

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:FIP:4
PLR-115775-15

Date:
December 10, 2015

In Re

Taxpayer =

Foreign Country =

Date A =

Date B =

Year 1 =

Individual =

Management =

Dear :

This letter is in response to Taxpayer's request, pursuant to § 301.9100-3 of the Procedure and Administration Regulations, requesting an extension of time (1) to make the election under § 953(d) of the Internal Revenue Code and (2) to make the election under § 831(b)(2)(A).

FACTS

Taxpayer represents that it was formed under the laws of Foreign Country on Date A of Year 1 and licensed as an insurance company in Foreign Country on Date B of Year 1

to provide property and casualty insurance coverage. Taxpayer represents that it qualifies as an insurance company for federal income tax purposes.

Individual owns stock of Taxpayer and is Taxpayer's President. Individual engaged Management to manage Taxpayer. Individual believed that Management was responsible for preparing and filing Taxpayer's federal income tax returns and would see to it that the appropriate elections were prepared and filed. The elections, however, were not filed.

Taxpayer's failure to make the election has not been discovered by the Internal Revenue Service. In addition, Taxpayer represents that it does not seek to alter a return position for which the accuracy related penalty has been or could have been imposed under § 6662 at the time Taxpayer requested relief, and the new position requires or permits a regulatory election for which relief is requested. Taxpayer represents that it intended to make the § 953(d) and the § 831(b) elections but inadvertently failed to do so. Finally, Taxpayer represents that it has not used hindsight to seek an extension of time to make the election.

Taxpayer represents that granting relief will not result in a lower tax liability than it would have had if it had filed the § 953(d) and the § 831(b) elections timely.

LAW AND ANALYSIS

Under § 953(d), certain foreign insurance companies may elect to be treated as domestic corporations for U.S. tax purposes. The substantive and procedural rules for making a § 953(d) election are contained in Notice 89-79, 1989-2 C. B. 392, and Rev. Proc. 2003-47, 2003-2 C.B. 55. This guidance provides that the election must be filed by the due date prescribed in § 6072(b) (including extensions) for the U.S. income tax return that is due if the election becomes effective. Rev. Proc. 2003-47, section 4.04(2). In addition, an electing corporation must use the calendar year as its annual accounting period for U.S. tax purposes, unless it joins in the filing of a consolidated return and adopts the parent corporation's tax year. Notice 89-79, section 1.

Section 831(a) provides that taxes, computed as provided in § 11, are imposed for each taxable year on the taxable income of every insurance company other than a life insurance company. However, § 831(b) allows certain small companies to elect to be subject to tax on their taxable investment income only. The election applies to the taxable year for which the company made it and, as long as the company continues to qualify, for all subsequent taxable years unless revoked with the consent of the Secretary.

The time and manner to make the § 831(b)(2)(A)(ii) election is not prescribed by statute but rather is prescribed by Treas. Reg. § 301.9100-8. Pursuant to Treas. Reg. § 301.9100-8(a)(2), the election is to be made by the due date (taking into account any

extensions of time to file obtained by the taxpayer) of the tax return for the first taxable year for which the election is to be effective by attaching a statement to the tax return containing the information specified in Treas. Reg. § 301.9100-8(a)(3). Accordingly, the § 831(b)(2)(A)(ii) election is a regulatory election. Treas. Reg. § 301.9100-1(b).

Under Treas. Reg. § 301.9100-1(c), the Commissioner may grant a reasonable extension of time under the rules set forth in Treas. Regs. §§ 301.9100-2 and 301.9100-3 to make a regulatory or statutory election. Treas. Reg. § 301.9100-2 does not provide relief for Taxpayer to make an election under § 831(b)(2)(A)(ii) for any of the years for which relief is sought. Treas. Reg. § 301.9100-3(a) provides that requests for relief will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that it "acted reasonably and in good faith" and that "the grant of relief will not prejudice the interests of the Government."

Under Treas. Reg. § 301.9100-3(b)(1), a taxpayer is deemed to have acted reasonably and in good faith if it:

- (i) requests relief under this section before the failure to make the regulatory election is discovered by the Internal Revenue Service;
- (ii) failed to make the election because of intervening events beyond the taxpayer's control;
- (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and complexity of the return or issue), the taxpayer was unaware of the necessity for the election;
- (iv) reasonably relied on the written advice of the Internal Revenue Service; or
- (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Under Treas. Reg. § 301.9100-3(b)(3), a taxpayer is deemed not to have acted reasonably and in good faith if it:

- (i) Seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested;
- (ii) Was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or
- (iii) Uses hindsight in requesting relief.

The Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief. Treas. Reg. § 301.9100-3(c)(1).

The interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Treas. Reg. § 301.9100-3(c)(1)(i).

Treas. Reg. § 301.9100-1(a) cautions that granting an extension of time to make an election is not a determination that the taxpayer is otherwise eligible to make the election.

Based solely on Taxpayer's representations and the additional information required under Treas. Reg. § 301.9100-3(e), Taxpayer qualifies for an extension of time to make the election under Treas. Reg. § 831(b)(2)(A)(ii). Taxpayer is deemed to have acted in good faith, as defined by Treas. Reg. § 301.9100-3(b), and the grant of relief will not prejudice the interests of the Government.

RULING

Accordingly, under Treas. Reg. § 301.9100-3, Taxpayer is granted an extension of time until 90 days following the date of this letter (1) to make the election provided by § 953(d) effective for Year 1 and (2) to make the election provided by § 831(b)(2)(A)(ii) effective for Year 1.

CAVEATS

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings, and it is subject to verification on examination.

Except as provided above, no opinion is expressed or implied concerning the federal income tax consequences of any other aspect of Taxpayer. Specifically, no ruling is made as to whether Taxpayer qualifies as an insurance company under § 831(c) and granting the extension under Treas. Reg. § 301.9100-1(a) should not be construed as a determination that Taxpayer is eligible to make the election provided by § 831(b)(2)(A)(ii). Also, no ruling is granted with respect to Taxpayer's entity classification for federal income tax purposes.

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

In accordance with a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

ALEXIS A. MACIVOR
Branch Chief, Branch 4
Office of the Associate Chief Counsel
(Financial Institutions & Products)