

Target =

Target Sub 1 =

Target Sub 2 =

Target Sub 3 =

Target Sub 4 =

Target Sub 5 =

Target Sub 6 =

Country X =

Seller A =

Seller B =

Seller C =

Date A =

Date B =

Corporate Officer & Tax Professional =

Dear :

This letter responds to a letter dated August 23, 2017, submitted on behalf of Parent, the common parent of the consolidated group which includes US Sub Y, the United States shareholder of Foreign Sub Y, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension to file a “§ 338 election” under § 338(g) with respect to Foreign Sub Y's acquisition of the stock of Target, a Country X corporation, and the deemed acquisitions of the stock of Target Sub 1 through Target Sub 6, all foreign corporations, (sometimes hereinafter referred to as the “Election”), on Date A. Additional information was received in letters dated March 9, 2018, March 19, 2018, and March 28, 2018. The material information is summarized below.

Parent is the common parent of a consolidated group which included its wholly owned subsidiary, US Sub X, and US Sub X's wholly owned subsidiary, US Sub Y. US Sub X and US Sub Y together owned all the stock of Foreign Partnership, an entity taxable as a partnership for United States federal income tax purposes. Foreign Partnership owned all the interests of Foreign DE, an entity disregarded as separate from its owner for United States federal income tax purposes. Foreign DE owned all the stock of Foreign Sub X which owned all the stock of Foreign Sub Y. On Date A, Foreign Sub Y acquired all of the stock of Target from Seller A, Seller B, and Seller C (collectively, "the Sellers") in exchange for cash. Target owned all the stock of Target Sub 1 which owned all the stock of Target Sub 2 and Target Sub 3. Target Sub 2 owned all the stock of Target Sub 4 and Target Sub 5. Target Sub 3 owned all the stock of Target Sub 6. Parent has represented that Foreign Sub Y's acquisition of the stock of Target qualified as a "qualified stock purchase," as defined in § 338(d)(3).

Parent has also represented that Foreign Sub Y is a controlled foreign corporation as defined in § 957 (taking into account § 953(c)) and is not required under § 1.6012-2(g) (other than § 1.6012-2(g)(2)(i)(b)(2)) to file a United States income tax return for its taxable year that includes the acquisition date.

Parent, as common parent of the consolidated group which included US Sub Y, the United States shareholder of the foreign purchasing corporation Foreign Sub Y, intended to file the Election. The Election was due on Date B, but for various reasons a valid Election was not filed. After the due date for the Election, it was discovered that

the Election had not been filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election.

Parent has represented that it is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time Parent requested relief, and for which the new position requires or permits a regulatory election for which relief is requested. Parent has also represented that all United States federal income tax and information returns have been timely and consistently filed as if a § 338(g) election was made and nothing has been reported inconsistently.

Section 338(a) permits certain stock purchases to be treated as asset acquisitions if: (1) the purchasing corporation makes or is treated as having made a "§ 338 election" or a "§ 338(h)(10) election"; and (2) the acquisition is a "qualified stock purchase."

Pursuant to § 1.338-2(e)(3), the statement of §338 election may be filed by the United States shareholders of a foreign purchasing corporation that is a controlled foreign corporation, if certain requirements are met.

Under § 301.9100-1(c), the Commissioner has discretion to 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 Internal Revenue Code except subtitles E, G, H, and I.

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 a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner 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).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.338-2(d)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent and Corporate Officer & Tax Professional explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Election,

and that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See § 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that Parent has shown it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-3, until 45 days from the date on this letter, for Parent to file the Election with respect to Foreign Sub Y's acquisition of the stock of Target and the deemed acquisitions of the stock of Target Sub 1 through Target Sub 6, as described above.

WITHIN 45 DAYS OF THE DATE ON THIS LETTER, Parent must file the Election on Form 8023, in accordance with § 1.338-2(d) and (e)(3) and the instructions to the form. A copy of this letter must be attached to Form 8023.

WITHIN 120 DAYS OF THE DATE ON THIS LETTER, all relevant parties must amend any relevant return to attach a copy of this letter and a copy of Form 8883. Alternatively, taxpayers filing their returns electronically may satisfy the requirement of attaching a copy of this letter by attaching a statement to their return that provides the date on and control number of the letter ruling.

Parent must also deliver written notice of the election (and a copy of Forms 8023 and 8883, their attachments and instructions) to United States persons selling or holding stock in Target. See §1.338-2(e)(4).

The above extension of time is conditioned on the taxpayers' (Parent's consolidated group's, Foreign Partnership's, Foreign Sub X's, Foreign Sub Y's, Target's, and Target Sub 1 through Target Sub 6's) tax liability (if any) being not lower, in the aggregate, for all years to which the Election applies, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made by the applicable Director's office upon audit of the Federal income tax returns involved.

We express no opinion as to: (1) whether the acquisition of the Target stock qualifies as a "qualified stock purchase" under § 338(d)(3); or (2) any other tax consequences arising from the Election.

In addition, we express no opinion as to the tax consequences of filing the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations

made by the taxpayers and Corporate Officer & Tax Professional. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

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

Pursuant to the power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)