

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:PSI:1 – PLR-104138-03

Date:

Nov 17 2003

LEGEND

X =

Y =

Z =

Country =

D1 =

D2 =

Dear

This responds to letters dated January 9, 2003, and May 1, 2003, and subsequent correspondence, submitted on behalf of X and Z, requesting a ruling that X be granted an extension of time pursuant to §301.9100-3 of the Procedure and Administration Regulations in which to elect to be treated as a disregarded entity under §301.7701-3(c). In addition, Y requests an extension of time, for purposes of §1.897-2(g)(1)(ii)(A) of the Income Tax Regulations, for X to obtain a statement described in §1.897-2(h)(1) from Z that the stock interest in Z is not a U.S. real property interest.

FACTS

According to the information submitted, X was validly formed under the laws of Country on D1. At that time Y was a member of a consolidated group, and Y indirectly owned 100 percent of X. Y subsequently was spun off from the consolidated group. As a result of a legal entity organizational chart given to Y by the consolidated group's tax department, Y mistakenly believed X to be a disregarded entity for federal tax purposes. When it came to X and Y's attention that a Form 8832 had not been filed for X, relief under §301.7701-3 was requested to make the election retroactive to D2.

Z is owned by X. The change in status of X by the entity classification election would result in a deemed liquidation of X, and a transfer of its assets, including the stock of Z, a domestic corporation, to X's parent. Because the stock interest in Z is deemed to be distributed by X upon its deemed liquidation, at X's request Z would be required to inform X as to whether the stock interest in Z is a U.S. real property interest. Z must then provide a notice to the Internal Revenue Service of Z's statement to X on or before the 30th day after the statement is mailed to X.

LAW AND ANALYSIS

Section 1.897-2(g)(1)(ii)(A) provides generally that a foreign person disposing of an interest in a domestic corporation may establish that the interest was not a U.S. real property interest as of the date of the disposition by requesting and obtaining from the corporation a statement that the interest was not a U.S. real property interest as of that date. The foreign person must obtain the corporation's statement no later than the date, including any extensions, on which a tax return would otherwise be due with respect to a disposition.

Section 1.897-2(h)(1)(i) provides generally that a domestic corporation must, within a reasonable period after receipt of a request from a foreign person holding an interest in it, inform that person whether the interest constitutes a U.S. real property interest.

Section 1.897-2(h)(2) provides generally that if a foreign interest holder requests that a domestic corporation provide a statement as to whether the interest in the domestic corporation is a U.S. real property interest described in paragraph (h)(1) then such corporation must provide a notice to the Internal Revenue Service of that statement in accordance with paragraph (h)(2).

Section 1.897-2(h)(2)(v) provides, in part, that a copy of any statement provided to the foreign interest holder must be attached to the notice; and that the notice must be mailed to the Director, Philadelphia Service Center, P.O. Box 21086, Drop Point 8731,

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FIRPTA Unit, Philadelphia, PA 19114-0586 (which is the current mailing address) on or before the 30th day after the statement referred to in §1.897-2(h)(1) is mailed to the interest holder that requested it.

Section 301.7701-3(b)(2)(i) provides that unless a foreign eligible entity elects otherwise, the 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 owners if it has a single owner that does not have limited liability.

Section 301.7701-3(b)(2)(ii) provides 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) allows an entity to elect to change its classification by filing Form 8832, Entity Classification Election, with the service center designated on that Form. Section 301.7701-3(c)(1)(iii) provides that all such elections become effective on the date specified by the entity on Form 8832 or on the date filed if no effective date is specified. The specified effective date must not be earlier than 75 days prior to the filing date of Form 8832, nor later than twelve months after that filing date.

Section 301.7701-3(c)(2)(ii) provides that if an election is to have a retroactive effective date, each person who was an owner between the date the election is to be effective and the date the election is filed, and who is not an owner at the time the election is filed, must also sign the election.

Section 301.9100-1(c) gives the Commissioner discretion to grant reasonable extensions of time to make regulatory elections under the rules of §§301.9100-2 and 301.9100-3. Under §301.9100-1(b), an election includes an application for relief in respect of tax, and defines a regulatory election as an election whose due date is prescribed by a regulation published in the Federal Register or a notice published in the Internal Revenue Bulletin.

Section 301.9100-3 sets forth the standards which the Commissioner uses to determine whether to grant a discretionary time extension. Under §301.9100-3, a request for relief will be granted when the taxpayer provides evidence proving to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

CONCLUSION

Based solely on the facts and representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly X is granted an extension of time of 60 days from the date of this letter to file Form 8832, effective on D2, with the appropriate service center. In addition, X is granted an extension of time of 60 days from the date of this letter, for purposes of §1.897-2(g)(1)(ii), to obtain a statement described in §1.897-2(h)(1) from Z that the stock interest in Z is not a U.S. real property interest.

A copy of this letter should be attached to the election and to Z's statement provided to X. A copy is enclosed for this purpose. Failure to mail the notice (including a copy of the statement X obtained from Z under §1.897-2(g)(1)(i)(A)) to the Internal Revenue Service within the time period set forth in §1.897-2(h)(2)(v) will cause the statement provided pursuant to §1.897-2(h)(1)(i) to become an invalid statement. Treas. Reg. §1.897-2(h)(2)(v).

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provision of the Code.

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,

/s/ Heather C. Maloy

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

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

cc