

**Internal Revenue Service**

Department of the Treasury  
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PLR-126155-19  
PLR-126156-19  
PLR-126157-19

Date:  
February 21, 2020

TY:

**LEGEND**

- FC1 =
- FC2 =
- FC3 =
- Year 1 =
- Country X =
- Date 1 =
- Professional Advisor =

Dear :

This is in response to a letter received by our office on November 1, 2019, submitted on behalf of Taxpayer by its authorized representative, requesting an extension of time under Treas. Reg. § 301.9100-3 to make the election provided under section 953(d) for Year 1 with respect to FC1, FC2, and FC3.

The ruling contained in this letter is predicated 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 part of the audit process.

## FACTS

Each of FC1, FC2, and FC3 (collectively referred to as “Taxpayers”) is organized and regulated as an insurance company under the laws of Country X. Taxpayers began their operations on Date 1. Taxpayers derive all of their business from insuring U.S. risks.

Taxpayers retained Professional Advisor for assistance with all aspects of Taxpayers’ U.S. income tax compliance. The employees of Professional Advisor were qualified tax professionals. Professional Advisor prepared Taxpayers’ U.S. federal income tax returns for Year 1, each of which included a section 953(d) election to be treated as a domestic corporation. Due to a miscommunication, Professional Advisor was under the impression that Taxpayers had already obtained an approval from the IRS for their section 953(d) election for Year 1. However, Taxpayers understood that Professional Advisor was responsible for filing the section 953(d) election statement with the IRS. As a result, neither the Professional Advisor nor Taxpayers sent a section 953(d) election statement to the IRS pursuant to Notice 89-79, 1989-2 C.B. 392, and Rev. Proc. 2003-47, 2003-28 C.B. 55.

Taxpayers represent that they relied on Professional Advisor to file all the necessary income tax elections, including the section 953(d) election for Taxpayers to be treated as a domestic corporation for Year 1.

Because of the miscommunication, Taxpayers represent that Professional Advisor failed to advise Taxpayers of the consequences of failing to make a section 953(d) election with respect to Year 1. Taxpayers’ failure to make the section 953(d) election was not discovered by the IRS before Taxpayers submitted their ruling request. In addition, Taxpayers represent that they do not seek to alter a return position for which the accuracy-related penalty has been or could have been imposed under section 6662 at the time Taxpayers requested relief. Taxpayers represent that they intended to make the section 953(d) election for Year 1. Finally, Taxpayers represent that they have not used hindsight to seek an extension of time to make the election. Taxpayers represent that granting relief will not result in a lower tax liability than they would have had if they had filed the section 953(d) election timely.

## LAW AND ANALYSIS

Under section 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 section 953(d) election are contained in Notice 89-79, 1989-2 C.B. 392, and Rev. Proc. 2003-47, 2003-2 C.B. 55. Rev. Proc. 2003-47 provides that the election must be filed by the due date prescribed in section 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. In the present situation, Rev. Proc. 2003-47 fixes the time to make the election under section 953(d). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayers an extension of time, provided that Taxpayers satisfy the standards set forth under Treas. Reg. § 301.9100-3(a).

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 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 section 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.

## CONCLUSION

Based solely on the facts and information submitted, Taxpayers qualify for an extension of time to make the elections under section 953(d). Taxpayers are 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.

Accordingly, Taxpayers are granted an extension of time of 60 days from the date of this ruling letter to make the section 953(d) election, in accordance with the procedural rules set forth in Rev. Proc. 2003-47, to be treated as a domestic corporation for U.S. federal income tax purposes effective for Year 1.

The above extension of time is conditioned on Taxpayers' tax liability (if any) being not lower, in the aggregate, for all years to which the section 953(d) election applies than it would have been if the election had been timely filed (taking into account the time value of money). No opinion is expressed as to Taxpayers' tax liability for the years involved. No opinion is expressed or implied concerning the federal income tax consequences of any other aspect of this or other transactions or item of income. Further, the granting of the above extension is not a determination that Taxpayers are eligible to make the section 953(d) election. Also, no ruling is granted with respect to Taxpayers' entity classification for federal income tax purposes.

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

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Pursuant to a power of attorney on file in this office, a copy of this ruling letter is being furnished to your authorized representative.

Sincerely,

Kristine A. Crabtree  
Senior Technical Reviewer, Branch 2  
Office of Associate Chief Counsel (International)

cc: