

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

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Date:
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TY:

Legend

- Taxpayer =
- Year 1 =
- Country X =
- Shareholder A =
- Shareholder B =
- Shareholder C =
- Shareholder D =

Dear :

This in response to a letter received by our office on May 15, 2012, 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 IRC section 953(d) to be treated as a domestic corporation for U.S. tax purposes and to make the election provided by section 831(b) to be subject to the alternative tax provided in section 831(b)(2)(A) for Taxpayer's taxable year ending December 31, Year 1.

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.

Taxpayer is a corporation organized under the laws of Country X and is in the business of providing insurance coverage for trade credit risks, accounts receivable risks, contingent business interruption insurance, and difference-in-condition policies.

Taxpayer is owned by Shareholder A, Shareholder B, Shareholder C, and Shareholder D. In the course of forming and initiating the operations of Taxpayer, all shareholders intended that the new company fully comply with U.S. tax reporting obligations.

Taxpayer has represented in its affidavit that the request for relief was submitted before the failure to file the section 953(d) election or the section 831(b) election was discovered by the IRS. Taxpayer intended at all times to make both elections.

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 positions require or permit a regulatory election for which relief is requested.

The substantive and procedural rules for making a section 953(d) election are contained in Notice 89-79, 1989-2 C.B. 392 and Rev. Proc. 2003-47, 2003-2 C.B. 55, respectively. These rules provide that the election must be filed by the due date prescribed in section 6072(b) (including extensions) for the U.S. income tax return that is due if the election becomes effective. Section 4.04(2), Rev. Proc. 2003-47. In addition, an electing corporation must use the calendar year as its annual accounting period for U.S. tax purposes, unless it joins in the filing of a consolidated return and adopts the parent corporation's tax year. Section 1, Notice 89-79. The section 953(d) election was not filed by the due date of the return for the Year 1 taxable year and thus, was not a timely election.

Insurance companies other than life insurance companies are taxable under section 831(a) on their taxable income. However, certain eligible companies can elect to pay an alternative tax provided in section 831(b) based only on their taxable investment income. Section 831(b)(2)(A)(ii) requires that a company elect the application of the alternative tax imposed by section 831(b) for the taxable year. Under Treas. Reg. § 301.9100-8(a)(2), the election must be made by the later of:

- (A) the due date (taking into account any extensions of time to file, obtained by the taxpayer) of the tax return for the first taxable year for which the election was effective, or
- (B) January 22, 1990.

Treas. Reg. § 301.9100-8(a)(3) provides that a section 831(b) election must be made by attaching a statement to the tax return for the first taxable year for which the section 831(b) election is to be effective. If such tax return is filed prior to making the election, the statement must be attached to an amended tax return of the first taxable year for which the election is to be effective. Taxpayer did not timely file the section 831(b) election.

Treas. Reg. § 301.9100-1(c) provides, in relevant part, that the Commissioner, in his discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. § 301.9100-3 to make a regulatory election or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all the subtitles of the Code 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 extensions of time for regulatory elections 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 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:

- (i) requests relief under this section before the failure to make the regulatory election is discovered by the Internal Revenue Service;
- (ii) failed to make the election because intervening events beyond the taxpayer's control;
- (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election;
- (iv) reasonably relied on the written advice of the Internal Revenue Service; or
- (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

However, Treas. Reg. § 301.9100-3(b)(3) provides that a taxpayer is deemed not to have acted reasonably and 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 and in good faith if the taxpayer uses hindsight in requesting relief.

Treas. Reg. § 301.9100-3(c)(1) provides in pertinent part, that the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by granting the relief.

Based solely on the facts and information submitted we conclude that Taxpayer satisfies Treas. Reg. §301.9100-3 with respect to the election under section 953(d) and the election under section 831(b). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to make the election provided by section 953(d) in accordance with the rules set forth in Notice 89-79 and Rev. Proc. 2003-47, to be treated as a domestic corporation for U.S. tax purposes effective for the tax year ended on December 31, Year 1. Taxpayer is also granted an extension of time of 60 days from the date of this ruling letter to make the election provided by section 831(b) in accordance with the rules set forth in Treas. Reg. § 301.9100-8, to be subject to the alternative tax provided in section 831(b)(2)(A) effective for the tax year ended on December 31, Year 1.

The granting of an extension of time to make the section 953(d) election is not a determination that Taxpayer is otherwise eligible to make the section 953(d) election. Treas. Reg. § 301.9100-1(a). Further, the granting of an extension of time to make the section 831(b) election is not a determination that Taxpayer is otherwise eligible to make the section 831(b) election. Treas. Reg. § 301.9100-1(a).

The Taxpayer should attach a copy of this letter to its section 953(d) election and its section 831(b) election.

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,

Jeffery G. Mitchell
Branch Chief
(International)