

**Internal Revenue Service**

Department of the Treasury  
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March 07, 2012

LEGEND

Company1 =

Company2 =

Company3 =

Company4 =

Company5 =

Company6 =

Country =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Date6 =

Dear :

This letter responds to a letter dated September 7, 2011, and subsequent correspondence, submitted on behalf of Company1, Company2, Company3, Company4, Company5, and Company6 (Companies) requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election under § 301.7701-3(c) to be treated as an association taxable as a corporation for federal tax purposes.

#### FACTS

Company1, Company2, Company3, Company4, Company5, and Company6 were formed under the laws of Country on Date1, Date2, Date3, Date4, Date5, and Date6, respectively. Companies represent that they are foreign entities eligible to elect to be treated as associations taxable as corporations for federal tax purposes. Companies intended to be treated as corporations effective the dates on which each one of the Companies were formed. However, due to inadvertence, Companies failed to file Form 8832, Entity Classification Election, electing to treat the Companies as corporations effective the respective date on which the Companies were formed.

#### 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 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.

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 making 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 solely on the facts submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Consequently, Companies are each granted an extension of time of 120 days from the date of this letter to file a Form 8832 with the appropriate service center to elect to be treated as an association taxable as a corporation effective Date1 for Company1, Date2

for Company2, Date3 for Company3, Date4 for Company4, Date5 for Company5, and Date6 for Company6. A copy of this letter should be attached to the Form 8832 filed for each of the Companies.

This ruling is contingent on the owners of each of the Companies filing within 120 days of this letter all required returns and amended income tax returns consistent with the requested relief. These returns may include, but are not limited to, the following forms: (i) Forms 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations, (ii) Forms 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships, and (iii) Forms 8858, Information Return of U.S. Persons With Respect to Disregarded Entities, such that these forms reflect the consequences of the relief granted in this letter. A copy of this letter should be attached to any such returns.

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 Internal Revenue 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 Companies' authorized representative.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

By: \_\_\_\_\_  
James A. Quinn  
Senior Counsel, Branch 3  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

A copy of this letter

A copy for § 6110 purposes

cc: