

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200946031**  
Release Date: 11/13/2009  
Index Number: 9100.10-01

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
INTL:BR05  
PLR-131158-09

Date:  
August 05, 2009

Taxpayer =  
Applicant =  
Tax Year A =  
Day B =  
Country A =  
Day C =  
Date D =  
Date E =  
Date F =  
Firm =  
Currency X =  
Currency Y =

Dear :

This letter responds to a request for an extension of time under sections 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations for the Taxpayer to file a signed duplicate copy of a Form 3115, Application for Change in Accounting Method, with the Internal Revenue Service (IRS) national office. This request was made in accordance with section 301.9100-3.

**FACTS**

The Taxpayer is a U.S. Corporation. The Taxpayer uses the accrual method of accounting and maintains its books and records using a tax year ending on Day B.

The Taxpayer owns 100% of the stock of the Applicant. The Applicant is an entity formed under the laws of Country A as a partnership and it has elected to be treated as a corporation for U.S. tax purposes. The Applicant uses the accrual method of accounting and maintains its books and records using a tax year ending on Day C.

The Applicant is a holding company that conducts most of its transactions in Currency Y with the Taxpayer and other foreign affiliates of the Taxpayer. The Applicant represents that it currently uses Currency X as its functional currency.

On Date D, the Taxpayer engaged the Firm to prepare a Form 3115 to change Applicant's functional currency from Currency X to Currency Y ("Form 3115 #1"). In addition to the Form 3115 #1, the Taxpayer engaged the Firm to prepare another "automatic change" Form 3115 with respect to the same taxable year but relating to a different type of change of accounting method ("Form 3115 #2"). The Firm instructed the Taxpayer that it must file both Forms 3115 with its e-filed Form 1120 and that the Taxpayer must mail a paper copy of both Forms 3115 to the IRS national office.

On Date E, the Taxpayer electronically filed its consolidated federal income tax return for Tax Year A. The Taxpayer attached Forms 3115 with respect to Form 3115 #1 and Form 3115 #2 to its electronically filed return.

The Taxpayer's director of global income tax compliance (the "Tax Director") instructed an employee of the Taxpayer (the "Employee"), to submit a signed copy of both Forms 3115 to the IRS national office. The Employee timely submitted a signed copy of Form 3115 #2 to the IRS national office. The Employee, however, did not timely file a signed copy of Form 3115 #1 with the IRS national office because the Employee mistakenly assumed that the Firm had submitted Form 3115 #1.

On Date F, the Tax Director asked the Employee to confirm that signed duplicate copies of both Forms 3115 had been mailed to the IRS national office. The Employee confirmed that Form 3115 #2 had been mailed the IRS national office, but that he did not mail Form 3115 #1 to the IRS national office because he understood that the Firm had submitted the signed copy of that form to the IRS national office. Shortly thereafter, the Firm confirmed that it had not mailed a signed copy of Form 3115 #1 to the IRS national office.

## LAW

Rev. Proc. 2008-52 provides the procedures by which a taxpayer may obtain automatic consent to change certain methods of accounting. A taxpayer complying with all the applicable provisions of this revenue procedure has obtained the consent of the Commissioner to change the taxpayer's method of accounting under section 446(e) of the Internal Revenue Code and the regulations thereunder. Section 6.02(3)(a) of Rev. Proc. 2008-52 provides that a taxpayer changing a method of accounting pursuant to Rev. Proc. 2008-52 must complete and file a Form 3115 in duplicate. The original must be attached to the taxpayer's timely filed (including extensions) original federal income tax return for the year of change, and a copy (with signature) of the Form 3115 must be filed with the IRS national office no earlier than the first day of the year of change and

no later than when the original is filed with the federal income tax return for the year of change.

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 Internal Revenue Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-3 sets forth the conditions that must be satisfied to obtain an extension of time to make a regulatory election when such election is not eligible for an automatic extension pursuant to Treas. Reg. § 301.9100-2. Treas. Reg. § 301.9100-3(a) provides that requests for such relief will be granted when the taxpayer provides evidence (including affidavits described in § 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 Treas. Reg. §§ 301.9100-3(b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief under this section before the failure to make the regulatory election is discovered by the IRS.

Treas. Reg. § 301.9100-3(b)(3) provides that a taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer:

- (i) Seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 of the Internal Revenue Code (the "Code") at the time the taxpayer requests relief (and the new position requires or permits a regulatory election for which relief is requested);
- (ii) Was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or
- (iii) Uses hindsight in requesting relief. In this regard, if specific facts have changed since the due date for making the election that make the election advantageous to a taxpayer, the IRS will not ordinarily grant relief unless the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

Treas. Reg. § 301.9100-3(c)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). In addition, Treas. Reg. § 301.9100-3(c)(i) states that if the tax consequences of more than one taxpayer are affected by the election, the Government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made.

Treas. Reg. § 301.9100-3(c)(1)(ii) provides that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made, or any taxable years that would have been affected by the election had it been timely made, are closed by the period of limitations on assessments under section 6501(a) of the Code before the taxpayer's receipt of a ruling granting relief.

### **ANALYSIS**

Based solely on the facts and representations submitted, including affidavits, we conclude that the Taxpayer satisfies the requirements of Treas. Reg. §§ 301.9100-1 and 301.9100-3. We find that the Taxpayer acted reasonably and in good faith and that the position of the Government will not be prejudiced by granting the Taxpayer's request for an extension of time to make a regulatory election.

We find that the Taxpayer acted reasonably and in good faith pursuant to Treas. Reg. § 301.9100-3(b)(1) because the Taxpayer represents that, as of the date that it filed this ruling request, the IRS had not contacted it with respect to the failure to file a signed copy of Form 3115 #1 with the IRS national office.

Furthermore, based upon the facts and representations of the Taxpayer, we do not find that the Taxpayer "is deemed to have not acted reasonably and in good faith" pursuant to Treas. Reg. § 301.9100-3(b)(3). The Taxpayer represents that it is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 of the code; rather, the Taxpayer seeks to change from one permissible method of accounting to another permissible method of accounting.

In addition, we find that the Taxpayer did not intentionally fail to file the Form 3115 after being fully informed of the tax consequences of an election to change the applicant's functional currency. The Taxpayer did not file a signed copy of Form 3115 with the IRS national office because it mistakenly understood that the Firm would file the signed copy on its behalf. The Taxpayer represents that it has otherwise complied with requirements for a change in the functional currency of the Applicant pursuant to § 985

and regulations thereunder. Furthermore, the Taxpayer attached Form 3115 #1 to its electronically filed return for Tax Year A.

Furthermore, the Taxpayer has not changed its position on the basis of subsequent facts. The Taxpayer filed the original Form 3115 with its timely filed consolidated federal income tax return. This request seeks to complete technical filing requirements prescribed by Rev. Proc. 2008-52. Because this request is consistent with the Form 3115 #1 filed with the Taxpayer's federal income tax return for Tax Year A, we find that the Taxpayer's request does not seek to change its position on the basis of subsequent facts.

Finally, we find that the interests of the Government will not be prejudice by granting the relief requested by the Taxpayer. The Taxpayer represents that the granting of relief will not result in the Taxpayer having a lower tax liability in the aggregate for all years to which the election applies than the Taxpayer would have had if the application had been timely made. Further, the Taxpayer represents that the statute of limitations on assessment under section 6501 of the Code with respect to Tax Year A has not expired.

### **CONCLUSION**

Accordingly, an extension of time is hereby granted for the Taxpayer to file the necessary copy of Form 3115 #1 with the IRS national office. The Taxpayer submitted a signed copy of Form 3115 #1 along with this request for an extension of time. That signed copy of Form 3115 #1 is hereby accepted as being timely filed with the IRS national office pursuant to the extension of time granted by this ruling.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Furthermore, we express no opinion as to whether the Taxpayer is qualified to file the Form 3115 #1 under Rev. Proc. 2008-52 or whether the requested change in accounting method described above meets the requirements of the revenue procedure.

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, a copy of this letter is being sent to your authorized representatives.

The rulings contained in this letter are 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 request for rulings, it is subject to verification on examination.

Sincerely,

Mark E. Erwin  
Senior Technical Reviewer, Branch 5  
(International)