

Internal Revenue Service

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Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-122781-18
Date:
January 28, 2019

Legend

X =

Y =

A =

Country =

Date1 =

Date2 =

Dear :

This letter responds to a letter dated July 23, 2018, and subsequent correspondence, submitted on behalf of X and requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for X to file an entity classification election to be treated as a partnership for federal income tax purposes.

FACTS

The information submitted states that X was formed as a limited liability company by A and Y under the laws of Country on Date1. A is a U.S. citizen living abroad in Country and Y is a foreign entity. X represents that it is a foreign eligible entity eligible to elect to be classified as a partnership for federal tax purposes as of Date2. X failed to timely file Form 8832, Entity Classification Election, to be classified as a partnership for federal tax purposes effective Date2.

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. Elections are necessary only when an eligible entity does not want to be classified under the default classification or when an eligible entity chooses to change its classification.

Section 301.7701-3(b) provides default classification for an eligible entity that does not make an election. Section 301.7701-3(b)(2)(i) provides that, unless the entity elects otherwise, a foreign eligible entity is (A) a partnership if it has two 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(c)(1)(i) provides 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, Entity Classification Election, with the appropriate service center. Under § 301.7701-3(c)(1)(iii), this election will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified. The date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed and no more than 12 months after the date the election is filed.

Section 301.7701-3(g)(1)(ii) provides that if an eligible entity classified as an association elects under § 301.7701-1(c)(1)(i) to be classified as a partnership, the following is deemed to occur: The association distributes all of its assets and liabilities to its shareholders in liquidation of the association, and immediately thereafter, the shareholders contribute all of the distributed assets and liabilities to a newly formed partnership.

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 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(b) provides

that the term “regulatory election” includes an election whose due date is prescribed by a regulation published in the Federal Register.

Sections 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 the election. Section 301.9100-2 provides the rules governing automatic extension of time for making certain elections. Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when a taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) the granting of relief will not prejudice the interests of the government.

CONCLUSION

Based solely on the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, X is granted an extension of time of 120 days from the date of this letter to file a Form 8832 with the appropriate service center to elect to be treated as a partnership effective Date2. A copy of this letter should be attached to the Form 8832.

This ruling is contingent on X and A filing, within 120 days from the date of this letter, all required federal income tax returns and information returns (including amended returns) for all open years consistent with the requested relief (including the application of § 301.7701-3(g)(1)(ii)). These returns must include, but are not limited to, Form 8865, Information Return of U.S. Persons With Respect to Certain Foreign Partnerships, and Form 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 should be attached to any such returns.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code and the regulations thereunder. 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.

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.

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.

PLR-122761-18

In accordance with the power of attorney on file with this office, we are sending copies of this letter to X's authorized representatives.

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