

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-125350-20

Date:

February 25, 2021

Legend

Taxpayer =

Parent =

Corporation A =

Corporation B =

Individual A =

Individual B =

Individual C =

Opco =

Hybrid Entity =

Accounting Firm =

Date 1 =

Date 2 =

Date 3 =

Dear _____ :

This responds to your letter dated October 30, 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”)¹ for Taxpayer’s first taxable year.

Facts

Taxpayer is a corporation owned one-half by Corporation A, with Corporation B owning a larger minority stake and Individuals A and B owning much smaller minority stakes.

Parent is an S corporation. Parent is owned by electing small business trusts and by grantor trusts. All of the trusts and ultimate individual beneficiaries are U.S. tax residents. Individual A is the grantor of some of the grantor trusts, Individual B is the grantor of others of the grantor trusts, and Individual C is the grantor of the rest of the grantor trusts.

Corporation A is a C corporation directly owned by Parent. Corporation B is a qualified subchapter S subsidiary directly owned by Parent.

Corporation A owns a group of entities that are disregarded as separate from Corporation A (and thereby also from one another) for U.S. federal income tax purposes. This group of disregarded entities manufactures and/or exports fabricated metal products, and, pursuant to a commission agreement, pays commissions to Taxpayer with respect to the exporting. All of these disregarded entities, including one that is the parent of the disregarded group (which we call “Opco” for this ruling letter), are domestic, except that Hybrid Entity is foreign and regarded as a separate tax entity by its country of residence. Some of the products are manufactured by Opco and the other disregarded entities; others are manufactured by third parties. Some of the customers are related parties and others are unrelated.

Individual A is the president and a director of Opco, and also a director of each of the other disregarded entities. Individual B is a director of Opco. Individual C is an officer of Parent, Corporation A, and Opco, and a director of those corporations, Corporation B, Opco, and some of the other disregarded entities.

Corporation A, Corporation B, Individual A, and Individual B engaged Accounting Firm to provide tax planning advice, including in connection with potential use of a DISC. These corporations and individuals also engaged legal and other financial professionals to set up the contemplated DISC and associated arrangements. As a part of this process, the corporations, individuals, and advisors discussed the requirement that Form 4876-A be filed within 90 days of the beginning of a DISC’s first taxable year to be effective from inception. However, a final step of assigning the preparation of that form was not taken.

¹ 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).

On Date 1, a few months later, the corporations and individuals incorporated Taxpayer, intending that it would elect to be treated as a DISC. An export commission agreement among Taxpayer, Opco, and its disregarded entities, which cited the DISC regime, was also put in place. However, the Form 4876-A was not prepared around Taxpayer's incorporation, and the omission went unnoticed until the due date for filing the form to be effective as of that time had passed.

On Date 2, the next year, Accounting Firm was preparing to file Taxpayer's initial Form 1120-IC-DISC, "Interest Charge Domestic International Sales Corporation Return," and requested a copy of Form 4876-A that it expected had been filed for Taxpayer. But Taxpayer and Accounting Firm soon discovered that the form inadvertently had never been filed.

Over the next several weeks, Taxpayer and Accounting Firm discussed the problem, had Accounting Firm prepare the extension request that is the subject of the letter, and filed a Form 1120-IC-DISC for Taxpayer's first taxable year by the due date for that form, attaching a statement that Taxpayer was seeking the extension.

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.

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.

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.

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.

Treasury Regulation § 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 90 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. In particular, no opinion is expressed or implied as to whether the commissions (or portions thereof) paid to Taxpayer by Opco may constitute taxable gifts. See, e.g., Rev. Rul. 81-54, 1981-1 C.B. 476.

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 each of your authorized representatives.

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,

Frank W. Dunham III
Branch Chief
(International)

cc: