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May 2, 2008

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
Room 3000 IR
1111 Constitution Avenue, N.W.
Washington, DC 20224

The Honorable Eric Solomon
Assistant Secretary (Tax Policy)
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Re: Notice 2008-19 and Protected Cell Companies Outside of the Insurance Arena

Dear Sirs:

On January 15, 2008, the Internal Revenue Service (the "Service") issued Revenue Ruling 2008-8, which provides guidance for determining when a transaction between a risk protection buyer and an individual "cell" of a "protected cell company" constitutes insurance for Federal income tax purposes.[1]

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[1] Revenue Ruling 2008-8 uses the terms "cell" and "protected cell company", but notes that "a company like a protected cell company is sometimes referred to as a protected cell company, a segregated account company or segregated portfolio company." This acknowledgement reflects the different nomenclature (*e.g.*, "series", "portfolio", "account" or

(*continued...*)

Notice 2008-19 (the "Notice") accompanied Revenue Ruling 2008-8 and it requested comments on a number of items, including what guidance, "if any, would be appropriate concerning similar segregated arrangements that do not involve insurance." This letter responds to that specific request — the use of segregated arrangements outside of the insurance context.[2]

The Notice announced that the Service will be proposing guidance as to the Federal income taxation of protected cell companies, and that the proposed guidance would include a rule to the effect that a cell of a protected cell company would be treated as an insurance company separate from any other entity if:

(a) the assets and liabilities of the cell are segregated from the assets and liabilities of any other cell and from the assets and liabilities of the protected cell company such that no creditor of any other cell or of the protected cell company may look to the assets of the cell for the satisfaction of any liabilities, including insurance claims (except to the extent that any other cell or the protected cell company has a direct creditor claim against such cell); and

(b) based on all the facts and circumstances, the arrangements and other activities of the cell, if conducted by a corporation, would result in its being classified as an insurance company within the meaning of Sections 816(a) or 831(c).[3]

We welcome the Service's guidance in Revenue Ruling 2008-8 and the Notice's outline of proposed guidance that would treat a cell of a protected cell company as an entity separate from any other entity, particularly because, as has been noted in prior commentary, there had not previously been any direct guidance

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"cell"), used in various jurisdictions to achieve very similar statutory regimes. For purposes of simplicity and clarity, this letter will refer to each segregated arrangement of assets and liabilities as a "cell" and the legal entity that establishes the cells as a "protected cell company".

2 This letter reflects the efforts and comments of a working group consisting of Miles Chatain, James Gouwar, Steven Kopp, Stephen Land, Jiyeon Lee Lim, David Miller, David Nirenberg, James Peaslee and Kirk Wallace. Kirk Wallace served as the principal drafter. This letter benefited greatly from an article co-authored by Mr. Peaslee, cited below. Additional helpful comments were made by Kim Blanchard, Peter Blessing, Andrew Braiterman, Robert Cassanos and Michael Schler.

3 All references to Section numbers are to the Internal Revenue Code of 1986, or the Treasury Regulations issued thereunder.

from the courts or the Service on this question, although many practitioners viewed separate treatment to be the correct conclusion.[4]

The determination of whether a cell is to be analyzed separately from the protected cell company and, if so, whether it is a corporation, partnership or disregarded entity can have dramatic Federal income tax consequences both to the entity itself and to its owners. Considerations such as the procedure for and effect of any number of income tax elections, such as those available under Section 475, Section 754 or Section 864, all depend on knowing whether the segregated arrangement is a separate entity for tax purposes or not. Ancillary considerations also are presented by the question as to who should file any number of income tax forms, such as check-the-box elections, tax returns or information reports, and determining whether the qualifying electing fund election can be made. Also, the use of net operating losses and allocations under Section 704 are other considerations. In the same vein, fundamental issues regarding the potential consequences of tax ownership and constructive ownership cannot be addressed without first determining whether the cell is a separate entity or not.

This letter first very briefly summarizes the relevant common statutory features of protected cell company statutes. It then proceeds from the premise that, as a Federal income tax matter, the rules addressing protected cell companies in the insurance context should be identical to those for similar arrangements that do not involve insurance. Hence, we suggest that the Service promulgate guidance establishing a safe harbor under which a cell of a protected cell company would qualify as a separate entity for Federal income tax purposes. The letter then provides several examples to help demonstrate a few ways in which such a safe harbor would operate (particularly as it relates to the beneficial ownership of protected cell companies and their cells). This letter does not comment on whether separate entity status should also result in situations where a segregation of assets and their attendant liabilities is accomplished by contract rather than pursuant to a segregating statute, and we do not believe that the establishment of a safe harbor for segregation under a statutory scheme should result in any inference with respect to the income tax characterization of segregation arising pursuant to contractual means (or, for that matter, under statutory arrangements that fail to satisfy the safe harbor).

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[4] *See, e.g.*, James M. Peaslee and Jorge G. Tenreiro, "Tax Classification of Segregated Portfolio Companies," Tax Notes October 1, 2007, (hereinafter *"Peaslee & Tenreiro"*).

I. Common Features of Protected Cell Legislation.

Outside of the insurance company context,[5] the laws of at least seven of the states and Puerto Rico permit protected cell companies (as statutory trusts or LLCs),[6] and at least eleven non-U.S. jurisdictions, including Luxembourg, the Cayman Islands, Bermuda, Jersey and Guernsey, do as well. One major motivation for commercial parties to use protected cell companies is to achieve administrative and other cost efficiencies for enterprises that typically need little active management but where there are significant commercial advantages to isolating (x) assets and liabilities into separate, discrete pools and (y) providing the potential for the pools to have separate beneficial owners. Special purpose insurance and reinsurance transactions, investment funds, and asset-backed financings seem to be the most common situations. As Peaslee and Tenreito note in their article, some jurisdictions' statutes treat each cell as a separate legal entity (and separate from the protected cell company itself), but many statutes are either ambiguous or clearly indicate that cells are not treated as separate legal entities for local law purposes.[7]

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5 Alabama, Arizona, Arkansas, Delaware, Hawaii, Michigan, Montana, South Carolina, Vermont, Utah and West Virginia are examples of jurisdictions which all have protected cell company provision for special purpose (or "captive") insurance companies.

6 *See* Del. Code Ann. Tit. 6, section 18-215 (2007); 805 Ill. Comp. Stat. 180/37-40 (2005); Iowa Code Ann. section 490A.305 (2006); Nev. Rev. Stat. Ann. Section 86.296 (2005); Okla. Stat. Ann. Tit. 18, section 2054.4 (2007); Tenn. Code Ann. 48-249-309 (2006); Utah Code Ann. Section 48-2c-606 (2006); Puerto Rico Laws Ann. Tit. 14, section 3426(p) (as amended through 2004).

In addition to protected cell company legislation (which deals with LLCs), several states provide for the creation of series within a trust. *See* Conn. Gen. Stat. Ann. Section 34-517(b)(2) (2005); Del. Code Ann. Tit. 12, section 3806(b)(2) (2006); Md. Code Ann. Corps & Assocs. Section 12-207(b) (2007); Nev. Rev. Stat. Ann. section 88A.280 (2005); N.H. Rev. Stat. Ann. section 293-B:7, II(d) (2007); Va. Code Ann. section 13.1-1219 (2006); Wyo. Stat. Ann. section 17-23-108(b)(ii) (2007).

7 Peaslee and Tenreiro note that

> In the Delaware statute, a conscious choice was made not to describe portfolios as separate legal entities. The Cayman Islands statute explicitly provides that each segregated portfolio is not a separate legal entity. Under the Illinois statute, by contract, each segregated portfolio may determine the degree to which it is a separate legal entity from the other portfolios (but in most respects appears to be legally similar to a separate company), and the Luxembourg statute also appears to treat them as separate legal entities. Some statutes are ambiguous. For example, the Tennessee statute applies several statutory provisions of LLCs to each series "as if [it] were a separate LLC."

Peaslee & Tenreiro at 46.

Ultimately, however, each of the statutes allows each cell to own identified assets and to protect those assets from liabilities of any other cell and to provide for separate enjoyment of the economic benefits and burdens associated with each such cell. These features should be determinative for Federal income tax purposes.[8] Although most of the statutes permit the cell company to have its own "non-cellular" assets *(i.e.*, assets that are owned by the protected cell company and not assigned to any particular cell), the key and defining power is that each cell can be designated as the economic owner of specified assets and as the debtor in respect of specified liabilities. Creditors' claims may be limited to such assets and creditors may be prohibited from moving against assets or profits of any other cell. Although, as far as we are aware, the statutes have not yet been tested in any jurisdiction's courts, by separating assets and liabilities, they are intended to prohibit contractual (*i.e.*, voluntary) and non-contractual creditors (*e.g.*, tort claimants) from making claims against assets that are not in the particular cell. The assets of a cell may be paid out to persons designated as owners or beneficiaries of that cell only, and each cell's assets may be managed separately -- although they may also share a common manager or management, as long as the management arrangement is clearly maintained (and paid for) on a cell-by-cell basis. Finally, under the statutes, any given cell can be liquidated without affecting the status of other cells or the protected cell company itself.

Under Delaware law, for example, a statutory trust may establish or provide for the establishment of designated series of trustees, beneficial owners or beneficial interests having separate rights, powers, or duties with respect to specified property or obligations of the statutory trust or profits and losses associated with specified property or obligations.[9] Moreover, the governing instrument of such a trust may provide that the debts, liabilities, and obligations existing with respect to a particular series may be enforced against the assets of that series only, and not against the assets of the trust generally or any other series.[10]

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8 *See, e.g.*, Rev. Rul. 55-39, 1955-1 C.B. 403 (investment by partnership of a partner's contributed capital in securities of his own choice, and for his own account, is in effect a withdrawal of such capital, and an investment by the partner (outside of the partnership) in the securities purchased); *National Securities Series-Industrial Stock Series, et al. v. Commissioner,* 13 T.C. 884 (1949), *acq.* 1950-1 C.B. 4 (discussed below).

9 Del. Code Ann. § 12-3806(b).

10 *Id.*

II. Consequences.

Whether a cell is to be analyzed separately from the protected cell company for Federal tax purposes is fundamental and drives multiple ancillary consequences. What is the proper entity classification as a corporation, partnership, trust or disregarded entity for any given cell or the protected cell company? How can a "check-the-box" election on Form 8832 under Regulation Section 301.7701-3 be made, and to what set of assets and liabilities does it apply? How can one determine the potential consequences of tax ownership and constructive ownership (*e.g.*, how would one apply Sections 318, 267, 1502, 1260 and many others to a protected cell arrangement?) Clearly, these questions cannot be addressed without first determining whether the segregated arrangement is a separate entity or not. Similarly, it is impossible to make other elections without knowing whether each cell is to be treated separately for such purposes. In particular, the elections available under Section 475(f), Section 754, Section 897(i), Section 953(d) or Section 1295 all depend on whether the segregated arrangement is a separate entity for tax purposes or not. Also, it is impossible to determine which entity is entitled to use net operating losses, or is subject to Section 704, without determining whether a cell constitutes an entity for Federal income tax purpose. Finally, it is impossible to file income tax forms, tax returns or information reports without determining whether the cell is a separate entity or part of some other entity.[11]

Although the Notice focuses on protected cell company arrangements dealing with insurance transactions, the legal and factual features that it focuses on (*i.e.*, that the assets and liabilities of each cell are segregated from the assets and liabilities of any other cell and from the assets and liabilities, if any, of the legal entity that is the protected cell company) are not unique to the insurance context. Indeed, as has been long recognized with respect to investment portfolios,[12] this sort of asset and liability segregation is desirable in any number of commercial settings. Accordingly, there is no evident Federal income tax policy reason why protected cell companies that qualify as insurance companies should be classified in this regard any differently from those that do not. And we believe that, on the facts presented in the Notice, separate treatment is clearly the correct conclusion for Federal income tax purposes.

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[11] Looking at the breadth of the potential consequences, it becomes obvious that even if the Service were to attempt to address some of these issues under the authority granted by Section 1298(b)(4) to issue regulations as may be necessary to carry out the purposes of the passive foreign investment company ("PFIC") regime, those regulations would not be sufficient to address the very broad set of circumstances that arise outside of the PFIC context.

[12] *See* Section 851(g).

Although no authority (other than the Notice) directly addresses the status under Federal income tax law of cells and protected cell companies, given the local law result of legal separation of the assets and liabilities of each cell from the other cells, most practitioners have long believed that each series of limited liability company or statutory trust organized in series under Delaware law or similar statutes should be respected as a separate entity for Federal income tax purposes (absent unusual facts or arrangements that were designed to avoid economic separateness). This conclusion is based on a variety of authorities arising in different contexts, but *National Securities Series-Industrial Stock Series, et al. v. Commissioner*[13] is generally considered to be the seminal authority. In *National Securities,* the Tax Court recognized that the several series of a single investment trust may be considered distinct taxable entities. Although the classification of entities in that case was not in issue, the court assumed in its opinion that each of the several series created under a single trust instrument was a separate taxpayer.

Several private letter rulings, relying on *National Securities* and Revenue Ruling 55-416,[14] which cites *National Securities* with approval, have held that a separate series of a trust will be treated as a separate taxable entity where, under state law (i) such series consists of separate pools of assets and streams of income, (ii) owners of such series can look only to the assets of such series in redemption, liquidation or termination, and (iii) rights of creditors of each series are limited to the assets of the series for recovery of expenses, charges or liabilities.

For example, in PLR 9819002,[15] the Service considered the treatment of a trust that was established under a state law that authorized the trust to have an unlimited number of series.[16] Under the state law, if the trust and series declarations so provided, the interests in each series would be treated as separate and distinct from the interests in any other series. Initially, the trust was established with ten series, including Series N. The declaration establishing the trust and each series provided that, pursuant to the state statute, expenses, fees, charges, taxes, and liabilities incurred by or arising in connection with a particular series would be payable out of the assets of that series only and not out of the assets of any other series. Matters affecting only one series were to be voted on only by owners of

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13 13 T.C. 884 (1949), *acq.* 1950-1 C.B. 4.

14 1955-1 C.B. 416

15 May 8, 1998.

16 We acknowledge, of course, that a private letter ruling (a "PLR") is "unpublished" guidance, is not "precedent" within the meaning of Section 6110(k)(3) of the Code, and may not be relied upon by any taxpayer other than the taxpayer that obtained the ruling.

interests in such series. On these facts, the Service held that Series N was a separate entity for Federal income tax purposes.

Similarly, in PLR 9721007,[17] the Service considered the treatment of a trust organized under state law that authorized the trust to have an unlimited number of series. Each series established under the trust declaration was treated as a separate trust under state law, which recognized each separate trust established under a single instrument with common trustees as independent legal estates or entities. Initially, the trust was established with four series, including Series P. Under state law, the rights of creditors of each series were limited to the assets of that series for recovery of expenses, charges or liabilities, and the owners of interests in a series could look only to the assets of such series in redemption, liquidation or termination. The Service held that Series P was a separate taxable entity for U.S. Federal income tax purposes.[18]

The series provisions of the Delaware limited liability company statute are analogous to the series provisions of the Delaware statutory trust statute and, as noted above, these same key features exist in protected cell company legislation generally. The Service confirmed this result with respect to Delaware series LLCs in PLR 2008-03004 which was released on January 18, 2008.

III. Safe Harbor.

In the interest of simplicity and uniform treatment, we recommend that the Treasury and the Service promulgate guidance in the form of a safe harbor that would contain factual conditions which, if met, would result in each cell of a protected cell company being treated as separately classifiable for Federal income tax purposes. The safe harbor factors we propose are the following:

1. The protected cell company is formed under the statute of a state or foreign sovereign jurisdiction.

   We suggest this requirement because it is not always clear in any given jurisdiction whether purely contractual arrangements that segregate pools of assets (and associated liabilities) are enforceable, particularly in respect of persons who do not have notice of the arrangement (*e.g.*, tort claimants and other involuntary creditors).

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[17] May 23, 1997.

[18] *See also* PLR 9847013 (Nov. 20, 1998) (same); PLR 9837005 (June 9, 1998) (same); PLR 9722012 (May 30, 1997) (same); PLR 9642022 (Oct. 18, 1996) (same).

Creating the arrangement under a statutory regime eliminates this uncertainty and hence is an appropriate basis for a safe harbor.

2. The statute provides for unambiguous separateness of assets and liabilities of the protected cell company and permits beneficial ownership to be held on a cell by cell basis. That is, the statute provides for the power (i) to establish designated "cells" (whether called that, or called "series," "pools," "portfolios" or "accounts" or any similar phrasing) of members, trustees, managers or ownership interests having separate rights, powers, or duties with respect to specified property or obligations of the entity (or profits and losses associated with specified property or obligations) and (ii) to provide that the debts, liabilities, and obligations existing with respect to a particular cell may be enforced against the assets of that cell only, and not against the assets of the protected cell company generally or of any other cell.[19]

   This factor is of course fundamental to the commercial purpose of using a protected cell company and the legal and theoretical underpinning of its characterization for Federal income tax purposes.

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[19] *See, e.g.,* Del. Code Ann. § 12-3806(b) (statutory trusts); Del. Code Ann. § 18-215(a) (limited liability companies).

The statutes of all of the following jurisdictions provide for this type of separation:

United States & Puerto Rico	Other[20]
Delaware	Anguilla
Illinois	Barbados
Iowa	Bermuda
Nevada	British Virgin Islands
Oklahoma	Cayman Island
Puerto Rico	Gibraltar
Tennessee	Guernsey
Utah	Jersey
	Isle of Man
	Luxembourg
	Mauritius

The Service might consider, whether the initial guidance should include, and subsequent notices or revenue procedures should maintain, a list of jurisdictions whose statutes meet this requirement similar to the list of *per se* corporations that is maintained under Regulation Section 301.7701-2.

3. The protected cell company itself is not a "*per se*" corporation under Regulation Section 301.7701-2 (*e.g.*, is not a U.S. corporation, a French S.A. or German AG). (This is distinct from a determination that any cell itself may become a *per se* corporation as a result of its activities or other features, for example, by reason of predominantly conducting an insurance business or being a "taxable mortgage pool.")

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[20] Anguilla (protected cell company), Protected Cell Companies Act, 2004. Barbados (segregated cell company), Division G of the Companies Act Cap. 308. Bermuda (segregated accounts company), Segregated Accounts Companies Act 2000. British Virgin Islands (segregated portfolio company), Part VII of the BVI Business Companies Act, 2004. Cayman Islands (segregated portfolio company), Part XIV of the Companies Law (2007 Revision). Gibraltar (protected cell company), Protected Cell Companies Act 2001. Guernsey (protected cell company, incorporated cell company), Protected Cell Companies Ordinance, 1997, as amended. Isle of Man (protected cell company), Part VII of the Companies Act 2006. Jersey (protected cell company, incorporated cell company), Companies (Jersey) Law (Amendment No. 8). Mauritius (protected cell company), Protected Cell Companies Act 1999.

While perhaps not strictly necessary as a logical matter, this requirement seems to be more consistent with the policies of the "check-the-box" regime of Regulation Section 301-7701-2 and -3. It is also consistent with the holding in *Union Trusteed Funds v. Commissioner*.[21]

4. Voting power may be, but need not be, vested on a cell by cell basis.

   This factor follows the economic and legal substance of the structure of cells and protected cell companies. Of course, different consequences as to various Federal income tax considerations, such as the eligibility to join in a consolidated group, status as a controlled foreign corporation (a "CFC"), and whether the cell's equity may be the subject of a non-recognition exchange, may result depending on how voting power is vested.

5. Beneficial ownership of a cell as determined for U.S. Federal income tax purposes may be vested as a matter of local law in the form of equity or debt (*e.g.*, participating notes).

   The Federal income tax characterization of an instrument as debt or equity does not turn solely on its local law status. That fundamental rule of Federal income tax law applies whether one is considering a protected cell company or any other entity.

6. The cells may or may not be commonly managed and may or may not pursue similar business or investment activities.

If the safe harbor is met, we suggest the following consequences:

A. *Separate Status.* Each cell is separately classifiable for Federal income tax purposes. That is, it may be treated as a grantor trust (if it is organized as a trust), a disregarded entity, a partnership or a corporation, depending on its ownership, activities and elections. Furthermore, as each cell is to be treated as a separate entity, each is subject to any statutory (e.g., Section 269B) or common law recharacterization rules or principles that would be generally applicable to separate juridical entities.

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[21] 8 T.C. 113 (1947).

B. *CFC and Consolidation.* Where a given cell is a classified as a corporation, the determination of whether it is a CFC or includable in a consolidated group is determined just as with any other corporation. (See item E below with respect to voting power.)

C. *Default Treatment of a Cell under Regulation. Section 301.7701-2.* The "normal" rules of Regulation Section 301.7701-3 apply. For protected cell companies formed under non-U.S. statutes, where no member has personal liability for the debt of or claims against the cell by reason of being a member or owner, each cell is to be treated as a corporation. For cell companies formed under the law of a U.S. state, each cell is to be treated as a disregarded entity if it has only one owner or a partnership if it has more than one owner, absent an election for any such cell to be treated as a corporation. We make these suggestions because this rule is consistent to the existing default regime and because we believe these default rules would likely correspond to most taxpayers' intentions, thus leading to fewer elections and less burden on the tax administration system. As under current law for any separate entity, elections to choose the non-default status for a cell's Federal income tax classification would be made in accordance with Regulation Section 301.7701-3. We anticipate that Form 8832 would be amended to reflect separate entity status for cells.

D. *Protected Cell Company not a* per se *owner.* Provided that separately issued ownership interests of the cell are voting equity, the protected cell company itself is not treated as an equity owner in any cell for entity classification purposes (*e.g.*, for purposes of determining whether the entity is a REIT, a qualified REIT subsidiary, a disregarded entity under Regulation Section 301.7701-3, or a publicly traded partnership) or other Federal income tax purposes unless the protected cell company itself has a non-de minimis economic interest in such cell's equity (or directly in its assets or profits).

E. *Voting.* If nominal voting power is vested in a board of the protected cell company, but the totality of the arrangements that govern the cell, either *de facto* or *de jure*, operate in such a way that actual control over the assets and activities of the cell are vested in the cell's equity (or other) instruments then the voting power with respect to the protected cell company will not be treated as voting power in the cell. In other words, the current law facts and circumstance tests as to the determination of which instruments have voting power should

continue to apply. Nothing in the proposed safe harbor would support the ability of the taxpayer to assert that a class of interests has voting power if it does not have such power expressly, as part of its legal rights; the Commissioner is able, however, to assert provisions such as Section 957 (where applicable) and the usual arguments for substance to control over form.[22]

As noted above, failure to satisfy the safe harbor would not preclude (or adversely affect) a cell from qualifying as a separate entity; rather, the determination would be made in accordance with existing Federal income tax authority, based on all the facts and circumstances.

IV. Examples:

1. **Facts**: The protected cell company has a single board of directors, and the cells have no such body under local law. The single class of instruments that vest beneficial ownership of each cell's economic performance (*i.e.*, the equity in the cell (as determined for Federal income tax purposes)) grant all material control rights with respect to the cell's assets and activities. These rights include the power to approve or prevent significant dispositions, mergers or other structural transactions, and the ability to hire and fire management. The equity instruments' terms and the protected cell company's organic documents prevent the protected cell company's board from taking any economically material action with respect to a cell without the consent of the holder(s) of its equity.

   Result: The equity in the cell is voting equity for Federal income tax purposes. If the cell is a U.S. corporation for Federal income tax purposes and the owner of 80% of the cell's equity is a corporation, the cell may be included in a consolidated return with the owner. If the cell is a non-US corporation, the cell is a CFC if more than 50% of such equity is owned by United States shareholders.[23]

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[22] *See, e.g.*, Framatome Connectors U.S., Inc. v. Commissioner; 118 T.C. 32 (2002), *aff'd* 108 Fed.Appx. 683 (2d Cir. 2004); [22]Alumax v. Commissioner, 109 T.C. 133, 170 (1997) *aff'd* 165 F.3d 822 (11th Cir. 1999); INI Inc. v. Commissioner, T.C. Memo. 1995-112 *aff'd* 107 F.3d 27 (11th Cir. 1997).

[23] This letter does not propose a rule for identifying voting equity or voting power of the protected cell company, on the one hand, and the cells, on the other, if the cells fail to have instruments or other arrangements that would be treated under existing law as voting equity or as conferring voting power with respect to such cell. The issues presented by such an arrangement are not

2. **Facts**: In a jurisdiction where such ownership is permitted as a matter of local law, one cell ("Cell A") of a protected cell company owns 100% of the equity interest in another cell ("Cell B") of the same protected cell company. Voting power over each cell is vested in the equity interests of such cell. Either (a) both Cell A and Cell B are life insurance companies or (b) neither is a life insurance company.

   Result: For Federal income tax purposes, if neither cell is an insurance company (or other *per se* corporate entity), Cell B can either be a disregarded entity *vis* a *vis* Cell A, or a wholly owned corporate subsidiary of Cell A. If Cell A and Cell B are each treated as U.S. corporations for Federal income tax purposes, subject to the generally applicable requirements of Section 1504, they can file a consolidated return.

3. **Facts**: In a non-U.S. jurisdiction, a protected cell company owns a portion (but less than all) of the equity interests in one of its cells ("Cell A") as a "non-cellular" asset of the protected cell company. Voting power over each cell is vested in the equity interests of such cell. Neither Cell A nor the protected cell company is an insurance company, or otherwise automatically treated as a corporation for Federal tax purposes, and the protected cell company has not elected to be a disregarded entity or partnership under Regulation Section 301.7701-2.

   Result: Under the default classification rules, the protected cell company is a corporation with regard to its non-cellular assets. Cell A is either a partially owned corporate subsidiary of the protected cell company, or is a partnership with the protected cell company as a partner in it, depending on Cell A's activities and on whether Cell A makes an election to be treated as a partnership. If the protected cell company's equity is listed and traded on an established securities market, Cell A will nonetheless not be a publicly traded partnership within the meaning of Section 7704 unless Cell A has that status by reason of the arrangements regarding its own equity or unless the anti-abuse rule of Regulation Section 301.7704-1(h)(3) applies.

4. **Facts**: Two or more cells are established in such a way as to share their assets and liabilities among each other (*e.g.*, creditors of any one such cell can also look to assets of the other cells) and owners of

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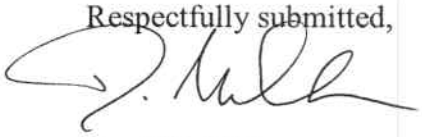
limited to the cell company context and, as such, are beyond the scope of this letter and should be resolved in accordance with existing authorities generally applicable to separate juridical entities.

equity (as determined for Federal income tax purposes) of any one cell also are entitled to (and burdened by) specified portions of the income (and losses) of other cells.

Result: The cells are not entities separate from each other for Federal income tax purposes. Collectively, they are a partnership or corporation depending on their activities and assets (*e.g.*, a taxable mortgage pool) and the elections of their owners or other authorized persons.

We appreciate your consideration of our recommendations and comments. Please let us know if you would like to discuss our letter or if we can assist you in any other way.

Respectfully submitted,



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