

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B06

PLR-118720-20

Date:

October 28, 2020

### Legend

Taxpayer =

Opco =

Law Firm =

Accounting Firm =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear \_\_\_\_\_ :

This ruling responds to your letter dated August 13, 2020 requesting that the Internal Revenue Service ("Service") grant Taxpayer an extension of time under Treas. Reg. §§ 301.9100-1 and 301.9100-3 to file Form 4876-A ("Election To Be Treated as an Interest Charge DISC")<sup>1</sup> for Taxpayer's first taxable year.

### Facts

Taxpayer is a corporation owned by Opco. Opco is an S corporation which is owned by one individual directly, and by four other individuals each through a respective trust. Each entity and each individual is a U.S. tax resident.

Opco manufactures metalworking supplies. Opco exports some of its output. All of Opco's exports are to related parties.

Opco engaged Law Firm to set up Taxpayer as an IC-DISC in connection with Taxpayer's exporting. Law Firm incorporated Taxpayer on Date 1.

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<sup>1</sup> An Interest Charge Domestic International Sales Corporation ("IC-DISC") is the type of DISC for which the Internal Revenue Code provides for the years at issue. See I.R.C. § 995(f).

Since incorporation, Taxpayer has had in place a commission agreement with Opco referencing the IC-DISC rules; has computed and received commissions and otherwise functioned as an IC-DISC; and has filed an annual return on Form 1120-IC-DISC, "Interest Charge Domestic International Sales Corporation Return."

There was a misunderstanding between Law Firm and Accounting Firm (with whom Opco had an established relationship) about who was to file the Form 4876-A in order for Taxpayer to validly elect IC-DISC status effective as of incorporation. Around the due date for Taxpayer to elect IC-DISC status effective as of incorporation, Law Firm and Accounting Firm discovered this misunderstanding. Accounting Firm promptly attempted to address the problem by filing a Form 4876-A for Taxpayer purporting to elect IC-DISC status effective as of incorporation, but the form was mailed on Date 2, several days after the relevant due date.

On or about Date 3, a few months later, Taxpayer received a notice from the Service that the Form 4876-A could not be processed. The reason was not readily apparent to Taxpayer and Accounting Firm from the notice.

Accounting Firm communicated with the Service for clarification. On Date 4, a few weeks later, Accounting Firm understood from the Service that the problem was solely the due date.

A few months after that, and about a year from Taxpayer's incorporation, Accounting Firm prepared and submitted the extension ruling request letter.

### Law and Analysis

Section 992(b)(1)(A) of the Internal Revenue Code (the "Code") provides that an election by a corporation to be treated as a DISC shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

Temporary Treasury Regulation § 1.921-1T(b)(1) provides, in part, that a corporation electing IC-DISC status must file Form 4876-A and that a corporation electing to be treated as an IC-DISC for its first taxable year shall make its election within 90 days after the beginning of that year.

Section 992(b)(1)(B) of the Code provides that such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on such first day of the first taxable year for which such election is effective consent to such election.

Treasury Regulation § 301.9100-1(c) provides, in part, that the Commissioner, in exercising the Commissioner's discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Treasury Regulation § 301.9100-1(b) provides that a regulatory election is an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. For this purpose, an election includes an application for relief in respect of tax.

Treasury Regulation § 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3.

Requests for relief subject to Treas. Reg. § 301.9100-3 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 that the grant of relief will not prejudice the interests of the Government.

Treas. Reg. § 301.9100-3(b)(1)(v) provides that a taxpayer is generally deemed to have acted reasonably and in good faith if the taxpayer 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.

### Conclusion

Based on the facts and representations submitted with Taxpayer's ruling request, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file Form 4876-A. Such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year.

The granting of an extension in this ruling letter is not a determination that Taxpayer is otherwise eligible to make the election or to claim IC-DISC status or benefits. See Treas. Reg. § 301.9100-1(a).

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.

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 representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Christopher James Faiferlick  
Branch Chief, Branch 6  
(International)

cc: