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Code Sections: 1034.04(b)(6)

Act: 1-2011

Date issued: December 5, 2016

Text

By letter received on March 26, 201X, you requested a ruling in connection with the treatment of the liquidation of COMPANY A into COMPANY B under the provisions of sections 1034.04(b)(6) and 1034.04(i) of the Puerto Rico Internal Revenue Code of 2011, as amended, (Code).

I. STATEMENTS OF FACTS

COMPANY A is a corporation organized under the laws of the Commonwealth of Puerto Rico. COMPANY B owns all of the outstanding shares of COMPANY A.

COMPANY B is a corporation organized under the laws of State X. COMPANY B is authorized to do business in Puerto Rico, but it is not engaged in a trade or business in Puerto Rico.

On the Liquidation Date, COMPANY B adopted a plan of complete liquidation and dissolution of COMPANY A. On such date, COMPANY A was liquidated into its parent company, COMPANY B. On that date, COMPANY A transferred to COMPANY B all its assets, rights, powers and privileges subject to all the liabilities, and obligations. COMPANY A ceased to exist and all its stocks were cancelled.

COMPANY A's liquidation is due to the cease of its operations on the Cease Date.

As of the date of its liquidation, COMPANY A had accumulated earning and profits available that were considered distributed on the day following the Cease Date, and the respective 10% tax withholding was duly deposited with the Department.

II. RULINGS REQUESTED

1. The liquidation of COMPANY A is not in pursuance of a plan having as one of its principal purposes the avoidance of Puerto Rico income taxes with the meaning of Section 1034.04(i) of the Code.
2. The property transferred to COMPANY B shall be considered to be distributed in complete liquidation of COMPANY A within the meaning of the Section

1034.04(b)(6) of the Code and, therefore, no gain or loss shall be recognized as result of the liquidation.

3. Pursuant to Section 1034.02(a)(13)(B) of the Code, the basis of the property received by COMPANY B shall be the same as it was in the hands of COMPANY A.
4. Pursuant to Section 1034.01(g)(2) of the Code, the holding period of the assets transferred to COMPANY B shall include the period during which COMPANY A held them.

III. LAW AND ANALYSIS

Section 1034.04(i) of the Code provides that if in relation to an exchange described in Section 1034.04(b)(6) of the Code a person of Puerto Rico transfers property to a foreign corporation, to determine the limit to which earnings shall be recognized in such exchange, a foreign corporation shall not be considered as a corporation unless it is demonstrated to the satisfaction of the Secretary, within a period of one hundred eighty-three (183) days after such exchange is effected, that the same does not have the purpose of avoiding the payment of income taxes levied by the Government of Puerto Rico. For these purposes, the term "person of Puerto Rico" means a domestic corporation, or a resident corporation, including a foreign corporation doing business in Puerto Rico. See Article 1112(i)-1(c)(1) of the Regulations under Section 1112 of the Internal Revenue Code of 1994, as amended, precursor to Section 1034.04 of the Code (the "Regulation"), which is still in effect pursuant to Section 6091.01 of the Code.

However, Article 1112(i)-2(c)(2)(vii) of the Regulation states that in order for the Secretary to determine if the transaction does not have the purpose of avoiding the payment of income taxes, the taxpayer must represent that any income tax resulting from any gain recognized in the exchange has been paid, or is in the process of being paid.

As represented, COMPANY A's liquidation into its parent company, COMPANY B, was due to COMPANY A's cease of operations and the corresponding withholding tax over the earnings and profits was duly deposited with the Department.

Section 1034.04(b)(6) of the Code states that no gain or loss shall be recognized upon the receipt by a corporation of property distributed in complete liquidation of another corporation. For purposes of this paragraph, a distribution shall be considered to be in complete liquidation only if (A) the corporation receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock, in such other corporation, possessing at least eighty (80) percent of the total combined voting power of all classes of stock entitled to vote and the owner of at least eighty (80) percent of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends), and was at no time on or after the date of the adoption of the plan of liquidation and until the receipt of the property the owner of a greater percentage

of any class of stock than the percentage of such class owned at the time of the receipt of the property; and (B) no distribution under the plan liquidation was made before the first day of the first taxable year of the corporation beginning after June 30, 1995; and (C) the distribution is by such other corporation in complete cancellation or redemption of all its stock, and the transfer of all the property occurs within the taxable year, in such case the adoption by the shareholders of the resolution under which is authorized the distribution of all the assets of such corporation in complete cancellation or redemption of all its stock, shall be considered an adoption of a plan of liquidation, even though no time for the completion of the transfer of the property is stated in such resolution. COMPANY A and COMPANY B has represented that the liquidation meets the requirements under Section 1034.04(b)(6) of the Code since as of the date of the liquidation COMPANY B owned 100% of COMPANY A's stock, no distribution under the plan liquidation was made before the first day of the first taxable year of the corporation beginning after June 30, 1995, and the distribution was in complete cancellation of COMPANY A's stock within the same taxable year.

With regards to the tax basis of the property received by COMPANY B following COMPANY A's liquidation, Section 1034.02(a)(13)(B) of the Code states that if property was received by a corporation upon a distribution in complete liquidation of another corporation (within the meaning of section 1034.04(b)(6)), then the basis in the hands of such distributee shall be the same as it would be in the hands of the transferor. With regards to the holding period of such property, Section 1034.01(g)(2) of the Code states that in determining the period for which the taxpayer has held property, however acquired, there shall be included the period during which such property was held by any other person, if under the provisions of section 1034.02 such property has, for purposes of determining gain or loss from a sale or exchange, the same basis, in whole or in part, in his hands as it would have in the hands of such other person. Therefore, the tax basis and holding period of the assets transferred to COMPANY B following COMPANY A's liquidation are the same as where for such assets as in COMPANY A's hand.

IV. CONCLUSION

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

1. The liquidation of COMPANY A is not in pursuance of a plan having as one of its principal purposes the avoidance of Puerto Rico income taxes within the meaning of Section 1034.04(i) of the Code.
2. The property transferred to COMPANY B shall be considered to be distributed in complete liquidation of COMPANY A within the meaning of Section 1034.04(b)(6) of the Code and, therefore, no gain or loss shall be recognized as a result of the liquidation.

3. Pursuant to Section 1034.02(a)(13)(B) of the Code, the basis of the property received by COMPANY B shall be the same as it was in the hands of COMPANY A.
4. Pursuant to Section 1034.01(g)(2) of the Code, the holding period of the assets transferred to COMPANY B shall include the period during which COMPANY A held them.

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 there from, that is not specifically covered by this ruling. This ruling is based on the factual representations as described above. Any misrepresentation or hiding of a material fact shall render this ruling null and void. The opinion expressed herein shall be valid only upon the continued existence of the facts as submitted for our consideration. This opinion is issued exclusively to COMPANY A and COMPANY B, and may not be relied upon by any other person.

Cordially,

CPA Elisa Vélez Pérez, Esq.
Assistant Secretary