

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202144008**

Release Date: 11/5/2021

Index Numbers: 9100.00-00, 9100.31-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B3
PLR-103016-21

Date:
August 06, 2021

Legend:

X:

Country:

Date 1:

Date 2:

Dear :

This letter responds to a letter dated February 1, 2021, and subsequent correspondence submitted on behalf of X by its authorized representative, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election under § 301.7701-3(c) to be classified as a partnership for federal tax purposes.

FACTS

The information submitted states that X was formed under the laws of Country on Date 1 and become relevant for U.S. tax purposes on Date 2. X represents that it is a foreign entity eligible to elect to be classified as a partnership. However, X failed to timely file Form 8832, Entity Classification Election, electing to be classified as a partnership effective Date 2.

LAW AND ANALYSIS

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7) or (8) (an eligible entity) can elect its classification for federal tax purposes as provided in § 301.7701-3. Under § 301.7701-3(a), an eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership.

Section 301.7701-3(b)(2)(i)(B) provides that, unless an entity elects otherwise, a foreign eligible entity is an association if all members have limited liability. Section 301.7701-3(b)(2)(ii) provides that a member of a foreign eligible entity has limited liability if the member has no personal liability for the debts of or claims against the entity by reason of being a member.

Section 301.7701-3(c)(1)(i) provides that an eligible entity may elect to be classified other than as provided in § 301.7701-3(b), or to change its classification, by filing a Form 8832 with the service center designated on the Form 8832.

Section 301.7701-3(c)(1)(iii) provides that an election made under § 301.7701-3(c)(1)(i) will be effective on the date specified by the entity on Form 8832 or on the date filed, if no date is specified on the election form. The effective date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed.

Section 301.7701-3(d)(1)(i) provides that a foreign eligible entity's classification is relevant when its classification affects the liability of any person for federal tax or information purposes.

Section 301.7701-3(d)(2) provides that if the classification of a foreign eligible entity the classification has never been relevant (as defined in § 301.7701-3(d)(1)), then the entity's classification will initially be determined pursuant to the default classification provisions of § 301.7701-3(b)(2) when the classification of the entity first becomes relevant (as defined in § 301.7701-3(d)(1)(i)).

Section 301.9100-1(c) provides that the Commissioner may 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 (Code), except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term "regulatory election" as including an election whose due date is prescribed by a regulation published in the Federal Register.

Sections 301.9100-1 through 301.9100-3 provide the standards that the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides rules for requesting extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2.

Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) the grant of relief will not prejudice the interests of the Government.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, X is granted an extension of time of 120 days from the date of this letter to file Form 8832 with the appropriate service center to elect to be classified as a partnership for federal tax purposes effective Date 2. A copy of this letter should be attached to the Form 8832.

This ruling is contingent on X and the owners of X filing within 120 days from the date of this letter all required federal income tax returns and information returns (including amended returns) for all open years consistent with the requested relief granted by this letter. These returns may include, but are not limited to, the following forms: (i) Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations, (ii) Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships, and (iii) Form 8858, Information Return of U.S. Persons With Respect to Foreign Disregarded Entities and Foreign Branches, such that these forms reflect the consequences of the relief granted in this letter. A copy of this letter should be attached to any such returns.

If applicable, X's election to be classified as a partnership effective Date 2 is disregarded for purposes of determining the amounts of all section 965 elements of all United States shareholders of X if the election otherwise would change the amount of any section 965 element of any such United States shareholder. See § 1.965-4(c)(2) of the Income Tax Regulations.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In addition, § 301.9100-1(a) provides that the granting of an extension of time for making an election is not a determination that the taxpayer is otherwise eligible to make the election.

In addition, we express no opinion concerning the assessment of any interest, additions to tax, additional amounts, or penalties for failure to file a timely income tax or information return with respect to any taxable year that may be affected by this ruling. For example, we express no opinion as to whether a taxpayer is entitled to relief from any penalty on the basis that the taxpayer had reasonable cause for failure to file timely any income tax or information returns.

The ruling contained in this letter is 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 ruling request, it is subject to verification on examination.

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, we are sending a copy of this letter to your authorized representatives.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

/s/ Adrienne M. Mikolashek

By: _____

Adrienne M. Mikolashek
Branch Chief, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter

Copy of this letter for § 6110 purposes

cc: