

Internal Revenue Service

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Person To Contact: _____, ID No.

Telephone Number: _____

Refer Reply To:
CC:PSI:B01
PLR-129070-20

Date:
May 28, 2021

LEGEND

X =

Y =

Country 1 =

Country 2 =

Date 1 =

Date 2 =

A =

Dear _____ :

This letter responds to a letter dated September 8, 2020, and subsequent correspondence, submitted on behalf of X and Y by their authorized representatives,

requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election under § 301.7701-3 to be classified as entities disregarded as separate from their owner for federal tax purposes effective Date 1 and Date 2, respectively.

FACTS

The information submitted states that X was formed under the laws of Country 1 on Date 1, and that Y was formed under the laws of Country 2 on Date 2. Both X and Y were indirectly and wholly owned by A at all relevant times. Both X and Y were foreign entities eligible to elect to be classified as disregarded entities for federal tax purposes. However, due to inadvertence, a Form 8832, Entity Classification Election, was not timely filed for either X or Y to be classified as an entity disregarded from their owners.

LAW

Section 301.7701-3(a) provides, in part, 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. 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, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(2)(i) provides that, except as provided in § 301.7701-3(b)(3), unless the entity elects otherwise, a foreign eligible entity is (A) a partnership if it has two or more members and at least one member does not have limited liability; (B) an association if all members have limited liability; or (C) disregarded as an entity separate from its owner if it has a single owner that does not have limited liability.

Section 301.7701-3(b)(2)(ii) provides, in part, that for purposes of § 301.7701-3(b)(2)(i), 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, in part, that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b), or to change its classification, by filing Form 8832 with the service center designated on 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 such 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. If an election specifies an effective date more than 75 days prior to the date on which the election is filed, it will be effective 75 days prior to the date it was filed.

Section 301.9100-1(c) provides that the Commissioner in exercising the Commissioner's discretion may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but not more than 6 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) provides that the term "regulatory election" includes an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-2 provides the standards the Commissioner will use to determine whether to grant an automatic extension of time for making certain elections.

Section 301.9100-3 provides the guidelines for granting extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 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 the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that both X and Y have satisfied the requirements of §§ 301.9100-1 and 301.9100-3. As a result, we grant both X and Y extensions of time of one hundred twenty (120) days from the date of this letter to file Forms 8832 with the appropriate service center to elect to be classified as disregarded entities effective Date 1 and Date 2, respectively. A copy of this letter should be attached to each Form 8832.

This ruling is contingent on X, Y, and A filing within 120 days of this letter all required returns for all open years consistent with the requested relief. 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, 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, the elections to classify X and Y as disregarded entities are disregarded for purposes of determining the amounts of all section 965 elements of all United States shareholders of X or Y 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).

If not for inadvertence, X and Y would have made the elections to be treated as disregarded entities as of the election due dates regardless of the enactment of the Tax Cuts and Jobs Act (TCJA) and the issuance of regulations relating to the TCJA.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. 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.

No opinion is expressed or implied about the federal income tax consequences of any other aspect of any transaction, such as the transaction described in footnote 3 of the ruling request, or item discussed or referenced in this letter, or the federal income tax treatment of any conditions existing at the time of, or effects resulting from, transactions that are not specifically covered by the above ruling.

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.

We are directing the ruling only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter ruling to your authorized representatives.

Sincerely,

Joy Spies

Joy Spies

Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter for section 6110 purpose

cc: