

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B2
PLR-117759-20

Date:
January 12, 2021

Legend

Parent =

FSub =

Target =

Date 1 =

Country X =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated August 12, 2020, submitted on behalf of Parent, requesting an extension of time under §301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension of time to file an election under section 338(g) (the "Election") with respect to FSub's acquisition of the stock of Target on Date 1. The material information submitted is summarized below.

Parent is the common parent of a consolidated group. Parent wholly owns FSub, a Country X corporation. Parent has represented that, on Date 1, FSub acquired all the stock of Target, a Country X corporation, in a transaction that qualified as a “qualified stock purchase” as defined in section 338(d)(3). Parent has also represented that FSub is a controlled foreign corporation as defined in section 957 (taking into account section 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 intended to file the Election, but for various reasons, a valid Election was not timely 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 section 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 also has represented that it would have made a section 338(g) election regarding the acquisition of Target as of the election due date regardless of the enactment of the Tax Cuts and Jobs Act (TCJA) and the issuance of regulations relating to the TCJA.

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 “section 338 election” or a “section 338(h)(10) election”; and (2) the acquisition is a “qualified stock purchase.”

Pursuant to §1.338-2(e)(3), the statement of section 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 (the “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, Company Official, and 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 75 days from the date on this letter, for Parent to file the Election with respect to the acquisition of the stock of Target.

WITHIN 75 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 150 DAYS OF THE DATE ON THIS LETTER, all relevant parties must file or amend, as applicable, all returns and amended returns (if any) necessary to report the transaction as a section 338 transaction for the taxable year in which the transaction was consummated (and for any other affected taxable year). Note, however, that the relief granted by this ruling letter is limited to the above extension of time to file the Election; no opinion is expressed with respect to any other relief or permission (e.g., permission to change a method of accounting) that any relevant parties would otherwise be required to receive or obtain from the Internal Revenue Service in order to report the transaction consistently with the making of the Election had the Election been timely made. A copy of this letter and a copy of Form 8883 must be attached to any tax return to which it is relevant. 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 (PLR-117759-20) of, this letter ruling.

Parent must also deliver written notice of the election (and a copy of Forms 8023 and 8883, their attachments and instructions) to each U.S. person (other than a member of the affiliated group of which the purchasing corporation is a member) selling or holding stock in Target in accordance with §1.338-2(e)(4).

The above extension of time is conditioned on the taxpayers' (Parent's consolidated group's, FSub's, and Target'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 FSub acquired the Target stock in a transaction that qualifies as a "qualified stock purchase" under section 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 Parent, Company Official, and 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 requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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

Sincerely,

Thomas I. Russell

Thomas I. Russell
Chief, Branch 1
Office of Associate Chief Counsel (Corporate)

cc: