

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B05

PLR-138565-15

Date:

March 31, 2016

Legend

FC	=
Country A	=
City A	=
Accounting Firm	=
Individual A	=
Individual B	=
Tax Year	=
Amount A	=
Amount B	=
Amount C	=
Amount D	=
Date A	=

Dear :

This is in response to a letter dated November 11, 2015, and subsequent correspondence, submitted on behalf of FC by its authorized representative, requesting an extension of time under Treas. Reg. §301.9100-3 to elect under Treas. Reg. §1.884-1(e)(3) to reduce its U.S. liabilities for purposes of computing its branch profits tax liability under section 884 of the Internal Revenue Code.

The rulings contained in this letter are based upon information and representations submitted by FC 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.

FACTS

FC is a foreign corporation organized under the laws of Country A. FC has a branch office in City A. FC's Form 1120-F (*U.S. Income Tax Return of a Foreign Corporation*) for Tax Year was timely filed on Date A. On its Tax Year Form 1120-F, FC reported effectively connected earnings and profits of Amount A and a decrease in U.S. net equity of Amount B. FC reported a dividend equivalent amount of Amount C and a branch profits tax of Amount D, each of which was consistent with making the election provided by Treas. Reg. §1.884-1(e)(3) to reduce FC's U.S. liabilities for purposes of computing its tax liability under section 884(a). However, when Accounting Firm filed FC's Tax Year Form 1120-F on behalf of FC, Accounting Firm did not include the statement described in Treas. Reg. §1.884-1(e)(3)(iv) that FC had reduced its liabilities for the taxable year as provided in Treas. Reg. §1.884-1(e)(3)(iii). Therefore, the election was not made in accordance with Treas. Reg. §1.884-1(e)(3). FC indicates that the absence of the statement was an oversight. The Tax Year Form 1120-F was prepared on the basis of the election having been made.

According to an affidavit provided by Individual A, who is an employee of FC, FC had no employees in either its Country A or City A offices trained in U.S. tax law and FC relied on accounting firms engaged by FC to properly prepare its U.S. federal tax returns. According to an affidavit provided by Individual B, who reviewed FC's Tax Year Form 1120-F on behalf of Accounting Firm, Individual B did not check the draft Form 1120-F that Individual B reviewed for the presence of a statement declaring that the election under Treas. Reg. §1.884-1(e)(3) had been made.

FC represents that granting relief to allow it to file a late election under Treas. Reg. §1.884-1(e)(3) will not prejudice the interest of the government. In addition, FC represents that it acted reasonably and in good faith, and that no hindsight is involved.

LAW AND ANALYSIS

Generally, a foreign corporation with income effectively connected with the conduct of a trade or business within the United States for the taxable year is subject to a 30 percent (subject to reduction by treaty) branch profits tax on its dividend equivalent amount for a taxable year. See sec. 884(a). The dividend equivalent amount is the foreign corporation's effectively connected earnings and profits for the taxable year, reduced (but not below zero) by an increase in U.S. net equity and increased by a reduction in U.S. net equity (with such increase limited to the corporation's accumulated effectively connected earnings and profits as of the close of the preceding taxable year). See sec. 884(b).

Generally, “U.S. net equity” refers to a foreign corporation’s U.S. assets, reduced (including below zero) by its U.S. liabilities. Sec. 884(c)(1). The term “U.S. liabilities” means the liabilities of a foreign corporation treated as connected with the conduct of a trade or business in the United States under regulations prescribed by the Secretary. Sec. 884(c)(2)(B). For this purpose, Treas. Reg. §1.884-1(e)(3) defines the term “U.S. liabilities” as the amount of liabilities determined under Treas. Reg. §1.884-1(e)(1) decreased by the amount of liabilities determined under Treas. Reg. §1.884-1(e)(3), and increased by the amount of liabilities determined under Treas. Reg. §1.884-1(e)(2).

Treasury Regulation §1.884-1(e)(3) provides an election to reduce U.S. liabilities for purposes of determining the branch profits tax. Under Treas. Reg. §1.884-1(e)(3)(ii), for any taxable year, a foreign corporation may elect to reduce the amount of its liabilities determined under Treas. Reg. §1.884-1(e)(1) by an amount that does not exceed the lesser of the amount of U.S. liabilities as of the determination date, or the amount of U.S. liability reduction needed to reduce a dividend equivalent amount as of the determination date to zero.

Under Treas. Reg. §1.884-1(e)(3)(iii), a foreign corporation that elects to reduce its liabilities must also, for purposes of computing the amount of its interest apportioned to effectively connected income under Treas. Reg. §1.882-5, reduce its U.S.-connected liabilities for the taxable year by the amount of the reduction in liabilities under Treas. Reg. §1.884-1(e)(3). Such a reduction in U.S.-connected liabilities requires a corresponding decrease in the amount of interest apportioned to effectively connected income under Treas. Reg. §1.882-5 for purposes of Treas. Reg. §1.884-4(a) and for all other Internal Revenue Code sections for which the amount of interest apportioned under Treas. Reg. §1.882-5 is relevant. See Treas. Reg. §1.884-1(e)(3)(iii).

Under Treas. Reg. §1.884-1(e)(3)(iv), a foreign corporation makes the election under Treas. Reg. §1.884-1(e)(3) by attaching a statement to its return for the taxable year that it has elected to reduce its liabilities. The statement must also indicate that the foreign corporation has reduced the amount of its U.S.-connected liabilities for the taxable year and must indicate the amount of such reductions. An election made under Treas. Reg. §1.884-1(e)(3) must be made before the due date (including extensions) for the foreign corporation’s income tax return for the taxable year.

Treasury Regulation §301.9100-3 provides standards for extensions of time for making regulatory elections when the deadline for making the election is other than a due date prescribed by statute. Treasury Regulation §301.9100-2 provides the rules governing automatic extensions of time for making certain elections. Treasury Regulation §301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of Treas. Reg. §301.9100-2.

Treasury Regulation §301.9100-3(a) provides that requests for relief 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 (1) the taxpayer acted reasonably and in good faith, and (2) the grant of relief will not prejudice the interests of the Government.

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

Treasury Regulation §301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the standards 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.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that the requirements of Treas. Reg. §§301.9100-1 and 301.9100-3 have been satisfied. Accordingly, FC is granted an extension of time until 120 days from the date of this letter to file an election under Treas. Reg. §1.884-1(e)(3). The election must be filed by attachment to an amended Form 1120-F filed by FC for the Tax Year and individually marked "Filed pursuant to section 301.9100-3" at the top. A copy of this letter must also be attached to such amended Form 1120-F filed by FC. This ruling is contingent on FC including with its amended Tax Year Form 1120-F an amended Schedule I (*Interest Expense Allocation Under Regulations Section 1.882-5*) that, as required by Treas. Reg. §1.884-1(e)(3)(iii), reflects a reduction in U.S.-connected liabilities for purposes of Treas. Reg. §1.882-5, along with any corresponding decrease in the amount of interest apportioned to effectively connected income under Treas. Reg. §1.882-5 for purposes of Treas. Reg. §1.884-4(a) and for all other Internal Revenue Code sections for which the amount of interest apportioned under Treas. Reg. §1.882-5 may be relevant.

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. Moreover, Treas. Reg. §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. Section 6110(k)(3) of the Internal Revenue 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 FC's authorized representative.

Sincerely,

Mark Erwin
Branch Chief, Branch 5
Associate Chief Counsel
(International)

cc: