

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-86 (14) C
Corporation Tax
July 3, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C860311A

On March 11, 1986, a Petition for Advisory Opinion was received from Mitsui & Co. (USA), Inc., 200 Park Avenue, New York, New York 10166.

The issues raised are (I) whether interest paid by a second tier subsidiary to its "grandparent" corporation is required to be added to Federal entire taxable income by the subsidiary in computing its entire net income under section 208.9(b)(5) of the Tax Law, contained in Article 9-A thereof, and (II) whether interest paid by a corporation to a "nephew" corporation (the second tier subsidiary of its parent) is required to be added to Federal entire taxable income by the corporation in computing its entire net income under section 208.9(b)(5) of the Tax Law, contained in Article 9-A thereof.

Section 208.9(b)(5) of the Tax Law provides, in pertinent part, that in arriving at entire net income for franchise tax purposes, an addition to Federal entire taxable income must be made in the amount of 90 percent of the interest paid on indebtedness directly or indirectly owed to any stockholder or shareholder owning more than five percent of the taxpayer's issued capital stock, or to a subsidiary of such corporate stockholder or shareholder.

Petitioner presents two sets of facts as follows:

Situation A

- 1) Mitsui & Co. (U.S.A.), Inc. (hereinafter "Mitsui USA"), a New York taxpayer engaged in international trading activities, is the sole shareholder of various companies (hereinafter the "trading subsidiaries") also engaged in trading or similar activities. Some of these trading subsidiaries are New York taxpayers.
- 2) In addition to being the sole shareholder of a number of subsidiaries, Mitsui USA plans to make an investment as an 80 percent shareholder of a New York taxpayer, to be known as Mitsui & Co. Investment Corp. (hereinafter "MCIC"). MCIC will in turn form a wholly owned subsidiary to be known as Mitsui & Co. Finance Corp. (hereinafter "MCFC") also a New York taxpayer. MCIC will furnish services to MCFC, which in turn will engage in various financing projects, including financing Mitsui USA's trading subsidiaries.

- 3) MCFC is financed by outside banks and by Mitsui & Co. Ltd. (hereinafter "Mitsui Ltd."), Mitsui USA's 100 percent shareholder. No loans are made directly or indirectly to MCFC from Mitsui USA.
- 4) The minority shareholder interest of 20 percent in MCIC is held by Mitsui Ltd.

Situation B

The facts are the same as Situation A, except that MCFC is financed by outside banks, Mitsui Ltd., and by Mitsui USA. The financing received from Mitsui USA, however, will be invested fully in treasury bills and similar instruments, as it will not be directly needed to finance MCFC's loans to the trading subsidiaries or others.

Issue I

The Situation A question is whether MCFC's interest payments to its grandparent corporation, Mitsui Ltd. are required to be added to Federal entire taxable income of MCFC when it computes entire net income.

The Situation B question is whether MCFC's interest payments to both grandparent corporations, Mitsui Ltd. and Mitsui USA, are required to be added to Federal entire taxable income of MCFC when it computes its entire net income.

Inasmuch as MCFC's interest payments to Mitsui Ltd. and Mitsui USA are not payments to an entity described in section 208.9(b)(5) of the Tax Law, 90 percent amount of such payments are not required to be added to Federal entire taxable income pursuant to such section 208.9(b)(5). Hooker Chemical & Plastics Corp., State Tax Commission Advisory Opinion, June 1, 1981, TSB-H-81(37)C; The Ore and Chemical Corporation, State Tax Commission Advisory Opinion, October 12, 1982, TSB-A-82(15)C.

Issue II

The question in both Situation A and Situation B is whether a New York trading subsidiary's interest payments to its nephew corporation MCFC, the second tier subsidiary of its parent corporation, are required to be added to Federal entire taxable income when such trading subsidiary computes its entire net income.

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In applying section 208.9(b)(5) of the Tax Law, it has been determined that the trading subsidiary's interest payments to its nephew corporation, MCFC, are not payments to an entity described in such section 208.9(b)(5). Thus, 90 percent of such interest payments is not required to be added to the trading subsidiary's Federal entire taxable income, pursuant to such section 208.9(b)(5), when the trading subsidiary computes its entire net income.

DATED: July 3, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.