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**From:**

**Sent:** Friday, March 23, 2012 11:23:13 AM

**To:**

**Cc:**

**Subject:** RE: Check the Box Regulations and TEFRA

Hi all

The discussion below is correct, the only point I may take issue with is the statement at the end that "It should be noted that most foreign entities would be considered a corporation in the regulations and would be considered a c corporation for TEFRA determination (NOT eligible to check the box)." [would know better than I would about the number of foreign entities that would default into a partnership or DE, but I wouldn't think it is not insignificant.](#)

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**From:**

**Sent:** Thursday, March 22, 2012 12:59 PM

**To:**

**Cc:**

**Subject:** Check the Box Regulations and TEFRA

With the creation of the check the box regulations, the filing of the 1120F as a partner in the partnership does not guarantee that the partner will be treated as a C corporation for purposes of TEFRA. The final "check-the-box" regulations became effective January 1, 1997. The regulations replace the existing rules for classifying business organizations with a simpler elective classification system.

In general, eligible entities that are not corporations, as defined in the regulations, may elect to be treated for federal tax purposes as a partnership, a corporation or an entity disregarded separate from its owner. In general eligible entities include Limited Liability Companies and Partnerships. If an eligible entity does not elect an entity classification then default rules take affect.

Unless an election is made on Form 8832, a Foreign "Eligible" Entity defaults as follows:

1. A partnership if it has two or more members and at least one member does not have limited liability. In this situation, you would expect the entity to file a Form 1065 .
2. An association taxable as a corporation if all members have limited liability. In this situation, the entity may file a Form 1120F (Not TEFRA unless another partner causes failure of small partnership election)
3. Disregarded as an entity separate from its owner if it has a single owner that does not have limited liability. In this situation, the entity may file a Form 1120F. (TEFRA would apply)

To determine whether a partner, of a partnership, filing as an 1120F triggers TEFRA, the agent must determine whether the entity made an entity classification election by filing Form 8832. If a Form 8832 is filed and the entity elected to be treated as a corporation, then TEFRA is not triggered, unless of course another partner causes the partnership to fail the small partnership exception. If the 1120F elected to be disregarded for Federal Tax purposes or to be treated as a partnership, the partnership in question will be subject to the TEFRA procedures.

It should be noted that most foreign entities would be considered a corporation in the regulations and would be considered a c corporation for TEFRA determination (NOT eligible to check the box). Default rules should only take affect if no election is made and the entity filed a non corporate return without electing entity classification.