

This is in response to a letter received by our office on August 29, 2006, submitted on behalf of Taxpayer by its authorized representative, requesting an extension of time under Treas. Reg. § 301.9100-3 to make the election provided by I.R.C. section 953(d) to be treated as a domestic corporation for U.S. tax purposes commencing on the first day of Taxpayer's X taxable year. Additional information was submitted on October 23, 2006 and January 23, 2007.

The ruling contained in this letter is predicated upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required a part of the audit process.

Taxpayer is a Country Y licensed insurance company with a long-term insurance license. Taxpayer is a wholly owned subsidiary of Company A. Taxpayer's ultimate U.S. parent is Company B. Taxpayer was incorporated on Date 1 and began its operations on Date 2.

On Date 2, Taxpayer and Company C, an unrelated Country Y insurance company, executed a Reinsurance Agreement effective Date 3. Pursuant to the Reinsurance Agreement, Taxpayer agreed to make an election under IRC section 953(d) for Taxpayer's X taxable year. However, because the first settlement date under the Reinsurance Agreement was not until Date 4, Taxpayer's operational and administrative procedures were not yet fully developed at the time it entered into the Reinsurance Agreement. Further, Company B's business line was responsible for providing administrative support to Taxpayer. However, Company B failed to notify Taxpayer to make the IRC section 953(d) election for the X taxable year by Date 5. Taxpayer discovered the election had not been made as a result of a correspondence sent by Company C on Date 6. Taxpayer will not file a consolidated return with Company B.

Taxpayer has represented in its affidavits that the request for relief was submitted before the failure to file the IRC section 953(d) election was discovered by the IRS. Taxpayer intended at all times to make the election.

Taxpayer has also represented that it does not seek to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time that it requested relief (taking into account any qualified amended return filed within the meaning of Treas. Reg. § 1.6664-2(c)(3)) and the new position requires or permits a regulatory election for which relief is requested.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant a taxpayer a reasonable extension of time, under the rules set forth in Treas. Reg.

§ 301.9100-3, to make a regulatory election under all subtitles of the I.R.C., except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) provides that an election includes an application for relief in respect of tax, and defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Treas. Reg. § 301.9100-3(b)(1) provides that except as provided in paragraphs (b)(3)(i) through (iii) of this section, a taxpayer is deemed to have acted reasonably and in good faith if it meets one of the conditions described in Treas. Reg. § 301.9100-3(b)(1)(i) through (v). One such condition is that that taxpayer requested relief before the failure to make the regulatory election is discovered by the IRS. Treas. Reg. § 301.9100-3(b)(1)(i).

Treas. Reg. § 301.9100-3(b)(3) provides that a taxpayer is deemed not to have acted reasonably or in good faith if the taxpayer seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under I.R.C. section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested, or if the taxpayer was informed in all material respects of the required election and related tax consequences but chose not to file the election. Furthermore, a taxpayer will not be considered to have acted reasonably or in good faith if the taxpayer uses hindsight in requesting relief.

Treas. Reg. § 301.9100-3(c)(1) provides that a relief will be granted only when the interests of the Government will not be prejudiced.

Rev. Proc. 2003-47, 2003-2 C.B. 55, 56 provides that the election to be treated as a domestic corporation under IRC section 953(d), to be effective for a taxable year, must be filed by the due date prescribed in I.R.C. section 6072(b) (with extensions) for the United States income tax return that is due if the election becomes effective.

In the present situation, Rev. Proc. 2003-47 fixes the time to make the election under I.R.C. section 953(d). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards set forth under Treas. Reg. § 301.9100-3(a).

Based on the facts and information submitted, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of

time of 60 days from the date of this ruling letter to make the election provided by I.R.C. section 953(d) in accordance with the procedural rules set forth in Rev. Proc. 2003-47, to be treated as a domestic corporation for U.S. tax purposes commencing on the first day of Taxpayer's Year X taxable year.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to make the IRC section 953(d) election. Treas. Reg. § 301.9100-1(a).

The Taxpayer should attach a copy of this letter ruling to its federal income tax return for the relevant year.

This ruling is directed only to the taxpayer who requested it. I.R.C. section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file in this office, a copy of this ruling letter is being furnished to your authorized representatives.

Sincerely,

Phyllis E. Marcus
Branch Chief
International, Branch 2
Office of Chief Counsel