

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:3-PLR-132307-01
Date:
October 19, 2001

LEGEND

Company =
Date 1 =
Country =

Dear

This letter responds to your submission dated June 8, 2001, and subsequent correspondence, requesting a ruling under § § 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations that Company be permitted to elect to be classified as a partnership pursuant to § 301.7701-3(c) effective Date 1.

FACTS

According to the information submitted, Company was formed on Date 1 as a Sociedad de Responsabilidad Limitada de Capital Variable (SRL) under the laws of Country. Company is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8). Each member of Company has limited liability as defined under § 301.7701-3(b)(2)(ii), thus unless Company elects otherwise, it is classified as an association under the default rules of § 301.7701-3(b)(2)(i)(B). Company intended to elect to be treated as a partnership for U.S. tax purposes as of Date 1. However, Company inadvertently failed to timely file Form 8832, Entity Classification Election.

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. 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)(B) provides that, unless the entity elects otherwise, a foreign eligible entity is classified as an association if all members 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

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on the date specified by the entity on Form 8832 or on the date filed if no such date is specified on the election form. The date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed and can not be more than 12 months after the date on which the election is filed.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad) under all subtitles of the Code, except subtitles E, G, H, and I.

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 an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

CONCLUSION

Based solely on the facts submitted and the representations made, good cause has been shown and the other requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, Company has 60 days from the date of this ruling to file a Form 8832 to change its classification as of Date 1. A copy of this letter should be attached with the election and is included for that purpose.

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.

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

Under a Power of Attorney on file with this office, we are sending a copy of this letter to the representatives.

Sincerely,
Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

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