

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:B02
PLR-106864-10
Date:
June 08, 2010

Legend

X1 =

X2 =

X3 =

Y =

A =

Country =

Date1 =

Date2 =

Dear :

This responds to a letter dated February 1, 2010, submitted on behalf of X1, X2 and X3, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for X1, X2 and X3 to file entity classification elections.

The information submitted states that X1 and X2 were formed under the laws of Country on Date1, and that X3 was formed under the laws of Country on Date2. X1, X2 and X3 have common owners, including Y. Y is ultimately owned by A, the only owner with a U.S. federal tax filing obligation. X1, X2, and X3 represent that they are foreign entities eligible to elect to be treated as partnerships for federal tax purposes. However, X1, X2 and X3 did not timely file a Form 8832, Entity Classification Election, electing to be treated as partnerships.

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)(2)(i) provides that, except for certain existing entities described in § 301.7701-3(b)(3), 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 owner if it has a single member 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) by filing Form 8832 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.

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 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. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the government.

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, X1 and X2 are each granted an extension of time of 120 days from the date of this letter to file a Form 8832 with the appropriate service center and elect to be treated as a partnership for federal tax purposes, effective Date1. In addition, X3 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 and elect to be treated as a partnership for federal tax purposes, effective Date2. A copy of this letter should be attached to each Form 8832.

As a condition for this late election relief, A must file, within 120 days of the date of this letter, Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships, for all tax periods affected by this ruling, through the present, consistent with X1, X2 and X3 having made timely entity classification elections. Copies of this letter should be attached to such forms.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Internal Revenue Code and the regulations thereunder.

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 representative.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By:

Richard T. Probst, Branch Reviewer
Branch 2
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes