

Internal Revenue Service

Number: **201837013**

Release Date: 9/14/2018

Index Numbers: 7701.02-00, 9100.00-00,
9100.31-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-137533-17

Date:
June 18, 2018

LEGEND

X =

Country =

Date 1 =

Date 2 =

Dear :

This letter responds to a letter dated December 15, 2017, 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 file an election under § 301.7701-3 to treat X as a partnership for federal tax purposes.

FACTS

X was formed under the laws of Country on Date 1. The ownership interests in X are held by foreign persons, but X became relevant for U.S. tax purposes on Date 2. X represents that it is a foreign entity eligible to elect to be classified as a partnership for federal tax purposes. However, X failed to timely file Form 8832, Entity Classification Election, to be treated as a partnership for federal tax purposes effective Date 2.

LAW AND ANALYSIS

Section 301.7701-3(a) provides 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, unless it 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 that 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 can not be more than 75 days prior to the date on which the election is filed and can not be more than 12 months after the date on which the election is filed.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six 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) defines a regulatory election as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice or announcement published in the Internal Revenue Bulletin.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections.

Section 301.9100-3 provides extensions of time for making regulatory 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 the 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 information submitted and the representations made, we conclude that X has satisfied the requirements of §§ 301.9100-1 and 301.9100-3. As a result, X is granted an extension of time of 120 days from the date of this letter to file a properly executed Form 8832 with the appropriate service center electing to be treated as a partnership effective Date 2. A copy of this letter should be attached to the Form 8832.

This ruling is contingent on X and its owners filing within 120 days from the date of this letter all required federal income tax and information returns (including amended returns) for all years consistent with the requested relief. These returns must include, but are not limited to, Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships, 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.

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.

Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. 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.

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.

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to X's authorized representatives.

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.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: _____
Caroline E. Hay
Assistant to the Branch Chief, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: