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Act: 1-2011

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Text

Reference is made to your letter dated October 21, 2015, whereby you requested, on behalf of your clients, Partnership, and Member, our rulings in connection with the Puerto Rico income tax treatment under the provisions of the Puerto Rico Internal Revenue Code of 2011, as amended (the "Code"), of certain interest payments that will be made by Member to a related entity. Our opinion is based on the following facts submitted for our consideration.

I. STATEMENT OF FACTS

A. TAXPAYERS INFORMATION AND BUSINESS OPERATIONS

The following facts were represented in the Ruling Request with respect to the taxpayers involved in the transaction described below.

1. Partnership

Partnership is a limited liability company organized and existing under the laws of the Commonwealth of Puerto Rico. It uses the accrual method of accounting for purposes of determining its net income on the basis of a calendar year. It is treated as a disregarded entity for United States income tax purposes and as a partnership for Puerto Rico income tax purposes. Partnership is a wholly owned subsidiary of Member.

2. Member

Member is organized and existing under the laws of a Foreign Country. It uses the accrual method of accounting for purposes of determining its net income on the basis of a calendar year. It is treated as a corporation for both United States and Puerto Rico income tax purposes. Member is a wholly owned subsidiary of Parent Company A, which is organized and existing under the laws of Foreign Country and is not engaged in a trade or business in Puerto Rico, and, in turn, is wholly owned by Parent Company B.

Member does not have employees in Puerto Rico, does not have offices in Puerto Rico, and does not own real or personal property subject to property taxes in Puerto Rico. It

has a branch in the United States and ownership interest in other non-Puerto Rico entities. Member does not have a trade or business in Puerto Rico other than its ownership interest in Partnership.

3. Parent Company B

Parent Company B is a limited liability company organized and existing under the laws of the State of X. It uses the accrual method of accounting for purposes of determining its net income on the basis of a calendar year. It is treated as a partnership for United States income tax purposes.

Parent Company B does not have employees in Puerto Rico, does not have offices in Puerto Rico, and does not own real or personal property subject to property taxes in Puerto Rico. Parent Company B does not have a trade or business in Puerto Rico.

B. FACTS RELATING TO THE TRANSACTION

Parent Company B has developed, acquired and/or is using certain Intangible Property. Member, Parent Company B, and Partnership entered into certain agreements, whereby (i) Parent Company granted Member certain rights; and (ii) Parent Company B assigned certain contracts to Member, which in turn assigned certain of such contracts to Partnership (the "Agreement"). In exchange for the rights granted under the Agreement, Member executed and delivered to Parent Company B a promissory note (the "Promissory Note") in the principal amount of xxx, plus interest, in accordance with the terms set forth in the Promissory Note.

Member and Partnership entered into certain Agreement (the "Agreement II") whereby Partnership received, as a capital contribution in exchange for all of its equity securities, certain rights acquired by Member under the Agreement.

Besides the distributive share in Partnership, Member will receive cash distributions from Partnership and reimbursement of expenses, and distributions related to its ownership interest in its other subsidiaries and branches located outside of Puerto Rico.

Partnership will not make any direct payment to Parent Company B in connection with the Agreement or Agreement II.

II. RULINGS REQUESTED

1. Member will be considered to be engaged in trade or business in Puerto Rico only with respect to its distributive share in the income, gain, loss, deduction, or credit of Partnership, pursuant to Section 1071.01 of the Code. Any other income received or payment made by Member not attributable to its ownership interest in Partnership, will be considered derived or paid by a foreign entity not engaged in a trade or business in Puerto Rico.

2. Pursuant to Sections 1035.01 and 1035.02 of the 2011 Code, any payment of interest by Member to Parent Company B, including the payments under the Promissory Note, will be from sources outside of Puerto Rico.
3. The payment of interest by Member to Parent Company B will not be subject to any Puerto Rico income or withholding at source, pursuant to Sections 1092.01 and 1062.11 of the 2011 Code.

III. LAW AND ANALYSIS

Section 1071.01 of the Code states that a partnership subject to the provisions of Chapter 7 of the Code shall not be subject to the income tax imposed by Subtitle A of the Code. Persons carrying on business as partners shall be liable for income tax only in their separate or individual capacities. For purposes of Subtitle A of the Code every partner of a partnership engaged in trade or business in Puerto Rico shall be considered as engaged in trade of business in Puerto Rico with respect to its distributable share in the income, gain, loss, deduction, or credit of the partnership.

As represented, Member is the sole member of Partnership. Member is an entity organized in Foreign Country, which is treated as a corporation for federal and Puerto Rico income tax purposes. Furthermore, it was represented that it is not engaged in a trade or business in Puerto Rico, it does not have employees or an office in Puerto Rico, and it is only engaged in Puerto Rico through its distributable share in the profits of Partnership.

Section 1035.01(a)(1) of the Code states that, in general, interest on bonds, notes, or other interest-bearing obligations of residents, natural or juridical, shall be deemed as income from sources within Puerto Rico. Section 1035.02 of the Code states that interest other than that derived from sources within Puerto Rico as provided in subsection (a)(1) of Section 1035.01 of the Code shall be treated as income from sources without Puerto Rico.

Section 1092.01(a)(1)(A)(i) of the Code states that there shall be levied, collected and paid for each taxable year, in lieu of the tax imposed by Sections 1022.01, 1022.02, 1022.03, and 1023.03 of the Code, upon the amount received, or implicitly received, by every foreign corporation or partnership not engaged in trade or business in Puerto Rico, from sources within Puerto Rico, that constitutes interest received from a related person (as said term is defined in Section 1010.05 of the Code) a tax of twenty-nine (29) per cent. Section 1062.11(a)(1) of the Code states that in the case of foreign corporations and partnerships that are not engaged in business in Puerto Rico, there shall be deducted and withheld at the source, in the same manner and on the same items of income that are provided in Sections 1062.08 and 1062.10 of the Code, a tax equal to twenty nine (29) percent of said income. However, paragraph (4) of Section 1062.11(a) states that in the case of interest received by a foreign corporation or partnership not engaged in business in Puerto Rico, the obligation to deduct an amount equal to twenty nine (29) percent of such interest shall apply only if such corporation or partnership is a related person (as defined in Section 1010.05 of the Code) to the debtor of the obligation. When

it has to do with any item of income which is effectively connected with the conduct of a trade or business within Puerto Rico and which, according to Section 1092.01(c)(2) of the Code can be included in the gross income of the receiver of the income for the taxable year, no deduction or withholding shall be made.

IV. CONCLUSION

Based solely on the facts, documents, and representations submitted for our consideration, the provisions of the Code, and the applicable Regulations, this Department rules that:

1. Member will be considered to be engaged in trade or business in Puerto Rico only with respect to its distributable share in the income, gain, loss, deduction, or credit of Partnership, pursuant to Section 1071.01 of the Code, and not for other purposes under the Code. Therefore, Member will be considered a foreign entity not engaged in a trade or business in Puerto Rico with respect to the receipt of any other income not attributable to its distributive share in Partnership.
2. Pursuant to Sections 1035.01 and 1035.02 of the Code, any payment of interest by Member to Parent Company B, including the payments under the Promissory Note, will be considered income from sources outside of Puerto Rico.
3. The payment of interest by Member to Parent Company B will not be subject to any Puerto Rico income tax or withholding at source, pursuant to Sections 1092.01 and 1062.11 of the Code.

No opinion is expressed as to the tax treatment of the above transaction under any other provision of the Code and the applicable regulations, or as to the tax treatment of any condition existing at the time of the transaction, or any effect resulting therefrom, that is not specifically covered by this ruling. The opinion expressed herein shall be valid only upon the continued existence of the facts, as submitted for our consideration. This letter ruling is directed only to the Partnership requesting it and may not be used or cited as precedent.

Cordially,

Elisa Vélez Pérez
Assistant Secretary
Tax Policy Area