

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-106947-21

Date:
September 24, 2021

LEGEND

Company =

Date 1 =

Date 2 =

Country =

X =

Dear :

This letter responds to a letter dated February 21, 2021, and subsequent correspondence, submitted on behalf of Company by Company's 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.

FACTS

According to the information and representations submitted, Company was formed on Date 1 under the laws of Country. On Date 2, Company had two shareholders. One of the shareholders was a subsidiary of Company owning X% of the shares. Also on Date 2, three individual U.S. owners acquired an indirect ownership in Company. Company represents that Company is a foreign eligible entity that may elect its classification for

federal tax purposes. However, Company inadvertently failed to timely file a Form 8832, Entity Classification Election as of Date 2.

Company represents that on the day prior to Date 2, there were no other U.S. owners nor any other U.S. connection or nexus with the structure and no facts have changed since Date 2 that makes the election more advantageous for Company or its direct or indirect owners. Company further represents that Company would have made the election as of Date 2 regardless of the enactment of the Tax Cuts and Jobs Act (TCJA) and the issuance of regulations relating to the TCJA. Company and the U.S. owners represents that the U.S. owners are in full compliance with their U.S. tax obligations.

LAW AND ANALYSIS

Section 301.7701-3(a) provides, in part, 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, except as provided in § 301.7701-3(b)(3), unless the entity 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, in part, 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) provides, in part, that, except as provided in § 301.7701-3(c)(1)(iv) and (v), 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, in part, 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 cannot be more than 75 days prior to the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed.

Section 301.7701-3(g)(1)(iii) provides that if an eligible entity classified as an association elects under § 301.7701-3(c)(1)(i) to be disregarded as an entity separate from its owner, the following is deemed to occur: The association distributes all of its assets and liabilities to its single owner in liquidation of the association.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 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 (Code) except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term “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.

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 extensions 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.

Section 301.9100-3(a) provides that a request for relief under § 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 (1) the taxpayer acted reasonably and in good faith, and (2) the grant of relief will not prejudice the interests of the Government.

Revenue Procedure 2021-3, 2021-1 I.R.B. 140, Section 4.02(11) provides that rulings or determination letters will not ordinarily be issued on the treatment or effects of hook equity, including as a result of its issuance, ownership, or redemption. Section 4.02(11) ordinarily will not apply if (i) an interest’s status as hook equity is only transitory, such as in a triangular reorganization, or (ii) the treatment of the hook equity is not relevant to the treatment of the overall transaction and issue presented. It defines hook equity as an ownership interest in a business entity (such as stock in a corporation) that is held by another business entity in which at least 50 percent of the interests (by vote or value) in such latter entity are held directly or indirectly by the former entity. However, if an entity directly or indirectly owns all of the equity interests in another entity, the equity interests in the latter entity are not hook equity.

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. As a result, Company is granted an extension of time of 120 days from the date of this letter to file Form 8832 with the appropriate service center to make an election under § 301.7701-3. A copy of this letter should be attached to the Form 8832.

If applicable, Company’s election is disregarded for purposes of determining the amounts of all section 965 elements of all United States shareholders of Company if the election otherwise would change the amount of any section 965 element of any such United States

shareholder. See § 1.965-4(c)(2) of the Income Tax Regulations.

Except as specifically set forth above, we express or imply no opinion concerning the facts of this case under any other provision of the Code. Further, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

Section 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. We express or imply no opinion regarding Company's eligibility to be treated as a disregarded entity or partnership for federal income tax purposes. See Rev. Proc. 2021-3, § 4.02(11), 2021-1 I.R.B. 140. Additionally, no opinion is expressed or implied regarding the effects resulting from filing the election, including the applicability or non-applicability of and any tax consequences under sections 331, 332, 334, 336, or 337 of the Code.

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.

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

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By:

_____/s/_____
Caroline Hay
Senior Counsel, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure

Copy for § 6110 purposes

cc: