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Person To Contact:
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Telephone Number:

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Date:
November 21, 2017

Legend

X =

Y =

M =

N =

O =

Country =

Year =

Name =

Date1 =

Date2 =

Date3 =

Dear :

This letter responds to a letter dated July 27, 2016, and subsequent correspondence submitted on behalf of X, requesting a ruling concerning entity

classification under § 7701 of the Internal Revenue Code ("Code"), along with other related rulings under § 367(e), § 1443 and § 4948 of the Code.

The information submitted states that X was formed under the laws of Country in Year. X represents that it is a tax-exempt entity in Country organized and operated exclusively for exempt purposes. X further represents that it obtained a determination from the Internal Revenue Service that it is an organization exempt from U.S. taxation under § 501(c)(3) of the Code and as a private foundation. X files Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation, each year.

X possesses a U.S. investment portfolio that is not held directly, but rather through Y, an investment vehicle of a type referred to as Name in Country. According to the submission, Y is structured in a three-way contractual arrangement. X is the sole investor in Y, whose assets are managed by M, a resident of Country, with the actual funds held by a custodian in Country. Up to and including Date3, the custodian was N, and thereafter the custodian has been O. It is X's understanding and belief that M is a wholly-owned subsidiary of N, which is a financial institution in Country.

While Y's assets are nominally owned by M, its assets and liabilities are segregated from the general assets and liabilities of M so that neither are imputed to the other, nor are the assets and liabilities of different funds held by M imputed to one another under the laws of Country. X is the sole unit-holder in this arrangement, with all earnings ultimately beneficially owned by X (subject to typical management and custodial fees paid to the asset manager and custodian). While it is possible for X to transfer a portion of its interests in Y to third parties, it has never done so, nor does it have any intention of doing so in the foreseeable future.

X holds and has held U.S. investments in Y for all the years subject to this request. N and O are qualified intermediaries that withhold U.S. taxes on their clients' investments for which they serve as custodian, and N and O have withheld U.S. tax under certain provisions of Chapter 3 of the Code on all U.S. source dividends paid to Y for all the years subject to this request. Thus, X's U.S. stock investments have effectively been subject to tax, generally at the reduced rate on dividends under the Country treaty applicable to Names resident in Country, despite X's tax-exempt status under § 501(c) of the Code.

X represents that Y has not filed any U.S. federal income tax returns. However, in preparation of seeking this ruling, Y filed and obtained an Employer Identification Number ("EIN"), indicating its entity classification for that purpose as a corporation. Y provided the EIN to N and O, which used this number to separate out the withholding amounts for Y from the withholding rate pool of which it was a part, and filed (or intend to file) Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, to

separately report the amounts of U.S. dividends, returns of capital, and U.S. tax withheld with respect to Y.

X represents that X has been relying on M, as the manager of a large portion of X's international investments, to take appropriate steps to minimize X's taxes. Given X's limited experience with the U.S. tax regime, X did not realize that M was not taking into account the exemption from income tax available to X under § 501(c). M, which was simultaneously managing a variety of funds with a diverse pool of investors subject to tax, did not attempt to reduce the withholding rate on portfolio dividends paid by X's U.S. stock investments below the reduced withholding rate on dividends under the Country treaty. X further represents that Y is a foreign business entity that is eligible to elect to be disregarded as an entity separate from its owner for federal income tax purposes (a disregarded entity), effective Date2. However, an entity classification election to treat Y as a disregarded entity effective Date2 was not timely filed.

X further represents that the deemed liquidation of Y as of Date1 pursuant to §§ 301.7701-3(g)(1)(iii) and 301.7701-3(g)(3) does not include any property used by Y in the conduct of a U.S. trade or business as described in § 1.367-2(c)(2)(i). Y was not engaged in any U.S. trade or business as of that date. In addition, X represents that Y did not own any U.S. real property interests (within the meaning of § 897(c)) as of Date1.

RULINGS REQUESTED

(1) Beginning on Date2, Y will not be treated as an entity separate from its owner, X, for purposes of Chapter 42 of the Code. To the extent this ruling depends on X filing an election on behalf of Y to treat Y as a disregarded entity, X seeks a ruling under § 301.9100-3 to make a late entity classification election on behalf of Y to treat Y as a disregarded entity;

(2) Beginning on Date2, the income and assets of Y will be reported as income and assets of X, and such income will share X's statutory exemption from federal income tax; X will report and pay the § 4948(a) excise tax of 4 percent on U.S. source gross investment income of Y;

(3) Beginning on Date2, any amounts of tax withheld from Y under Chapter 3 or Chapter 4 of the Code will be refundable credits counted in determining X's liability for income and excise taxes and entitlement of refunds; and

(4) Neither X nor Y will realize any taxable gain in connection with any deemed distribution of assets from Y to X that may result from the entity classification election to treat Y as a disregarded entity effective Date2.

RULING #1

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes. Elections are necessary only when an eligible entity does not want to be classified under the default classification or when an eligible entity chooses to change its classification.

Section 301.7701-3(b) provides the default classification for an eligible entity that does not make an election. Section 301.7701-3(b)(2)(i) provides that, unless the entity elects otherwise, a foreign eligible entity is (A) a partnership if it has two or more members and at least one member does not have limited liability; (B) an association if all members have limited liability; or (C) disregarded as an entity separate from its owner if it has a single owner that does not have limited liability.

Under § 301.7701-3(b)(2)(ii), a foreign eligible entity has limited liability if the member has no personal liability for the debts or claims against the entity by reason of being a member.

Section 301.7701-3(c)(1)(i) provides that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b)(2) by filing Form 8832, Entity Classification Election, with the appropriate service center. Under § 301.7701-3(c)(1)(iii), this election will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified. The date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed and no more than 12 months after the date the election is filed.

Section 301.7701-3(c)(2)(i) provides, in general, that an election made under § 301.7701-3(c)(1)(i) must be signed by (A) each member of the electing entity who is an owner at the time the election is filed; or (B) any officer, manager, or member of the electing entity who is authorized (under local law or the entity's organizational documents) to make the election and who represents to having such authorization under penalties of perjury.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(b) provides that the term "regulatory election" includes an election whose due date is prescribed by a regulation published in the Federal Register.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make the election. Section 301.9100-2 provides the rules governing automatic extension of time for making certain elections. Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when a taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the government.

Based solely on the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, X is granted an extension of time of 120 days from the date of this letter to file a Form 8832, Entity Classification Election, on behalf of Y with the appropriate service center to treat Y as a disregarded entity, effective Date2. A copy of this letter should be attached to the Form 8832.

If X files a Form 8832 on behalf of Y to treat Y as a disregarded entity effective Date2, Y will be treated as a disregarded entity for purposes of Chapter 42 of the Code beginning on Date2. This election will have no effect on Y's status under the laws of Country or for purposes of its eligibility to claim treaty benefits under the Country treaty with respect to U.S. source dividends. With respect to the income of Y, X has not been entitled, and will not become entitled, to claim any treaty benefits under the Country treaty by reason of this election, because it will not derive the items of U.S. source income paid to Y. *See* Treas. Reg. § 1.894-1(d) and Article 1 (General Scope) of the Country treaty.

RULING #2

Section 4948(a) provides that, in lieu of the tax imposed by § 4940, there is hereby imposed for each taxable year on the gross investment income (within the meaning of § 4940(c)(2)) derived from sources within the United States (within the meaning of § 861) by every foreign organization which is a private foundation for the taxable year a tax equal to 4 percent of such income.

Section 53.4948-1(a)(1) provides for imposition on the gross investment income derived from sources within the United States by every foreign organization which is a private foundation (within the meaning of section 509 and the regulations thereunder) and exempt from taxation under section 501(a) for the taxable year a tax equal to 4 percent of such income. The tax is reported on Form 990-PF and paid annually for the taxable year, at the time prescribed for filing such annual return (determined without regard to any extension of time for filing). For purposes of this section, the term foreign organization means any organization which is not described in section 170(c)(2)(A).

Based on the foregoing, if X files a Form 8832 on behalf of Y to treat Y as a disregarded entity effective Date2, we conclude that the income and assets of Y will be reported as income and assets of X, for purposes of the Code, and such income will be exempt from federal income tax beginning on Date2. Provided X maintains its status as an organization exempt from U.S. taxation under § 501(c)(3) and as a private foundation under § 509 on and after Date2, X will include Y's income in determining X's U.S. source gross investment income subject to the § 4948(a) excise tax of 4 percent on or after Date2.

RULING #3

Section 1443(b) provides that, in the case of income of a foreign organization subject to the tax imposed by § 4948(a), Chapter 3 of the Code (§§ 1441-1464) shall apply, except that the deduction and withholding shall be at a rate of 4 percent and shall be subject to such conditions as may be provided under regulations prescribed by the Secretary.

Section 1.1443-1(b)(3) provides that a withholding agent withholding the 4-percent amount pursuant to § 1.1443-1(b)(1) shall treat such withholding as withholding under § 1441(a) or 1442(a) for all purposes, including reporting of the payment on a Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, and a Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, pursuant to § 1.1461-1(b) and (c). Section 1.1443-1(b)(3) also provides that the foreign private foundation shall treat the 4-percent withholding as withholding under § 1441(a) or 1442(a), including for purposes of claims for refunds or credits.

For purposes of the requirement to withhold under § 1441, § 1.1441-1(b)(2)(iii)(B) provides that a payment to a wholly-owned entity that is a disregarded entity is treated as a payment to the single owner.

Section 33 allows the amount of tax withheld at source under Subchapter A of Chapter 3 of the Code as a credit against tax imposed by Subtitle A. Section 1.1464-1(a) provides that the refund or credit of an overpayment of tax that has actually been withheld at the source under Chapter 3 shall be made to the taxpayer from whose income the amount of such tax was in fact withheld.

Based on the foregoing, if X files a Form 8832 on behalf of Y to treat Y as a disregarded entity effective Date2 and X maintains its status as an organization exempt from U.S. taxation under § 501(c)(3) and as a private foundation under § 509 on and after Date2, we conclude that X, as the entity treated as receiving the income for U.S. income tax purposes paid to Y (including income paid to N and O for Y's account), may claim credit for the tax previously withheld under Chapter 3 on this income for a taxable

year against any U.S. income tax liability of X or excise tax liability of X under § 4948(a). X may claim a refund to the extent the withholding results in an overpayment for a taxable year of X. Any claim for overpayment of such tax must comply with the requirements of § 301.6402-3(e) and is subject to the provisions for excess credits under § 33 that are specified in § 6401(b)(2). A copy of this letter should be attached to a tax return for which X claims such credit or refund with respect to the taxes withheld under Chapter 3 that are described earlier in this letter. X may also claim credit for the amount of any tax withheld under § 1443(b) for the current or future taxable year of X on gross investment income from U.S. sources paid to Y against X's excise tax liability under § 4948(a).

X will not be entitled to claim an exemption from the excise tax under the Country treaty, however, because the payment to Y is a payment to an entity specifically identified in the Country treaty as a resident, the effect of which is that only Y is treated as deriving the items of income for purposes of applying the Country treaty. *See* Treas. Reg. § 1.894-1(d)(1). In addition, private foundation excise taxes are not covered taxes for purposes of the Country treaty. *See* Article 2 (Taxes Covered) of the Country treaty.

RULING #4

Section 337(a) provides that no gain or loss shall be recognized to the liquidating corporation on the distribution to the 80-percent distributee of any property in a complete liquidation to which § 332 applies.

Section 367(e)(2) provides that, in the case of any liquidation to which § 332 applies, except as provided in regulations, §§ 337(a) and (b)(1) shall not apply where the 80-percent distributee (as defined in § 337(c)) is a foreign corporation. Therefore, absent an exception in the regulations under § 367(e)(2), a corporation must recognize gain or loss on a liquidating distribution to an 80-percent foreign distributee. In general, domestic liquidating corporations must recognize gain, whereas foreign liquidating corporations, with certain exceptions, generally are not required to recognize gain pursuant to § 367(e)(2). See §§ 1.367(e)-2(b) and 1.367(e)-2(c)(1). Exceptions to the general rule of nonrecognition in the case of a foreign liquidating corporation include distributions of property used in the conduct of a U.S. trade or business or distributions of U.S. real property interests. See § 1.367(e)-2(c)(2). In this case, the liquidating corporation, Y, is not a domestic corporation. In addition, the deemed liquidation of Y as of Date1 pursuant to §§ 301.7701-3(g)(1)(iii) and 301.7701-3(g)(3) does not include any property used by Y in the conduct of a U.S. trade or business as described in § 1.367(e)-2(c)(2)(i). Y was not engaged in any U.S. trade or business as of that date. In addition, Y did not own any U.S. real property interests (within the meaning of § 897(c)) as of Date1.

Based on the foregoing, if X files a Form 8832 on behalf of Y to treat Y as a disregarded entity effective Date2, we conclude that neither X nor Y will realize any taxable gain in connection with any deemed distribution of assets from Y to X that may result from the entity classification election to treat Y as a disregarded entity effective Date2.

The rulings contained in this letter are contingent on X filing within 120 days from the date of this letter, to the extent necessary or appropriate, all required federal income tax returns and information returns (including amended returns) consistent with the relief granted in this letter. A copy of this letter should be attached to any such returns.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Internal Revenue Code and the regulations thereunder.

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 ruling request, it is subject to verification on examination.

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, we are sending a copy of this letter to X's authorized representative.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries

By: _____
Bradford R. Poston
Senior Counsel, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes