

Part III - Administrative, Procedural, and Miscellaneous

Croatian Per Se Corporation

Notice 2013-44

SECTION 1. PURPOSE

This notice announces that the Internal Revenue Service (IRS) and the Treasury Department will amend §301.7701-2(b)(8) of the Procedure and Administration Regulations to add the Croatian dionicko drustvo to the list of entities that are always treated as corporations under section 7701 of the Internal Revenue Code.

SECTION 2. BACKGROUND

The IRS and the Treasury Department issued final regulations concerning the federal tax classification of entities under section 7701 on December 18, 1996 (the check-the-box regulations). See TD 8697 (1997-1 CB 215; 61 FR 66584) and §§301.7701-1 through 301.7701-3. Under the check-the-box regulations, a business entity that is not specifically classified as a corporation can elect its classification for federal tax purposes under certain circumstances. Section 301.7701-2(b)(8) provides a list of certain foreign business entities that are always classified as corporations for federal tax purposes. This list is known as the per se corporation list, and the foreign business entities on this list are referred to as per se corporations. The IRS and the

Treasury Department intend to amend the per se corporation list in light of changes in European Union law.

On October 8, 2001, the Council of the European Union adopted Council Regulation 2157/2001 (2001 Official Journal of the European Communities, L 294/1) (the EU Regulation) to provide for a new business entity called the European public limited liability company, which is also known as a Societas Europaea or SE. This EU Regulation entered into force on October 8, 2004, and provides general rules that govern the formation and operation of an SE. With respect to many issues, however, the EU Regulation defers to the laws for a public limited liability company of the country in which the SE has its registered office. An SE must have a registered office in one of the Member States of the European Economic Area, which includes Norway, Iceland, Liechtenstein, and every member of the European Union. For further background, see TD 9197 (2005-1 CB 985; 70 FR 19697) and Notice 2004-68 (2004-2 CB 706).

The IRS and the Treasury Department stated in Notice 2004-68 that the SE is properly classified as a per se corporation for federal tax purposes. Consequently, the IRS and the Treasury Department issued regulations modifying §301.7701-2(b)(8) to include the SE on the per se corporation list. See TD 9197 (2005-1 CB 985; 70 FR 19697) and TD 9235 (2006-1 CB 338; 70 FR 74658). The IRS and the Treasury Department also believe that a public limited liability company should be included on the per se corporation list for every country in which an SE may have its registered office. Thus, those regulations also included certain public limited liability companies organized in Member States that do not already appear on the per se corporation list. More

recently, the IRS and the Treasury Department issued regulations modifying §301.7701-2(b)(8) to add the public limited liability company of Bulgaria to the per se corporation list, because with Bulgaria's entry into the European Union, the SE could have a registered office in Bulgaria. See TD 9433 (2008-2 CB 1263; 37 FR 72345).

The IRS and the Treasury Department have identified the dionicko drustvo as the only public limited liability company of Croatia. As of July 1, 2013, Croatia will become a member of the European Union. Accordingly, as of July 1, 2013, an SE will be eligible to have its registered office in Croatia, and an SE with a registered office in Croatia, to a certain extent, will be subject to the public limited liability company laws of Croatia. As a result, and consistent with TD 9235, the IRS and the Treasury Department believe that it is appropriate to add the Croatian dionicko drustvo to the per se corporation list.

SECTION 3. DISCUSSION

The IRS and the Treasury Department will issue temporary and proposed regulations that will modify §301.7701-2 to include the Croatian dionicko drustvo on the per se corporation list in §301.7701-2(b)(8).

SECTION 4. EFFECTIVE DATE

The temporary and proposed regulations adding the Croatian dionicko drustvo to §301.7701-2(b)(8) generally will apply to such entities formed on or after July 1, 2013. In addition, the regulations will apply to an entity formed before such date from the date after July 1, 2013, on which, in the aggregate, a 50 percent or more interest in such entity is owned by any person or persons who were not owners of the entity as of July 1, 2013. For purposes of the preceding sentence, the term interest means: (i) in the case

of a partnership, a capital or profits interest; and (ii) in the case of a corporation, an equity interest measured by vote or value.

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