

[4830-01-p]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

TD 9235

RIN 1545-BD77

Classification of Certain Foreign Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to certain business entities included on the list of foreign business entities that are always classified as corporations for Federal tax purposes.

DATES: Effective Date: These regulations are effective on December 16, 2005.

Applicability Date: For the dates of applicability of these regulations, see §301.7701-2(e)(4).

FOR FURTHER INFORMATION CONTACT: Ronald M. Gootzeit, (202) 622-3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On April 14, 2005, the IRS and Treasury Department published in the **Federal Register** temporary regulations (TD 9197, 2005-18 I.R.B. 985 [70 FR19697]) and a notice of proposed rulemaking (REG-148521-04, 2005-18 I.R.B. 995 [70 FR 19722] under section 7701 of the Internal Revenue Code (Code). The regulations added certain foreign business entities to the list of entities in §301.7701-2(b)(8) (the per se corporation list) in response to the adoption by the Council of the European Union of a Council Regulation (2157/2001 2001 O.J. (L 294)) permitting a new business entity, the European public limited liability company (Societas

Europaea or SE). Specifically, the temporary and proposed regulations added the SE, Estonian Aktsiaselts, Latvian Akciju Sabiedriba, Lithuanian Akcine Bendroves, Slovenian Delniska Druzba, and Liechtenstein Aktiengesellschaft to the per se list of corporations. For further background see TD 9197 (2005-18 I.R.B. 985; 70 FR 19697) and Notice 2004-68 (2004-2 CB 706).

Explanation of Provisions

No substantive comments were received regarding the temporary and proposed regulations. Accordingly, these regulations finalize the proposed regulations without modification and revise the temporary regulations to cross reference to the new provisions.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative and Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the Notice of Proposed Rulemaking preceding the final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Ronald M. Gootzeit of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and Recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301 -- PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7701-2 is amended by:

1. Adding six entries in alphabetical order to paragraph (b)(8)(i).
2. Removing paragraph (b)(8)(vi).
3. Adding paragraphs (e)(3) and (4).

The additions read as follows:

§301.7701-2 Business entities; definitions.

* * * * *

(b) * * *

(8) * * *

(i) * * *

Estonia, Aktsiaselts

European Economic Area/European Union, Societas Europaea

* * * * *

Latvia, Akciju Sabiedriba

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Liechtenstein, Aktiengesellschaft

Lithuania, Akcine Bendroves

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Slovenia, Delniska Druzba.

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(e) * * *

(3) [Reserved]. For further guidance, see §301.7701-2T(f).

(4) The reference to the Estonian, Latvian, Liechtenstein, Lithuanian, and Slovenian entities in paragraph (b)(8)(i) of this section applies to such entities formed on or after October 7, 2004, and to any such entity formed before such date from the date any person or persons, who were not owners of the entity as of October 7, 2004, own in the aggregate a 50 percent or greater interest in the entity. The reference to the European Economic Area/European Union entity in paragraph (b)(8)(i) of this section applies to such entities formed on or after October 8, 2004.

Par. 3. Section 301.7701-2T is amended by:

1. Removing paragraph (b)(8)(vi).
2. Revising paragraph (e)(3).

The revision reads as follows:

§301.7701-2T Business entities; definitions (temporary).

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(e) * * *

(3) [Reserved]. For further guidance, see §301.7701-2(e)(4).

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Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

Approved: December 8, 2005.

Eric Solomon,
Acting Deputy Assistant Secretary of the Treasury.