

Internal Revenue Service

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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:B01
PLR-130498-14

Date:
February 09, 2015

LEGEND

X =

Y =

Country A =

Date =

Period =

Treaty =

Article Z =

Dear :

This responds to a letter dated August 8, 2014, and subsequent correspondence, submitted on behalf of X, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election under § 301.7701-3(c) to be treated as a disregarded entity for federal tax purposes.

FACTS

According to the information submitted, X was formed under the laws of Country A. X represents that it is a foreign eligible entity eligible to elect to be disregarded as a separate entity for federal tax purposes. On Date, Y was the sole member of X. X intended to elect to be treated as a disregarded entity for federal tax purposes effective Date. However, X inadvertently failed to timely file Form 8832, Entity Classification Election.

X alleges that Y may claim treaty protection on the income from X's operations in the United States under the Country A Treaty if X makes an election under § 301.7701-3(c) to be treated as a disregarded entity for federal tax purposes.

X represents that it acted in good faith and reasonably. X represents that the interests of the government will not be prejudiced by granting the relief sought.

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. An eligible entity with at least two members can elect to be classified as either an association 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) provides guidance on the classification of a foreign eligible entity for federal tax purposes. Generally, a foreign eligible entity is treated as an association if all members have limited liability, unless the entity makes an election to be treated otherwise.

Section 301.7701-3(c)(1) provides that an entity classification election, or change in entity classification, must be filed on Form 8832 and can be effective up to 75 days prior to the date the form is filed or up to 12 months after the date the form is filed.

Section 301.7701-3(c)(1)(iv) states, in part, if an eligible entity makes an election to change its classification, the entity cannot change its classification by election again during the sixty months succeeding the effective date of the election. An election by a newly formed eligible entity that is effective on the date of formation is not considered a change for purposes of this paragraph (c)(1)(iv).

Section 301.7701-3(c)(2)(i) provides that such an election must be signed by either (A) each member of the electing entity who is an owner at the time the election is filed; or (B) any officer, manager, or member of the electing entity who is authorized (under local law or the entity's organization documents) to make the election and who represents to having such authorization under penalties of perjury.

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) 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. 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) the granting 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 § 301.9100-3 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, Entity Classification Election, with the appropriate service center to elect to be treated as a disregarded entity for federal tax purposes effective Date. A copy of this letter should be attached to the Form 8832. A copy is enclosed for that purpose. However, because Y does not meet the requirements of Article Z that requires Y to derive the income of X under the laws of Country A, Y may not claim any benefits of the Country A Treaty with respect to the income from X's operations in the United States.

This ruling is contingent on X and Y filing within 120 days from the date of this letter all income tax or information returns that would have been required to be filed under the Internal Revenue Code for any taxable year within Period consistent with the requested relief being effective Date. A copy of this letter should be attached to any such returns.

Except as specifically set forth above, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Further, we express no opinion concerning the assessment of any interest, additions to tax, additional amounts, or penalties with respect to any taxable year within Period.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

Joy C. Spies

By: Joy C. Spies
Senior Technician Review, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter
Copy of this letter for section 6110 purposes