

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

[Third Party Communication:

Date of Communication: Month DD, YYYY]

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:BR1

PLR-121154-16

Date:

December 30, 2016

TY:

Legend

Taxpayer =

Country X =

Individual A =

Individual B =

State =

Tax Year =

Amount =

Date 1 =

Date 2 =

Date 3 =

Dear :

This is in reply to a letter dated requesting an extension of time under  
Treas. Reg. § 301.9100-3 for Taxpayer to file a Form 8848, *Consent to Extend the Time*

*to Assess the Branch Profits Tax Under Regulations Sections 1.884-2T(a) and (c).*  
Additional information was submitted in a letter dated .

The ruling contained in this letter is based upon facts and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

## FACTS

Taxpayer was an entity organized under the laws of Country X on Date 1. Taxpayer is treated as a corporation for U.S. tax purposes and operates on a calendar year basis. Since Taxpayer's incorporation, Individual A, a nonresident alien, has been a director and shareholder of Taxpayer. Individual A's spouse, Individual B, also a nonresident alien, was Taxpayer's other shareholder.

Taxpayer's sole asset was a condominium in State, which Individual A and Individual B used as a family vacation home. Taxpayer did not collect any rent for the use of the condominium. Taxpayer paid property taxes and other expenses related to the condominium until it was sold on Date 2 of Tax Year. U.S. income tax of Amount was withheld from the proceeds of the sale of the condominium under the Foreign Investment in Real Property Tax Act. At the time of the sale, Taxpayer believed all of its U.S. income tax liabilities relating to the sale of the condominium had been satisfied through the withholding of Amount under section 1445. Individual A, as Taxpayer's Director, was not aware that, under section 897(a) of the Internal Revenue Code (Code), the gain from the sale was taxable under section 882(a)(1) as if Taxpayer was engaged in a trade or business in the United States during the taxable year and as if the gain was effectively connected with that trade or business. Nor did Individual A know that Taxpayer was potentially subject to the branch profits tax under section 884(a). As a result, Taxpayer did not file a Form 1120-F, *U.S. Income Tax Return of a Foreign Corporation*, and Form 8848 for Tax Year.

Taxpayer was dissolved on Date 3. While consulting with a foreign tax professional in that year, Individual A became aware that Taxpayer may have potential U.S. tax obligations relating to its sale of the condominium. Individual A subsequently sought to bring Taxpayer into compliance with U.S. tax laws by consulting with U.S. tax professionals and filing the instant request for an extension of time to file the Form 8848 for Tax Year, the year of the sale of the condominium and the year in which Taxpayer alleges to have terminated its U.S. trade or business.

## LAW AND ANALYSIS

Treas. Reg. § 1.884-2T(a)(1) provides, in relevant part, that “[a] foreign corporation shall not be subject to the branch profits tax for the taxable year in which it completely terminates all of its U.S. trade or business within the meaning of [Treas. Reg. § 1.884-2T(a)(2)].” Taxpayer represents, as required by Treas. Reg. § 1.884-2T(a)(2):

- (1) At the close of Tax Year, Taxpayer did not own any U.S. assets;
- (2) Neither Taxpayer nor a related corporation (within the meaning of Treas. Reg. § 1.884-2T(a)(2)(iv)) has used or will use, directly or indirectly, in the conduct of a trade or business in the United States at any time during the three-year period following the close of Tax Year: (a) any of the U.S. assets of the terminated U.S. trade or business; (b) any property attributable to those assets; or (c) any property attributable to effectively connected earnings and profits of Taxpayer for Tax Year; and
- (3) Taxpayer did not have any income that was, or was treated as, effectively connected income during the three-year period following the close of Tax Year.

Treas. Reg. § 1.884-2(a)(2)(ii) provides that the waiver referred to in Treas. Reg. § 1.884-2T(a)(2)(i)(D) must be executed on Form 8848 on or before the date (including extensions) prescribed for filing the foreign corporation's income tax return for the year of complete termination and extend the period of assessment of the branch profits tax for the year of complete termination to a date not earlier than the close of the sixth taxable year following that taxable year.

Treas. Reg. § 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.

Treas. Reg. § 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.

Treas. Reg. § 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.

Treas. Reg. § 301.9100-3(a) provides that requests for relief subject to this section 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.

Based on the facts and circumstances of this case, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a) and is granted an extension of time to file a signed Form 8848 and attach it to a Form 1120-F within 60 days from the date of this ruling letter. Because Taxpayer's filing of the Form 1120-F for Tax Year will be more than 18 months after the filing deadline in Treas. Reg. § 1.882-4(a)(3), no deductions are allowed in computing Taxpayer's effectively connected income in that year, although credits are allowed for taxes withheld at source under section 33.

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. Specifically, as provided in Treas. Reg. § 301.9100-1(a), the granting of an extension of time is not a determination that Taxpayer is otherwise eligible to file Form 8848.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the 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 your authorized representative.

Sincerely,

Elizabeth U. Karzon  
Branch Chief, Branch 1  
Associate Chief Counsel (International)