recognition of the initial errors were incorporated into the tax return preparation process for both Taxpayer 2 and Taxpayer 3, as well as for Taxpayer 1. Due to its extensive review and improvements to the systems, Taxpayer 1 is confident that these errors have not and will not recur in subsequent years.

Taxpayer 1, Taxpayer 2, and Taxpayer 3 have represented that none of the above described errors were identified or discovered by the Internal Revenue Service and none of the relevant taxable years for Taxpayer 1, Taxpayer 2, and Taxpayer 3 are closed by statute or agreement. Taxpayer 1, Taxpayer 2, and Taxpayer 3 have further represented that by filing for this relief, they do not seek to alter a return position for which an accuracy-related penalty could be imposed under section 6662 at the current time and granting relief would result in the same aggregate tax liability with respect to all affected taxpayers as would have resulted if the election had been timely made. In addition, Taxpayer 1, Taxpayer 2, and Taxpayer 3 stated that no facts have changed that have influenced the consent dividends elections. Rather, mistakes were discovered subsequent to filing the consent dividend elections that caused Taxpayer 1, Taxpayer 2, and Taxpayer 3 to realize that the prior elections specified the wrong amounts.

LAW AND ANALYSIS

Section 565(a) of the Code provides that if any person owns consent stock (as defined in section 565(f)(1)) in a corporation on the last day of the taxable year of such corporation, and such person agrees, in a consent filed with the return of such corporation in accordance with the regulations, to treat as a dividend the amount specified in such consent, the amount so specified shall, except as provided in section 565(b), constitute a consent dividend for purposes of section 561 (relating to the deduction for dividends paid).

Section 1.565-1(a) of the Income Tax Regulations provides that the dividends paid deduction, as defined in section 561, includes the consent dividends for the taxable year. A consent dividend is a hypothetical distribution (as distinguished from an actual distribution) made by certain corporations to any person who owns consent stock on the last day of the taxable year of such corporation and who agrees to treat the hypothetical distribution as an actual dividend, subject to specified limitations, by filing a consent at the time and in the manner specified in section 1.565-1(b). Section 1.565-1(b)(3) provides that a consent may be filed not later than the due date (including extensions) of the corporation's income tax return for the taxable year for which the dividends paid deduction is claimed.

Section 301.9100-1(c) provides that the Commissioner of Internal Revenue, in exercising his discretion, may grant a reasonable extension of time under the rules set forth in section 301.9100-3 to make a regulatory election under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. The term "regulatory election" is defined in section 301.9100-1(b) as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, or announcement published in the Internal Revenue Bulletin.

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

Under section 301.9100-3(b)(1)(i), except as provided in paragraphs (b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief before the failure to make the regulatory election is discovered by the Internal Revenue Service.

Paragraphs (b)(3)(i) through (iii) of section 301.9100-3 provide that a taxpayer is deemed not 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 section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested;

(ii) was informed in all material respects 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 due date for making the election that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief. In such a case, the Service will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

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 under section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

CONCLUSION

The taxpayers' election is a regulatory election, as defined under section 301.9100-1(b), because the due date of the election is prescribed in the regulations under section 1.565-1(b). Based upon our analysis of the facts and representations, Taxpayer 1, Taxpayer 2, and Taxpayer 3 acted reasonably and in good faith, and granting relief will not prejudice the interests of the government. Therefore the requirements of sections 301.9100-1 and 301.9100-3 have been met.

Under the facts represented, the failure of Taxpayer 1, Taxpayer 2, and Taxpayer 3 to report the correct amount in their consent dividend elections was not due to the intentional disregard of the tax rules, but was due to clerical and transcription errors. Taxpayer 1, Taxpayer 2, and Taxpayer 3 are not seeking to alter a return position for which an accuracy-related penalty could have been imposed. There is no indication that Taxpayer 1, Taxpayer 2, or Taxpayer 3 is using hindsight in requesting relief. Finally, Taxpayer 1, Taxpayer 2, and Taxpayer 3 acted promptly in filing their request for relief, before the Service discovered the errors. Therefore, Taxpayer 1, Taxpayer 2, and Taxpayer 3 did not act unreasonably or in bad faith.

Furthermore, granting relief will not result in Taxpayer 1, Taxpayer 2, and Taxpayer 3 having a lower tax liability in the aggregate for all taxable years affected by the election than Taxpayer 1, Taxpayer 2, and Taxpayer 3 would have had if the correct amount had been reported as consent dividends, and no closed years will be affected. Therefore, the interests of the Government will not be prejudiced by granting the request for relief.

Because Taxpayer 1, Taxpayer 2, and Taxpayer 3 acted reasonably and in good faith, and because the interests of the government will not be prejudiced if the request for relief is granted, the following relief is granted:

(A) Taxpayer 2 is hereby granted an extension of 45 days from the date of this letter within which it may:

(1) Revoke its Claim for Deduction for Consent Dividends (Form 973) for its tax year ending Year 1;

(2) Correct the amount of the section 565 election by filing a corrected Form 972 as to Shareholder 1; and

(3) Execute and file a corrected Form 973.

(B) Taxpayer 3 is hereby granted an extension of 45 days from the date of this letter within which it may:

(1) Revoke its Claim for Deduction for Consent Dividends (Form 973) for its tax year ending Year 1;

(2) Correct the amount of the section 565 election by filing a corrected Form 972 as to Shareholder 2; and

(3) Execute and file a corrected Form 973.

The consent of the Commissioner is contingent on the corrected amount of the consent dividends being included in the consolidated income reported and paid by Taxpayer 1 for its taxable year ending Date 5.

A copy of this letter should be attached to the amended returns filed reflecting the elections. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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.

Further, no opinion is expressed or implied as to whether Taxpayer 2, Taxpayer 3, or any entity mentioned in this letter that purports to be a Real Estate Investment Trust qualifies as a Real Estate Investment Trust under Part II of Subchapter M of the Code.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers 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.

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

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

NORMA C. ROTUNNO
Senior Technician Reviewer, Branch 2
Office of the Associate Chief Counsel
(Income Tax & Accounting)

cc: