

Internal Revenue Service

Department of the Treasury
 Washington, DC 20224

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Person To Contact:
 , ID No.

Telephone Number:

Refer Reply To:
 CC:PSI:B01 – PLR-163048-02

Date:
 September 10, 2003

Legend:

X =
Date 1 =
Year 1 =
Country 1 =
Restructuring =
U.S. Shareholder =

Dear :

This private letter ruling is in response to your request, dated October 31, 2002, on behalf of X, requesting an extension of time under section 301.9100-3 of the Procedure and Administration Regulations to file an election to be treated as a partnership for federal tax purposes under section 301.7701-3(c).

Facts

Based on the information submitted and representations made within, X is a Country 1 entity. X represents that as of Date 1, X was eligible to make an election under section 301.7701-3(c), to be a partnership for federal income purposes. However, the Form 8832, Entity Classification Election, inadvertently was not timely filed. X is one of several Country 1 entities that is directly or indirectly owned by U.S. Shareholder and that was part of a Restructuring in Year 1.

Law and Analysis

Section 301.7701-3(b)(2) provides guidance on the classification of a foreign eligible entity for federal tax purposes. Generally, a foreign eligible entity is treated as an association taxable as a corporation if all members have limited liability, unless the entity makes an election to be treated otherwise. If a foreign eligible entity has one owner, it may elect to be treated as a disregarded entity pursuant to the rules in section 301.7701-3(c). If a foreign eligible entity has more than one owner, it may elect to be treated as a partnership pursuant to the rules in section 301.7701-3(c). Section 301.7701-3(c) provides that an entity classification election must be filed on Form 8832 and can be effective up to 75 days prior to the date the form is filed or up to 12 months after the date on which the form is filed.

Under section 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 including an election whose deadline is prescribed by a regulation published in the Internal Revenue Bulletin.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions for time for making elections that do not meet the requirements of section 301.9100-2.

Requests for relief under section 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(a).

Conclusion

Based solely on the facts submitted and representations made, we conclude that the requirements of section 301.9100-3 have been satisfied. Accordingly, X is granted an extension of time of sixty (60) days from the date of this letter to elect to be treated as a partnership for federal tax purposes, effective Date 1. The election should be made

by filing Form 8832 with the appropriate service center. A copy of this letter should be attached to the election.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed or implied regarding whether gain is recognized as a result of the Restructuring. Further, no opinion is provided as to the application of section 367 of the Internal Revenue Code. It is noted that the filing of the check-the-box elections may result in the recognition of substantial gain to U.S. Shareholder of X and that section 1248 may apply to recharacterize such gain.

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

Pursuant to the power of attorney on file with this office, a copy of this letter will be sent to the taxpayer representative.

Sincerely,

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

Enclosures (2)
Copy of this letter
Copy for section 6110 purposes