Internal Revenue Service

Number: **200625019**
Release Date: 6/23/2006
Index Number: 985.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
CC:INTL:BR5
PLR-151558-05

Date:
March 16, 2006

In Re:

LEGEND

Taxpayer
REIT 1
REIT 2
REIT 3
REIT 4
REIT 5
REIT 6
State A
State B
Partnership

Dear :

This is in response to your letter dated October 5, 2005, in which you request a ruling under Treas. Reg. § 1.985-1(b)(1)(iii) that subsidiary real estate investment trusts 1 through 6 ("subsidiary REITs") may use a currency other than the U.S. dollar as their functional currency. Specifically, you request a ruling that permits each REIT to determine its functional currency by applying the principles used to determine the functional currency of a qualified business unit that is not required to use the dollar as its functional currency as provided in Treas. Reg. § 1.985-1(c).

The ruling contained in this letter is predicated upon facts and representations submitted by the Taxpayer and accompanied by a penalties of perjury statement executed by the appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of factual information,

representations and other data may be required as part of the audit process. Taxpayer has represented the facts described below.

FACTS:

Taxpayer is a U.S. corporation formed in in State A. Taxpayer elected to be taxed as a REIT commencing with its taxable year ended December 31, , and commencing with such taxable year has been organized and operated in such a manner as to qualify for taxation as a REIT. Taxpayer is engaged primarily in the ownership, development, redevelopment, acquisition and expansion of a portfolio of hotels through Partnership, a State B limited partnership, or through its lower-tier partnerships.

Partnership formed the subsidiary REITs and qualified business units ("QBUs") of the REITs to facilitate its investment outside of the United States in a manner that complies with the requirements for qualification as a REIT. Each subsidiary REIT was formed pursuant to the laws of State A and will be taxable as a domestic corporation for Federal income tax purposes. Each subsidiary REIT expects to qualify as a real estate investment trust for Federal income tax purposes. Taxpayer represents that none of the subsidiary REITS will conduct any trade or business within the United States. Each subsidiary REIT and its respective QBUs will invest and operate in the currency of the location in which investments are made (hereafter referred to in this letter as the "designated currency").

Taxpayer represents that the following will be denominated in the designated currency of each REIT and its QBUs: acquisitions and dispositions of investments (including improvements and borrowings to finance acquisitions and improvements), income from such investments (e.g., rents, interest and gains), and general financial decisions. Taxpayer represents that, except in extraordinary circumstances, transactions between the subsidiary REITs and its shareholders (such as payment of dividends, capital contributions, and sales of additional shares) will be denominated in each respective REIT's designated currency. Taxpayer represents that the books and records of each subsidiary REIT will be kept in the REIT's designated currency.

Taxpayer represents that none of the subsidiary REITs will have its own employees. Taxpayer represents that Partnership will be responsible for the day-to-day management of the subsidiary REITs, identifying and making acquisitions on behalf of the subsidiary REITs, and will provide a variety of services related to the business operations of the subsidiary REITs.

LAW:

In general, section 985 provides that all determinations for Federal income tax purposes shall be made in the taxpayer's functional currency. Section 985(a). Treas. Reg. §

1.985-1(b)(1)(iii) provides that except as otherwise provided by ruling or administrative pronouncement, the U.S. dollar shall be the functional currency of a QBU that has the United States as its residence as defined in section 988(a)(3)(B). Treas. Reg. § 1.989(a)-1(b)(2)(i) provides that a corporation is a QBU. Section 988(a)(3)(B)(i)(II) provides that the United States shall be the residence of a corporation which is a United States person. Section 7701(a)(30) provides, in part, that the term "United States person" means a domestic corporation. Section 7701(a)(4) provides that the term "domestic," as applied to a corporation, means created or organized in the United States or under the law of the United States or any State. See also Treas. Reg. § 1.988-4(d)(1)(ii).

Treas. Reg. § 1.985-1(c)(1) provides that if a QBU is not required to use the dollar as its functional currency, then its functional currency shall be the currency of the economic environment in which a significant part of the QBU's activities are conducted, if the QBU keeps, or is presumed to keep, its books and records in such currency. Treas. Reg. § 1.985-1(c)(2) provides that the economic environment in which a significant part of the QBU's activities are conducted shall be determined by taking into account all the facts and circumstances. Treas. Reg. § 1.985-1(c)(2)(i) sets forth some facts and circumstances which are considered when determining the economic environment in which a significant part of the QBU's activities are conducted.

The General Explanation of the Tax Reform Act of 1986 states that "[i]n appropriate circumstances, a domestic QBU (such as a regulated investment company organized to invest in securities denominated in a specific currency) may have a foreign currency as the functional currency." Staff of the Joint Committee on Taxation, 100th Cong., 1st Sess., General Explanation of the Tax Reform Act of 1986, at 1093-94 (Comm. Print 1987).

ANALYSIS:

Absent a ruling to the contrary, each subsidiary REIT's functional currency would be the U.S. dollar because the subsidiary REITs are U.S. corporations. Consequently, they would recognize foreign currency gain or loss on every section 988 transaction because such transactions would be denominated in a designated currency, which would be a non-functional currency to the REIT. See section 988 and Treas. Reg. § 1.988-1(a). Moreover, any QBUs of the REITs that maintained a currency other than the U.S. dollar as their functional currency would be subject to section 987. Since foreign currency gain or loss is not expressly listed as qualifying income in sections 856(c)(2) or 856(c)(3), and since currency fluctuations could affect the valuation of assets under section 856(c)(4), the subsidiary REITs risk losing REIT status if they are not permitted to adopt a designated currency as their functional currency.

If the ruling requested herein is issued, each subsidiary REIT's functional currency would be determined by applying the principles of Treas. Reg. § 1.985-1(c). Under these principles, the REITs would be eligible to adopt their designated currency as their functional currency. This conclusion is consistent with the language contained in the General Explanation of the Tax Reform Act of 1986 as set forth above.

Based solely on the facts and representations submitted, Taxpayer may apply the principles of Treas. Reg. § 1.985-1(c)(2)(i) to determine the designated currency of each subsidiary REIT. Should a subsidiary REIT properly adopt a designated currency as its functional currency, it will compute its taxable income or loss in its designated currency and translate its taxable income into U.S. dollars using the average exchange rate for the taxable year.

No opinion is expressed regarding the proper functional currency of a subsidiary REIT under the principles of Treas. Reg. § 1.985-1(c).

No opinion is expressed whether the subsidiary REITs qualify as real estate investment trusts under section 856.

No opinion is expressed regarding the character of dividends or other REIT income distributed by the subsidiary REITs to U.S. investors, or the character of income or loss realized on the sale by investors of their ownership interest in the subsidiary REITs.

No opinion is expressed regarding the treatment of foreign currency received as dividends in the hands of the shareholders.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

It is important that a copy of this letter be attached to the Federal income tax return of the taxpayers involved for the taxable year in which the determination covered by this letter is made.

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

Sincerely,

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Jeffrey L. Dorfman
Chief, Branch 5 International