

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B02

PLR-108876-18

Date:

August 14, 2018

TY:

Legend

Taxpayer =

Year 1 =

Country X =

Corporation Y =

Date 2 =

Year 3 =

Corporation Z =

Date 3 =

Tax Director =

Accounting Firm =

Dear :

This is in response to Taxpayer's letter, submitted by your authorized representative and received by our office on March 20, 2018, requesting an extension of

time under Treas. Reg. § 301.9100-3 to make the election provided by section 953(d) of the Internal Revenue Code (Code) to be treated as a domestic corporation for U.S. tax purposes effective for Year 1.

The ruling contained in this letter is predicated upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as part of the audit process.

FACTS

Taxpayer is a corporation that was organized under the laws of Country X in Year 1. Since its formation, Taxpayer was wholly owned by Corporation Y, a disregarded entity for U.S. income tax purposes. On Date 2, Corporation Z, a U.S. corporation, acquired Taxpayer from Corporation Y. Taxpayer represents that at the date of its formation and at all times subsequent, it has been a controlled foreign corporation as defined in section 957(a) of the Code. Taxpayer also represents that its primary and predominant business is one of reinsuring risks underwritten by insurance companies such that it would qualify as an insurance company under Part II of subchapter L of the Code if it were a domestic entity.

In connection with its formation, Taxpayer filed the section 953(d) election to be treated as a domestic corporation to be effective as of the first day of Taxpayer's initial tax year in accordance with Rev. Proc. 2003-47, 2003-28 C.B. 55, with the IRS on Date 3. At that time, Tax Director for Corporation Y was responsible for effectuating the section 953(d) election by filing the original election statement and all other information necessary for the election. Accounting Firm, Corporation Y's external tax provider, also assisted with preparing the section 953(d) election statement.

Both Tax Director and Accounting Firm are qualified tax professionals. Tax Director along with Accounting Firm advised Taxpayer on all aspects of its corporate formation and they were responsible for all aspects of Taxpayer's U.S. income tax compliance. Taxpayer represented that it relied on Tax Director to file all the necessary income tax elections, including the section 953(d) election, for Taxpayer to be treated as a domestic corporation.

In Year 3, in connection with the sale of Taxpayer to Corporation Z, Corporation Z requested a copy of Taxpayer's approved section 953(d) election. Upon a thorough review, Taxpayer discovered that its section 953(d) election was never approved by the IRS. However, Taxpayer's U.S. federal income tax return for Year 1 included the section 953(d) election statement to be treated as a domestic corporation and Taxpayer has since complied with all its U.S. tax obligations as if it was a domestic corporation, including timely filing all U.S. income tax returns.

Taxpayer represented that Tax Director failed to secure an approval letter for the section 953(d) election from the IRS. In addition, Tax Advisor failed to advise Taxpayer of the consequences of failing to make a section 953(d) election with respect to Taxpayer's Year 1.

Taxpayer's failure to make the section 953(d) election was not discovered by the Internal Revenue Service prior to the time Taxpayer submitted its ruling request. In addition, Taxpayer represents that it does not seek to alter a return position for which the accuracy related penalty has been or could have been imposed under section 6662 at the time Taxpayer requested relief. Taxpayer represents that it intended to make the section 953(d) election. Finally, Taxpayer represents that it has not used hindsight to seek an extension of time to make the election. Taxpayer represents that granting relief will not result in a lower tax liability than it would have had if it had filed the section 953(d) election timely.

LAW AND ANALYSIS

Under section 953(d), certain foreign insurance companies may elect to be treated as domestic corporations for U.S. tax purposes. The substantive and procedural rules for making a section 953(d) election are contained in Notice 89-79, 1989-2 C. B. 392, and Rev. Proc. 2003-47, 2003-2 C.B. 55. Rev. Proc. 2003-47 provides that the election must be filed by the due date prescribed in section 6072(b) (including extensions) for the U.S. income tax return that is due if the election becomes effective. Rev. Proc. 2003-47, section 4.04(2). In addition, an electing corporation must use the calendar year as its annual accounting period for U.S. tax purposes, unless it joins in the filing of a consolidated return and adopts the parent corporation's tax year. Notice 89-79, section 1. In the present situation, Rev. Proc. 2003-47 fixes the time to make the election under section 953(d). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards set forth under Treas. Reg. § 301.9100-3(a).

Treas. Reg. § 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 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.

Treas. Reg. § 301.9100-3(b)(1) provides that except as provided in paragraphs (b)(3)(i) through (iii) of that section, a taxpayer is deemed to have acted reasonably and in good faith if it meets one of the conditions described in Treas. Reg. § 301.9100-3(b)(1)(i) through (v):

- (i) Requests relief before the failure to make the regulatory election is discovered by the Internal Revenue Service;
- (ii) Failed to make the election because of intervening events beyond the taxpayer's control;
- (iii) Failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and complexity of the return or issue), the taxpayer was unaware of the necessity for the election;
- (iv) Reasonably relied on the written advice of the Internal Revenue Service; or
- (v) Reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Further, the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief. Treas. Reg. § 301.9100-3(c)(1). The interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Treas. Reg. § 301.9100-3(c)(1)(i).

Lastly, Treas. Reg. § 301.9100-1(a) cautions that granting an extension of time to make an election is not a determination that the taxpayer is otherwise eligible to make the election.

CONCLUSION

Based on the facts and information submitted, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Taxpayer qualifies for an extension of time to make the election under section 953(d). Taxpayer is deemed to have acted in good faith, as defined by Treas. Reg. § 301.9100-3(b), and the grant of relief will not prejudice the interests of the Government. Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to make the election provided by section 953(d), in accordance with the procedural rules set forth in Rev. Proc. 2003-47, to be treated as a domestic corporation for federal income tax purposes effective for Year 1.

The above extension of time is conditioned on Taxpayer's tax liability (if any) being not lower, in the aggregate, for all years to which the section 953(d) election applies than it would have been if the election had been timely filed (taking into account the time value of money). No opinion is expressed as to Taxpayer's tax liability for the taxable years involved. Further, the granting of the above extension is not a

determination that Taxpayer is otherwise eligible to make the section 953(d) election. Treas. Reg. § 301.9100-1(a). Also, no ruling is granted with respect to Taxpayer's entity classification for federal income tax purposes.

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 your authorized representatives.

Sincerely,

Jeffery G. Mitchell
Branch Chief, Branch 2
(International)

cc: