

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:INTL:B04  
PLR-105091-24

Date:  
August 20, 2024

Legend

X =

FDE1 =

FDE2 =

Country =

Date 1 =

Date 2 =

State =

Dear :

This responds to a letter dated February 14, 2024, 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 elect to treat a transfer of operating intangibles by X to FCorp1 (as defined below) as a sale pursuant to §§ 1.367(d)-1T(g)(2) and 1.367(d)-1(g)(2)(i), effective for the tax year including Date 2 (the “Deemed Sale Election”).

Facts

X is a domestic corporation organized under the laws of State. On Date 1, X formed FDE1, a Country company that was disregarded as an entity separate from its owner for federal tax purposes at the time of its formation. On Date 1, FDE1 acquired all the interests of FDE2, a Country company that was disregarded as an entity separate from its owner for federal tax purposes, for cash from an unrelated seller.

FDE1 filed Form 8832, Entity Classification Election, to be treated as an association (and thus a corporation under § 301.7701-2(b)(2)) for federal tax purposes as of Date 2 (the “CTB Election”). Following the CTB Election, FDE1 is referred to as “FCorp1.” As a result of the CTB Election, X was treated as contributing all of the assets and liabilities of FDE1 to FCorp1 in exchange for stock of FCorp1 under § 301.7701-3(g)(1)(iv). X intended this contribution to be treated as a section 351(a) exchange.

At the time of the CTB Election, FDE1 held no assets other than the interests of FDE2 acquired on Date 1. The assets of FDE1 that are deemed transferred as a result of the CTB Election therefore are comprised of FDE2’s assets, which included “operating intangibles” (as defined in § 1.367(a)-1(d)(6)). X determined that its basis in the deemed transferred assets equaled the fair market value of the assets at the time of the deemed transfer resulting from the CTB Election.

An external accounting firm assisted X with analyzing the tax consequences of the acquisition of FDE2 by FDE1 and the CTB Election, and in the preparation of X’s tax return for the year including Date 2, including a Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation. The Form 926 prepared by the accounting firm and filed by X noted the outbound transfer of intangible property to FCorp1, the total fair market value and basis of such property, and an income inclusion for the year under section 367(d) of zero. However, the Form 926 did not identify any of the intangible property as “operating intangibles” nor did it indicate a Deemed Sale Election was made. Further, the accounting firm did not advise X to make the Deemed Sale Election on its tax return.

### Law

Section 367(d) provides that if a U.S. person transfers any intangible property to a foreign corporation in an exchange described in section 351, the U.S. person is treated as having sold the property in exchange for payments that are contingent upon the productivity, use, or disposition of the property.

Section 1.367(d)-1T(g)(2) provides that a U.S. person that transfers intangible property to a foreign corporation in a transaction subject to section 367(d) may instead elect to recognize gain in the year of the transfer as ordinary income in an amount equal to the difference between the fair market value of the intangible property transferred and its adjusted basis, if the U.S. person meets certain requirements. Under § 1.367(d)-

1(g)(2)(i), the requirements of § 1.367(d)-1T(g)(2) are met if the intangible property transferred constitutes an operating intangible, as defined in § 1.367(a)-1(d)(6).

A taxpayer makes an election under § 1.367(d)-1T(g)(2) by notifying the Internal Revenue Service of the election in accordance with the requirements of section 6038B and regulations thereunder, and subsequently including the appropriate amounts in gross income in a timely filed tax return for the year of the transfer.

Section 6038B and the regulations thereunder require U.S. persons to report transfers subject to section 367(d) on Form 926. Section 1.6038B-1(c)(6)(iv) specifically requires reporting of the adjusted basis of transferred intangible property and that items of intangible property be separately identified, including intangible property described in § 1.367(d)-1(g)(2)(i). Form 926 instructs taxpayers to include gain recognized as a result of an election under § 1.367(d)-1T(g)(2) in the income inclusion for the year of transfer that is required to be entered for each identified transferred intangible.

Section 301.9100-1(a) provides that §§ 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic extensions covered in § 301.9100-2) will be granted when the taxpayer provides evidence (including affidavits) to establish that the taxpayer acted reasonably and in good faith and the grant of relief will not prejudice the interests of the Government.

Under § 301.9100-3(b), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief before the failure to make the regulatory election is discovered by the Service, or reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election. However, a taxpayer is not considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not competent to render advice on the regulatory election or was not aware of all relevant facts.

In addition, § 301.9100-3(b)(3) provides that a taxpayer is deemed not to have acted reasonably and in good faith if the taxpayer—

- (i) Seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief, and the new position requires or permits a regulatory election for which relief is requested;
- (ii) Was fully informed in all material respects of the required election and related tax consequences but chose not to make the election; or
- (iii) Uses hindsight in requesting relief. If specific facts have changed since the original deadline that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief.

Section 301.9100-3(c)(1) provides that the Commissioner will grant a reasonable extension of time to make the regulatory election only when the interests of the Government will not be prejudiced by the granting of relief.

Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

Section 301.9100-3(c)(1)(ii) provides that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable year that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

### Representations

X represents that it acted reasonably and in good faith, and that the interests of the government will not be prejudiced by granting relief.

In addition, X makes the following representations:

1. The transfer of the assets of FDE1 to FCorp1 resulting from the CTB Election qualifies as an exchange under section 351 of the Code.
2. The assets deemed transferred to FCorp1 as a result of the CTB Election include "operating intangibles" as defined in § 1.367(a)-1(d)(6).
3. X's basis in the assets of FDE1 as of the date of the CTB Election equaled its fair market value of the assets of FDE1 on the date of deemed transfer resulting from the CTB Election.

### Conclusion

Based solely on the facts submitted and representations made, we conclude that X has satisfied the requirements of §§ 301.9100-1 and 301.9100-3.

Accordingly, X is granted an extension of time of 120 days from the date of this letter to make the Deemed Sale Election. X should make the election by filing an amended tax return consistent with the requested relief with the appropriate service center, and a copy of this letter should be attached to the filing.

This ruling is contingent on X filing within 120 days of the date of this letter amended returns for all open years consistent with the requested relief. These returns may include, but are not limited to Forms 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations, such that these forms reflect the

consequences of the relief granted in this letter. A copy of this letter ruling should be attached to any such returns.

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, including any consequences to any person under section 482 and the source under sections 861 through 865 of any gain recognized on the Deemed Sale Election. In addition, § 301.9100-1(a) provides that the granting of an extension of time for making an election is not a determination that a taxpayer is otherwise eligible to make the election.

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 the 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) 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 your authorized representative.

Sincerely,

Robert Williams Jr  
Senior Counsel, Branch 4  
(International)

cc: