

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:03

PLR-134148-18

Date:

September 19, 2019

Legend

Company =

Partnership =

HoldCo 1 =

HoldCo 2 =

Individual 1 =

Individual 2 =

Country 1 =

Country 2 =

Date 1 =

Date 2 =

a =

b =

c =

d =

Dear :

This letter responds to a letter dated November 9, 2018, and additional correspondence, submitted on behalf of Company requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for Company to file an entity classification election to be treated as a partnership for federal tax purposes.

Facts

The information submitted states that, Company was formed under the laws of Country 1 on Date 1. Company is owned a percent by Partnership, a domestic limited liability company taxed as a partnership for Federal income tax purposes, and b percent by Individual 1, a U.S. citizen. Partnership is owned c percent by HoldCo 1, a domestic corporation, and d percent by HoldCo 2, a domestic corporation. HoldCo 1 is wholly owned by Individual 1. HoldCo 2 is wholly owned by Individual 2, a citizen of Country 2.

Company represents that it is a foreign entity eligible to elect to be classified as a partnership for federal tax purposes. Company's default status is an association taxable as a corporation. Company represents that it relied upon a qualified tax professional to provide tax advice; however, the tax professional failed to advise Company of the need to file a Form 8832, Entity Classification Election. Thus, Company failed to timely file Form 8832, Entity Classification Election, to be treated as a partnership for federal tax purposes effective Date 2.

Company represents that granting relief will not prejudice the interest of the Government and hindsight is not involved in submitting its request for relief to file a late election. Company further represents that such relief would not result in a lower tax liability in the aggregate for all taxable years to which the request applies. Finally, Company represents that it acted reasonably and in good faith.

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. 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) 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 or a revenue ruling, revenue procedure, notice, announcement published in the Internal Revenue Bulletin.

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. Sections 301.9100-1 through 301.9100-3 provide the standard the Commissioner will use to determine whether to grant an extension of time to make a regulatory election.

Conclusion

Based solely on the information submitted and the representations made, we conclude that Company has satisfied the requirements of §§ 301.9100-1 and 301.9100-3. As a result, Company 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 Date 2. A copy of this letter should be attached to the Form 8832.

This ruling is contingent on Company and its owners 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, such that the forms and returns reflect the consequences of the relief granted in this letter, including the application of § 301.7701-3(g)(1)(ii). 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.

If applicable, this 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).

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.

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

Sincerely,
Associate Chief Counsel
(Passthroughs & Special Industries)

By: _____
Adrienne M. Mikolashek
Branch Chief, Branch 3
(Passthroughs & Special Industries)

Enclosures (2):
Copy of this letter
Copy for §6110 purposes