

**Internal Revenue Service**

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Person To Contact:  
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Refer Reply To:

CC:PSI:B03 – PLR-136486-11

Date:

January 23, 2012

LEGEND

X =

Y =

Country 1 =

Country 2 =

Individual =

D1 =

D2 =

D3 =

Dear :

We received a letter dated August 15, 2011, and subsequent correspondence, submitted on behalf of Y requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election under § 301.7701-3(a) to be classified as a disregarded entity for federal tax purposes.

## FACTS

The information submitted discloses that X was formed under the laws of Country 1 on D1. X's majority shareholder is Individual, a Country 1 citizen but a U.S. tax resident. By default classification, X was an association for federal tax purposes. X failed to file timely Form 8832, Entity Classification Election, to be classified as a partnership for federal tax purposes, effective D2. X represents that all of its U.S. owners during the period before the D2 effective date of its elective change in entity classification will be notified of X's deemed liquidation and any resulting gain or loss.

Y, which is indirectly owned by X through a wholly owned subsidiary, was formed under the laws of Country 2 on D3. Y failed to file timely Form 8832 to be classified as a disregarded entity for federal tax purposes, effective D3.

## LAW AND ANALYSIS

Section 301.7701-3(a) provides, in part, 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 as provided in § 301.7701-3. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(2)(i) provides that, except as provided in § 301.7701-3(b)(3), unless the entity elects otherwise, a foreign eligible entity is: (A) a partnership if it has two or more members and at least one member does not have limited liability; (B) an association if all members have limited liability; or (C) disregarded as an entity separate from its owner if it has a single owner that does not have limited liability. Section 301.7701-3(b)(2)(ii) provides, in part, that for purposes of § 301.7701-3(b)(2)(i), a member of a foreign eligible entity has limited liability if the member has no personal liability for the debts of or claims against the entity by reason of being a member.

Section 301.7701-3(c)(1)(i) provides, in part, that, except as provided in § 301.7701-3(c)(1)(iv) and (v), an eligible entity may elect to be classified other than as provided under § 301.7701-3(b), or to change its classification, by filing Form 8832, Entity Classification Election, with the service center designated on Form 8832.

Section 301.7701-3(c)(1)(iii) provides, in part, that an election made under § 301.7701-3(c)(1)(i) will be effective 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 effective date specified on Form 8832 can not 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.

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Section 301.7701-3(g)(1)(ii) provides that if an eligible entity classified as an association elects under § 301.7701-3(c)(1)(i) to be classified as a partnership, the following is deemed to occur: The association distributes all of its assets and liabilities to its shareholders in liquidation of the association, and immediately thereafter, the shareholders contribute all of the distributed assets and liabilities to a newly formed partnership. Under § 301.7701-3(g)(3)(i), any transactions that are deemed to occur under § 301.7701-3(g) as a result of a change in classification are treated as occurring immediately before the close of the day before the election is effective.

Under § 301.9100-1(c), the Commissioner may 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 Internal Revenue Code (Code) except subtitles E, G, H, and I. Section 301.9100-1(b) provides that the term “regulatory election” includes an election whose due date is prescribed by a regulation published in the Federal Register.

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 regulatory elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief under § 301.9100-3 will be granted when the taxpayer provides the 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.

### CONCLUSION

Based on the facts and representations submitted, Y has established that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied. Consequently, Y is granted an extension of time of one hundred twenty (120) days from the date of this letter to elect under § 301.7701-3 to be treated as a disregarded entity, effective D3. Y must file Form 8832 within the extension period with the appropriate service center, with a copy of this letter attached. This ruling is contingent on X and the owners of X filing within 120 days of the date of this letter all required returns and amended income tax returns consistent with the requested relief being effective D3. To the extent appropriate, these returns must include, but are not limited to, Forms 8858, Information Return of U.S. Persons With Respect to Foreign Disregarded Entities, such that these forms reflect the consequences of the relief granted in this letter.

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Except for the specific ruling above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. In addition, § 301.9100-1(a) provides that the granting of an extension of time for making an election is not a determination that the taxpayer is otherwise eligible to make the election.

This ruling is directed only to the taxpayer requesting it. According to § 6110(k)(3) of the Code, this ruling 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 Y's authorized representative.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

By: /s/

Richard T. Probst  
Senior Technician Reviewer, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures: Copy of this letter  
Copy for § 6110 purposes