

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:INTL:BR1
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Date:
January 03, 2018

TY:

Legend

Taxpayer =

Date 1 =

Country A =

Percentage =

U.S. Partnership =

Tax Year =

U.S. Real Property =

Accountant =

Dear :

This is in reply to a letter dated requesting an extension of time under Treas. Reg. § 301.9100-3 for Taxpayer to file a Form 8848, *Consent to Extend the Time to Assess the Branch Profits Tax Under Regulations Sections 1.884-2(a) and (c)*. The ruling contained in this letter is based upon facts and representations submitted by 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 a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

FACTS

Taxpayer is a corporation that was organized in Date 1 under the laws of Country A. Taxpayer does not have an office or any employees in the United States. Taxpayer holds a Percentage interest in U.S. Partnership and serves as its managing member. U.S. Partnership does not have an office or any employees. Up to and including Tax Year, Taxpayer, through U.S. Partnership, was engaged in the leasing of U.S. Real Property pursuant to net leases. Since Taxpayer's formation, including Tax Year, Accountant has been solely responsible for the preparation of Taxpayer's Forms 1120-F, *U.S. Income Tax Return of a Foreign Corporation*. For the tax years prior to Tax Year, Accountant reported Taxpayer's U.S. Real Property leasing income on its Forms 1120-F as income effectively connected with the conduct of a U.S. trade or business pursuant to an election made under section 882(d) of the Internal Revenue Code. Accountant also reported Taxpayer's branch profits tax under section 884, if any, on the Forms 1120-F.

In Tax Year, U.S. Partnership distributed to Taxpayer its interest in the U.S. Real Property, and Taxpayer immediately sold its interest in the U.S. Real Property to an unrelated corporation, within the meaning of Treas. Reg. § 1.884-2T(a)(2)(iv). At the end of Tax Year, Taxpayer did not have any assets from which it derived income or with respect to which a disposition would result in gain constituting income effectively connected with the conduct of a U.S. trade or business. Taxpayer's interest in U.S. Partnership no longer constituted a U.S. asset, within the meaning of Treas. Reg. § 1.884-1(d)(1). Accountant prepared and filed Taxpayer's Form 1120-F for Tax Year but did not attach a Form 8848 to the return.

The Internal Revenue Service (IRS) discovered that a Form 8848 had not been attached to Taxpayer's Form 1120-F for Tax Year during an examination of the Form 1120-F. Taxpayer subsequently consulted its legal adviser and took action to request an extension of time to file a Form 8848 under Treas. Reg. §301.9100-3. Taxpayer has notified the IRS examining agent of this request.

LAW AND ANALYSIS

Treas. Reg. § 1.884-2T(a)(1) provides, in relevant part, that "[a] foreign corporation shall not be subject to the branch profits tax for the taxable year in which it completely terminates all of its U.S. trade or business within the meaning of [Treas. Reg. § 1.884-2T(a)(2)]." Taxpayer represents, as required by Treas. Reg. § 1.884-2T(a)(2):

- (1) At the close of Tax Year, Taxpayer did not own any U.S. assets (within the meaning of Treas. Reg. § 1.884-1(d)(1));

- (2) Neither Taxpayer nor a related corporation (within the meaning of Treas. Reg. § 1.884-2T(a)(2)(iv)) has used or will use, directly or indirectly, in the conduct of a trade or business in the United States at any time during the three-year period following the close of Tax Year: (a) any of the U.S. assets of the terminated U.S. trade or business; (b) any property attributable to those assets; or (c) any property attributable to effectively connected earnings and profits of Taxpayer for Tax Year; and
- (3) Taxpayer did not have any income that was, or was treated as, effectively connected income during the three-year period following the close of Tax Year.

Treas. Reg. § 1.884-2T(a)(2)(i)(D) also requires that the foreign corporation execute a waiver of the period of limitations for the branch profits tax in the year of complete termination. Treas. Reg. § 1.884-2(a)(2)(ii) provides that this waiver must be executed on Form 8848, or substitute form, on or before the date (including extensions) prescribed for filing the foreign corporation's income tax return for the year of complete termination and extend the period of assessment of the branch profits tax for the year of complete termination to a date not earlier than the close of the sixth taxable year following that taxable year.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the standards set forth in Treas. Reg. § 301.9100-3 to make a regulatory election under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-3 provides standards for extensions of time for making regulatory elections when the deadline for making the election is other than a due date prescribed by statute.

Treas. Reg. § 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Based on the facts and circumstances of this case, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a) and hereby grant Taxpayer an extension of time to file a signed Form 8848 and attach it to an amended Form 1120-F within 60 days from the date of this ruling letter.

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. Specifically, as provided in Treas. Reg. § 301.9100-1(a), the granting of an extension of time is not a determination that Taxpayer is otherwise eligible to file Form 8848.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Elizabeth U. Karzon
Branch Chief, Branch 1
Associate Chief Counsel (International)

Enclosure:
Copy for 6110 purposes

cc: