

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 - PLR-119794-02

Date:

November 7, 2002

### Legend

A =

B =

C =

D =

E =

F =

G =

H =

I =

J =

K =

L =

M =

N =

O =

P =

Q =

R =

S =

T =

U =

V =

W =

X =

Y =

Z =

Country1 =

Country2 =

Country3 =

d1 =

d2 =

d3 =

d4 =

d5 =

Dear :

This letter responds to a letter dated April 3, 2002, and subsequent correspondence, submitted on behalf of B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, and Z, by their authorized representatives, requesting a ruling that B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, and Z, each be given an extension of time to elect under § 301.7701-3(c) of the Procedure and

Administration Regulations to be classified as a disregarded entity for federal tax purposes.

### Facts

The information submitted states that A is a US partnership, owned 50% by US investors. B, a wholly owned subsidiary of A, was formed on d1, pursuant to the laws of Country1. C, a wholly owned subsidiary of B, was formed on d2, pursuant to the laws of Country2. D, a wholly owned subsidiary of C, was formed on d3, pursuant to the laws of Country3. E, a corporation formed under the laws of Country3 became a wholly owned subsidiary of D as of d4. On d4, C and D purchased F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, and Z. Immediately after the purchase, the properties owned by the subsidiaries were transferred to E. E owns F and G. F owns H. H owns I, J, K, L, M, N, O, and P. J owns Q, R, S, T, U, V, W, X, and Y. P owns Z.

B represents that pursuant to § 301.7701-3(a), B is a foreign eligible entity that is not required to be classified as a corporation for federal tax purposes. B has a single owner that has limited liability as defined in § 301.7701-3(b)(2)(ii). B intended to be disregarded for federal tax purposes effective on d1. However, B inadvertently failed to timely file a Form 8832, Entity Classification Election.

C represents that pursuant to § 301.7701-3(a), C is a foreign eligible entity that is not required to be classified as a corporation for federal tax purposes. C has a single owner that has limited liability as defined in § 301.7701-3(b)(2)(ii). C intended to be disregarded for federal tax purposes effective on d2. However, C inadvertently failed to timely file a Form 8832, Entity Classification Election.

D represents that pursuant to § 301.7701-3(a), D is a foreign eligible entity that is not required to be classified as a corporation for federal tax purposes. D has a single owner that has limited liability as defined in § 301.7701-3(b)(2)(ii). D intended to be disregarded for federal tax purposes effective on d3. However, D inadvertently failed to timely file a Form 8832, Entity Classification Election.

E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, and Z represent that pursuant to § 301.7701-3(a), E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, and Z, are each a foreign eligible entity that is not required to be classified as a corporation for federal tax purposes. E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, and Z, each has a single owner that has limited liability as defined in § 301.7701-3(b)(2)(ii). E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, and Z, each intended to be disregarded for federal tax purposes effective on d5. However, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, and Z, each inadvertently failed to timely file a Form 8832, Entity Classification Election.

## Law and Analysis

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an "eligible entity") can elect its classification for federal tax purposes. A "business entity" is any entity recognized for federal tax purposes that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Internal Revenue Code. Section 301.7701-2(a).

Section 301.7701-3(b)(2)(i) provides that unless a foreign eligible entity elects otherwise, the entity is: (A) a partnership if it has two or more members and at least one member does not have limited liability; (B) an association if all members have limited liability; or (C) disregarded as an entity separate from its owners if it has a single owner that does not have limited liability.

Section 301.7701-3(b)(2)(ii) provides that for purposes of § 301.7701-3(b)(2)(i), a member of a foreign eligible entity has limited liability if the member has no personal liability for the debts of or claims against the entity by reason of being a member.

Section 301.7701-3(g)(3)(iii) provides that when elections under § 301.7701-3(c)(1)(i) for a series of tiered entities are effective on the same date, the eligible entities may specify the order of elections on Form 8832.

Section 301.7701-3(c)(1)(i) provides that to elect to be classified other than as provided in § 301.7701-3(b), an eligible entity must file Form 8832, Entity Classification Election, with the designated service center. Section 301.7701-3(c)(2)(iii) provides that an election will be effective on the date specified on the Form 8832 or on the date filed if no such date is specified. The effective date specified on the Form 8832 cannot be more than 75 days prior to the date the election is filed.

Under 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term "regulatory election," as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or an announcement published in the Internal Revenue Bulletin.

Sections 301.9100-1 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(iii) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue) the taxpayer was unaware of the necessity for the election.

### Conclusion

Based solely on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. As a result, B is granted an extension of time of 60 days from the date of this letter to file a Form 8832 with the appropriate service center and elect under § 301.7701-3(c) to be classified as a disregarded entity for federal tax purposes effective for d1. C is granted an extension of time of 60 days from the date of this letter to file a Form 8832 with the appropriate service center and elect under § 301.7701-3(c) to be classified as a disregarded entity for federal tax purposes effective for d2. D is granted an extension of time of 60 days from the date of this letter to file a Form 8832 with the appropriate service center and elect under § 301.7701-3(c) to be classified as a disregarded entity for federal tax purposes effective for d3. E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, and Z, each is granted an extension of time of 60 days from the date of this letter to file a Form 8832 with the appropriate service center and elect under § 301.7701-3(c) to be classified as a disregarded entity for federal tax purposes effective for d5. Additionally, in accordance with § 301.7701-3(g)(3)(iii), the entities may specify that the order of the elections of E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, and Z be deemed made in order, from the bottom subsidiary to the top subsidiary on Form 8832. A copy of this letter should be attached to each Form 8832. A copy is included for that purpose.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code.

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

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Heather C. Maloy  
Associate Chief Counsel  
(Passthroughs and Special Industries )

Enclosures: 2  
Copy of this letter  
Copy for § 6110 purposes