Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
Telephone Number:

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PLR-107910-21

Date:
October 01, 2021

Legend

Company A	=
Company B	=
Company C	=
Company D	=
Company E	=
Company F	=
Company G	=
Country 1	=
Country 2	=
State X	=
Business 1	=
Business 2	=
Business 3	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
Consultant	=
Law Firm	=
Date A	=

Dear :

This is in response to a letter dated March 16, 2021, in which you request, through your authorized representative, an extension of time pursuant to § 301.9100-1 of the Procedure and Administration Regulations to file the notice of election described in Section 3 of Revenue Procedure 93-40,1993-2 C.B. 535 (“Rev. Proc. 93-40”) to be treated as operating qualified separate lines of business (“QSLOBs”) under section 414(r)(2) of the Internal Revenue Code (“Code”).

FACTS

The following facts and representations have been submitted under penalties of perjury in support of your ruling request.

Company A is a Country 1 company. Company A is the parent company of various direct and indirect subsidiaries, including Company B. Company C is a State X corporation and an indirect subsidiary of Company A. Most of Company A's U.S. subsidiaries are organized as subsidiaries under Company C, (the Company C Group). Such subsidiary companies include Company D and Company E. Company B is not one of the U.S. subsidiaries in the Company C Group.

Company F, a Country 2 entity, is a wholly-owned subsidiary of Company A. There are several companies organized as direct and indirect subsidiaries under Company F, including Company B and its parent company, Company G, a Country 2 entity. Company B is the only U.S.-incorporated company among such subsidiaries of Company F. Company B is a State A limited liability company, a wholly-owned subsidiary of Company G. Company B contracts with the U.S. Government to provide certain services. Company B performs U.S. Government work that requires U.S. facility and/or security clearance; i.e., Company B's services involve either U.S. classified information and/or the personnel working on Company B contracts must possess a U.S. security clearance. As such, Company B operates pursuant to a comprehensive Foreign Ownership Control and Influence ("FOCI') mitigation framework to ensure protections for U.S. Government classified and unclassified controlled information.

Company A maintains three lines of business: Business 1, provided by Company B; Business 2, provided by Company A’s other direct and indirect subsidiaries; and Business 3, operated by Company A. Several of Company A's subsidiaries, including Company D, Company E, and other subsidiaries organized under Company C as well as Company B, have locations and employees in the United States. Company B maintains offices and training facilities in the United States, although its operations for the U.S. Government are located and performed primarily outside of the United States. In contrast, Company A's other U.S. entities, such as Company D and Company E, operate almost exclusively within the U.S. Company A treats Company B as a single line of business due to the nature of Company B's business, which is significantly different from that of Business 1 and Business 2.

Company A acquired Company G in Year 1 pursuant to a share purchase agreement (the Acquisition). The Acquisition included Company B, which has remained a wholly owned subsidiary of Company G since the Acquisition. Due to its FOCI certification, Company B is required to be walled off from Company A and the other companies in Company A's controlled group, and to maintain additional protections against foreign influence or control. All Company B employees, including all management personnel, generally work exclusively for Company B except for rare situations where Company B may be required to provide support to an affiliate. However, on these occasions, Company B employees remain under Company B' s control, are paid by Company B, and must go through an approval process involving Company B's Government Security Committee as well as the U.S. Defense Counterintelligence and Security Agency ("DCSA"). Company B maintains its own financial and accounting systems human resources system and procedures. Company B maintains its own section 401(k) plan which benefits only the employees of Company B.

For purposes of DCSA and FOCI clearance, Company B must institute various controls in its operations, including maintaining the following: (1) a board of directors separate from Company A with a number of DCSA-approved independent outside directors that outnumber the inside directors; (2) a special Government Security Committee made up of only the outside directors that manage the overall FOCI compliance regime and who must report directly to DCSA; (3) separate employees that do not work for or report to, and are not controlled by, any affiliate of the Operating Parent; (4) separate communication systems (email, phones, etc.) with. regular monitoring of communications with the Company A Group to ensure that no control or influence is exercised over Company B employees by any affiliate; and (5) an approval process via the Government Security Committee for any in-person visits, meetings, and other interactions between Company B and the members of Company A's controlled group.

Prior to the Acquisition, Company B sponsored and maintained a section 401(k) plan (the Company B Plan). Due to the unique nature of its business and its workforce, Company B has continued to maintain the Company B Plan exclusively for the benefit of Company B employees. Because Company B operated its own business, was required to maintain a mostly separate existence from the Company A Group, and maintained the Company B Plan for the benefit of its own employees only, the nondiscrimination tests with respect to the Company B Plan for Year 1 (the year of the Acquisition), Year 2, and Year 3, were not performed on a controlled group basis, and thus did not take into account the other companies in the Company A Group. When the nondiscrimination tests were performed taking into account only Company B, all tests were passed.

In Year 4 or Year 5, Company D advised Company B that the Company B Plan had to be tested on a controlled group basis starting with the Year 3 plan year. For Year 1 and Year 2, Company B could rely on the transition rule in Section 410(b)(6)(C) to pass the testing.

In Year 5, Company B engaged Consultant for additional support on nondiscrimination testing for the Company B Plan. Consultant was informed that Company B was part of the Company B Group controlled group of companies. When the nondiscrimination testing was performed by Consultant on a controlled group basis, the Company B Plan failed the 410(b) Ratio Percentage Test for the Year 3 plan year. After discovering and investigating the testing failure, Law Firm was engaged by Company E to advise on whether Company B constituted a QSLOB such that the Company B Plan could apply the requirements of Sections 410(b) and 401(a)(4) separately with respect to the employees of Company B.

In December of Year 5, Law Firm advised Company B that it could meet the safe harbor under § 1.414(r)-5(d) of the Income Tax Regulations and rely on it during the period allowed under such regulations. Law Firm also advised that Form 5310-A, Notice of Qualified Separate Lines of Business ("Form 5310-A"), should have been filed with the Internal Revenue Service (IRS) by Date A to effectively make the QSLOB election for the Year 2 testing year. Company B informed Law Firm that Form 5310-A had not been filed with the IRS. Law Firm then advised Company B that an extension of time to file Form 5310-A could be requested pursuant to § 301.9100-1, effective for the Year 2 testing year and the transition period.

RULING REQUEST

Company A requests a ruling that the IRS grant an extension of time pursuant to § 301.9100-1 to file updated Forms 5310-A for Year 2, to reflect the treatment of Company B as separate line of business for QSLOB purposes. Company A has requested this relief under § 301.9100-1 prior to the IRS discovery of any failure to file the election. Company A also represents that, other than the filing of Form 5310-A, the Company B plan satisfied all the requirements of section 414(r) and the regulations thereunder for Year 2.

LAW AND ANALYSIS

In general, section 414(r) provides that, for purposes of sections 129(d)(8) and 410(b), an employer shall be treated as operating separate lines of business during any year if the employer operates separate lines of business for bona fide business reasons and satisfies certain other conditions under the Code. If the employer is treated as operating QSLOBs for the year, the employer may apply the minimum coverage requirements of section 410(b) (including the nondiscrimination requirements of section 401(a)(4) and the minimum participation requirements of section 401(a)(26)) separately with respect to the employees in each QSLOB.

Section 414(r)(2)(B) requires that an employer notify the Secretary of the Treasury that a line of business is being treated as separate for purposes of sections 129(d)(8) and 410(b).

Section 3 of Rev. Proc. 93-40 sets forth the exclusive rules for satisfying the notice requirement of section 414(r)(2)(B). Section 3.03 of Rev. Proc. 93-40 provides that notice must be given by filing Form 5310-A. Section 3.05 of Rev. Proc. 93-40 provides that notice for a testing year must be given on or before the Notification Date for the testing year. The Notification Date for a testing year is the later of October 15 of the year following the testing year or the 15th day of the 10th month after the close of the plan year of the plan of the employer that begins earliest in the testing year. Section 3.06 of Rev. Proc. 93-40 provides that after the Notification Date, notice cannot be modified, withdrawn or revoked, and will be treated as applying to subsequent testing years unless the employer takes timely action to provide a new notice.

Section 301.9100-1(a) states that the regulations under §§ 301.9100-1, 301.9100-2, and 301.9100-3 provide the standards the IRS will use to determine whether to grant an extension of time to make a regulatory election. It further provides that the granting of an extension of time is not a determination that the taxpayer is otherwise eligible to make the election.

Section 301.9100-1(b) defines a “regulatory election” to mean an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. Notice that an employer elects to be treated as operating QSLOBs pursuant to section 414(r) and section 3 of Rev. Proc. 93-40 constitutes a regulatory election.

Section 301.9100-1(c) provides that the IRS, in its discretion, may grant a reasonable extension of time under the rules of §§ 301.9100-2 and 301.9100-3 to make a regulatory election.

Section 301.9100-2 lists certain elections for which automatic extensions of time to file are granted. Section 301.9100-3 generally provides guidance with respect to the granting of relief with respect to those elections not referenced in § 301.9100-2. The relief requested in this case is not referenced in § 301.9100-2.

Section 301.9100-3(a) provides that applications for relief that fall within § 301.9100-3 will be granted when the taxpayer provides sufficient evidence (including affidavits described in § 301.9100-3(e)(2)) to establish that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief would not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides that a taxpayer will be deemed to have acted reasonably and in good faith if (i) the taxpayer’s request for relief under this section is filed before the failure to make a timely election is discovered by the IRS; (ii) the taxpayer inadvertently failed to make the election because of intervening events beyond the taxpayer’s control; (iii) the taxpayer failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) the taxpayer reasonably relied upon the written advice of the IRS; or (v) 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.

Section 301.9100-3(c)(1)(ii) provides that ordinarily the interests of the Government will be treated as prejudiced and that ordinarily the IRS will not grant relief when tax years that would have been affected by the election had it been timely made are closed by the statute of limitations before the taxpayer's receipt of a ruling granting relief under this section.

Company A represents that (i) this request for relief is being filed before the IRS discovered the failure to file Form 5310-A, (ii) Company A inadvertently failed to make the filing because, after exercising reasonable diligence (through the companies in the controlled group), it was unaware of the necessity for filing Form 5310-A, and (iii) Company A (through the companies in its controlled group) reasonably relied on third-party advisors for advice on plan administration and none of the service providers advised Company A to make the QSLOB election by filing Form 5310-A. Thus, Company A satisfies clause (i), (iii), and (v) of § 301.9100-3(b)(1). Furthermore, although some of the tax years at issue are closed under the statute of limitations, there is no statute of limitations for plan qualification issues, including nondiscrimination concerns. In addition, you represent that neither Company A nor Company B will have a lower tax liability than it otherwise would have if the election had been timely filed, and there are no tax consequences for any taxpayer on account of the election. Thus, the interests of the Government would not be prejudiced by providing the requested relief.

RULING

Accordingly, Company A is granted an extension of 60 days from the date of the issuance of this ruling letter to file notification of the QSLOB elections on Forms 5310-A for Year 2, with the appropriate office of the IRS.

No opinion is expressed as to whether the separate lines of business of the taxpayer satisfy the requirements under section 414(r).

The rulings contained in this letter do not constitute a determination that a separate line of business satisfies the requirement of administrative scrutiny within the meaning of § 1.414(r)-6.

PROCEDURAL STATEMENTS

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, as specified in Rev. Proc. 2021-1, 2021-1 I.R.B. 1, section 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation

retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2021-1, section 11.05.

No opinion is expressed as to the tax treatment of the transaction described herein under any other provisions of the Code or regulations that may be applicable thereto. This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative in accordance with a power of attorney on file with this office.

Sincerely,

/s/ Neil Sandhu

Neil Sandhu
Senior Technician Reviewer
Qualified Plans, Branch 1
(Employee Benefits, Exempt Organizations, and Employment Taxes)

cc: