Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:
    June 01, 2000

Legend:

A   =

B   =

C   =

D   =

E   =

F   =

G   =

D1   =

D2   =

D3   =

aa%   =

bb%   =

cc%   =

dd%   =

ee%   =

ff%   =

Country =

This responds to your letter dated December 15, 1999, and subsequent correspondence, submitted on behalf of G requesting an extension of time pursuant to §301.9100-3(a) of the Procedure and Administration Regulations to file an election for G to be classified as a partnership for federal tax purposes under § 301.7701-3(c).

FACTS

A is a domestic corporation which wholly owns B, a domestic corporation. B owns all the stock of C, a domestic corporation. C holds interests in two foreign entities, E and F, which were formed under the laws of Country on D1 and D2, respectively. E and F are treated as partnerships for federal tax purposes. D is an unrelated corporation, formed under the laws of Country. C and D are the only partners in E and F. Before the restructuring described below, C held an aa% interest in E and a bb% interest in F, while D held a cc% interest in E and a dd% interest in F.

In order to provide a more efficient and effective means to raise capital for use in the operations in Country, E and F decided to engage in a restructuring transaction which would consolidate the operations of the two companies. On D3, pursuant to the restructuring transaction, C purchased for cash a portion of D's interest in E and F. After the purchase, C had increased its interest in each partnership to ee% and reduced D's interest in each partnership to ff%. Thereafter, E and F each transferred all of their assets to G, an entity formed under the laws of Country in exchange for ownership interests in G.

Taxpayer represents that C, E and F intended for G to make an election to be treated as a partnership for federal tax purposes, effective on D3. The need for an election was communicated with the tax personnel of C on several occasions. Due to oversight, the election to treat G as a partnership was not made.

G represents that it is a foreign eligible entity within the meaning of § 301.7701-3(b).

LAW AND ANALYSIS

Section 301.7701-3(b)(1) provides guidance on the classification of foreign eligible

entities for federal tax purposes. In the absence of an election to be treated as a partnership, a foreign eligible entity with more than one owner is treated as an association taxable as a corporation if all of the members of the entity have limited liability.

Under § 301.7701-3(c)(1), a foreign eligible entity may elect to be classified other than as provided under § 301.7701-3(b)(2) by filing a Form 8832, Entity Classification Election, with the designated service center. An election under § 301.7701-3(b) can be effective on the date specified on the Form 8832 or on the date filed. The effective date specified on the Form 8832 cannot be more than 75 days prior to the date on which the election is filed.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time, under the rules set forth in §§ 301.9100-2 and 301.9100-3, to make a regulatory election. Section 301.9100-1(b) defines a 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 standards 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 extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

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. Accordingly, G is granted an extension of time to make the election to have it treated as a partnership for federal tax purposes, effective D3, until 60 days following the date of this letter. The election should be made by following the procedure set forth in Form 8832 and a copy of this letter should be attached to the election.

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. Specifically, no opinion is expressed concerning the tax consequences of the restructuring transaction or the applicability of § 1503(d) (regarding the disallowance or recapture of a "dual consolidated loss").

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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, a copy of this letter is being sent to the taxpayer.

Sincerely,

/signed/Paul F. Kugler

Paul F. Kugler
Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
     Copy of this letter
     Copy for § 6110 purposes