

Part 301

Section 7701 Definitions

26 CFR 301.7701-2: Business entities; definitions

Rev. Rul. 2006-3

ISSUE

Will a Japanese Yugen Kaisha business entity (“YK”) that becomes a Japanese Tokurei Yugen Kaisha business entity (“TYK”) pursuant to the Kaisha Ho, Law No. 86 of 2005 (Company Law) and the Seibi Ho, Law No. 87 of 2005 (the Law Concerning the Coordination, Etc., of Associated Laws in Connection with the Enforcement of the Companies Law) (Coordination Law), as promulgated on July 26, 2005, remain an eligible entity for purposes of § 301.7701-1 through 3 of the Procedure and Administration Regulations?

FACTS

On July 26, 2005, the Japanese Diet reorganized Japanese corporate law through the promulgation of the Company Law and the Coordination Law, which were passed on June 29, 2005. Pursuant to the Coordination Law, the YK will be abolished as a Japanese corporate entity. All YKs in existence as of the effective date of the Coordination Law will continue as TYKs, a special type of Kabushiki Kaisha business

entity (“KK”) under the Company Law. The effective date of these laws will be determined by a Cabinet enforcement order; however, the provisions will be effective no later than January 26, 2007. After the effective date of the new laws, no new YKs or TYKs may be formed.

LAW AND ANALYSIS

Section 301.7701-2(a) defines the term “business entity” as any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner under § 301.7701-3) that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Code. A business entity with two or more members is classified for federal tax purposes as either a corporation or a partnership. A business entity with only one owner is classified as a corporation or is disregarded. However, § 301.7701-2(b)(8) provides that certain foreign business entities are always classified as corporations for federal tax purposes (per se corporations). Under § 301.7701-2(b)(8), a KK is a per se corporation. Further, a YK is an eligible entity, for which an entity classification election can be made under § 301.7701-3.

Based on the Company Law and Coordination Law promulgated on July 26, 2005, TYKs are not per se corporations described in § 301.7701-2(b)(8) and will be classified in the same manner as YKs were prior to the effective date of the new Japanese corporate law. Therefore, a YK that becomes a TYK will remain an eligible entity for purposes of § 301.7701-1 through 3.

HOLDING

A Japanese YK that becomes a Japanese TYK, pursuant to the Company Law and the Coordination Law, as promulgated on July 26, 2005, will remain an eligible entity for purposes of § 301.7701-1 through 3.

DRAFTING INFORMATION

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