

**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-128784-20

Date:  
April 07, 2021

**Legend**

- Taxpayer =
- Accounting Firm =
- Company =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Individual A =
- Individual B =
- Individual C =
- Individual D =
- Individual E =
- Individual F =
- Individual G =
- Individual H =
- Individual I =
- Individual J =
- Individual K =

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

This responds to a letter dated November 16, 2020, supplemented by additional correspondence dated February 11, 2021, and February 25, 2021, submitted by your representatives 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”) for Year 1, Taxpayer’s first taxable year.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and accompanied by affidavits and penalty of perjury statements executed by appropriate parties. This office has not verified any of the materials submitted in support of the request for a ruling. It is subject to verification on examination.

### **FACTS**

On Date 1, Taxpayer was incorporated to operate as an interest charge domestic international sales corporation (“IC-DISC”). Taxpayer is a domestic corporation that is wholly owned by Company. Company is an S corporation owned by Individual A, Individual B, Individual C, Individual D, Individual E, Individual F, Individual G, Individual H, Individual I, Individual J, and Individual K. Individual A is President of Taxpayer.

Taxpayer established a commission arrangement with Company on Date 1. Under the commission arrangement, Taxpayer receives commission payments related to the Company’s sales outside the U.S. Upon its incorporation on Date 1, Taxpayer immediately began operating as if it had a valid IC-DISC election in effect. Taxpayer maintained its own bank account and maintained separate books and records to record IC-DISC transactions starting on Date 1.

Taxpayer formed as a result of advice from Accounting Firm. Accounting Firm prepared Form 4876-A, Election to Be Treated as an Interest Charge DISC, with an effective date of Date 1, and provided it to Individual A and Taxpayer’s Controller via email on Date 2. Individual A signed Form 4876-A shortly after receipt. Individual A mistakenly believed that Form 4876-A was submitted by Taxpayer’s Controller. Taxpayer’s Controller mistakenly believed that Form 4876-A was submitted by Individual A. Accordingly, Form 4876-A was signed, but not submitted to the Service. Taxpayer believed that all requirements to conduct business and be treated as an IC-DISC for its first taxable year were satisfied.

Even though Taxpayer had assumed that all the necessary requirements to conduct business as an IC-DISC were satisfied, it did not qualify as an IC-DISC for federal income tax purposes because it did not timely file a Form 4876-A with the Service within 90 days of Date 1. Taxpayer represents that it did not realize this error until after Taxpayer filed a Form 1120-IC-DISC tax return for the year ending Date 3 and received a notice from the Service dated Date 4 stating that the Service had not received a valid Form 4876-A with respect to Taxpayer. Taxpayer asked Accounting Firm to assist it in

addressing the Service's notice. Accounting Firm had several communications with Taxpayer and discovered that Taxpayer had failed to file Form 4876-A.

### **LAW AND ANALYSIS**

Section 992(b)(1)(A) provides that an election by a corporation to be treated as a DISC<sup>1</sup> 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) 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.

Temp. Treas. Reg. § 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.

Treas. Reg. § 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.

Treas. Reg. § 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.

Treas. Reg. § 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.

In the present situation, the election described in Temp. Treas. Reg. § 1.921-1T(b)(1) is a regulatory election as defined in Treas. Reg. § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant

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<sup>1</sup> As used in this letter, the terms "IC-DISC" and "DISC" have the same meaning.

Taxpayer an extension of time, provided that Taxpayer satisfies the standards for relief set forth in Treas. Reg. § 301.9100-3.

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). Taxpayer should attach a copy of this ruling letter to its Form 4876-A and Federal income tax return for the taxable years to which this letter applies.

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. 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.

Sincerely,

Angela E. Holland  
Senior Counsel, Branch 6  
(International)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes

cc: