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Legend

Taxpayer =

PRS 1 =

LLC =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Tax Year 1 =

Firm 1 =

Firm 2 =

X =

State A =

Dear :

This letter responds to Taxpayer's request for a private letter ruling for permission to make a late election out of the installment method for the installment sale of its partnership interest in PRS 1 on Date 1 and a late election to file Form 8848, *Consent to Extend the Time to Assess the Branch Profits Tax Under Regulations Sections 1.884-2(a) and (c)* for Tax Year 1, which includes Date 1.

#### FACTS

Taxpayer is a foreign corporation organized in a non-treaty jurisdiction that for U.S. tax purposes uses an accrual method of accounting and a calendar year. During Tax Year 1 and in prior years, Taxpayer was engaged in a U.S. trade or business pursuant to § 875 of the Internal Revenue Code, as a limited partner in PRS 1, which at all relevant times owned U.S. real property in State A. Taxpayer filed Forms 1120-F, *U.S. Income Tax Return of a Foreign Corporation*, for each year it was a partner in PRS 1.

On Date 1, Taxpayer sold its limited partnership interest in PRS 1 to LLC in an installment sale. Taxpayer represents that during the negotiations of the sale and subsequently it always understood that the sale would not be subject to U.S. tax based on statements made by LLC's representatives.

One week before Taxpayer's Tax Year 1 tax return or extension was due, Firm 1 alerted Taxpayer that based on an initial read of the sales agreement Taxpayer had a taxable gain on the sale. On Date 2, Firm 1 informed Taxpayer that the sale was reportable on the installment method and that Taxpayer could elect out of the installment method, which would minimize or eliminate branch profits tax that otherwise would be due under § 884. On Date 3, Taxpayer's Tax Year 1 Form 1120-F or an extension to file was due. Because Taxpayer was on Date 3 still attempting to reconcile Firm 1's views with LLC's representations concerning whether the gain on the sale was subject to federal income tax, it directed Firm 1 not to file for an extension of time to file its Tax Year 1 Form 1120-F.

Neither Taxpayer nor Firm 1 can recall with certainty whether Firm 1 informed Taxpayer by the due date of the return that an election out of the installment method had to be made on a timely filed return. Shortly after the due date of Taxpayer's Tax Year 1 return, Firm 1 informed Taxpayer that an election out of the installment method generally needed to be made on a timely filed return (including extensions) and because Taxpayer did not file an extension, Firm 1 would need to research whether

Taxpayer could elect out of the installment method. Ultimately, Firm 1 declined the engagement to prepare Taxpayer's Tax Year 1 Form 1120-F.

Taxpayer subsequently engaged Firm 2 to prepare its Tax Year 1 Form 1120-F. On Date 4, Taxpayer filed its Tax Year 1 Form 1120-F, electing out of the installment method for the sale of its limited partnership interest in PRS 1 and reporting all of the gain from the sale in accordance with § 897(g). Taxpayer attached a statement to the Form 1120-F stating that it would request a private letter ruling to extend the time to make an election under § 453(d). Taxpayer represents that it has no independent knowledge of the law surrounding the taxation of installment gains or the procedure for electing out of the installment method. Moreover, Taxpayer represents that at all relevant times it was not aware, and was not advised by its representatives, that it was required to file Form 8848, *Consent To Extend the Time To Assess the Branch Profits Tax Under Regulations Sections 1.884-2(a) and (c)*, on or before the due date (including extensions) of Form 1120-F for Tax Year 1, in order to be treated as completely terminating its U.S. trade or business activities in such year under § 1.884-2T(a)(2) of the temporary Income Tax Regulations.

On Date 5, you and Taxpayer filed a complaint in X against LLC and others alleging various claims. Taxpayer represents that, in the event that it receives any amounts as a result of or in settlement of its claims in X other than prejudgment interest, post-judgment interest, or punitive damages, or an interest in PRS 1, it will report such amounts as income in the year that such claims are finally resolved, and that the source and character of any amounts other than prejudgment interest, post-judgment interest, or punitive damages or any interest in PRS 1, shall be determined and reported by Taxpayer in the same manner as proceeds from the sale of Taxpayer's interest in PRS 1 on Date 1. If Taxpayer is awarded any interest in PRS 1 as a result of the claims in X, Taxpayer will treat such interest as having been repurchased in the year in which it receives that interest. See Rev. Rul. 80-58, 1980-1 C.B. 181. Taxpayer also represents that it has not and will not receive, in settlement or otherwise, any interest in PRS 1 prior to the end of the three-year period following the close of Tax Year 1.

Furthermore, Taxpayer represents that: (1) at the close of Tax Year 1, Taxpayer did not own any U.S. assets; (2) neither Taxpayer nor a related corporation (within the meaning of § 1.884-2T(a)(2)(iv)) has used or will use, directly or indirectly, in the conduct of a trade or business in the U.S. at any time during the three-year period following the close of Tax Year 1: (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 1; and (3) Taxpayer has not had, and will not have, any income that is, or is treated as, effectively connected income during the three-year period following the close of Tax Year 1 (other than solely by reason of § 864(c)(6) or (c)(7)).

## LAW

Section 453(a) provides that, except as otherwise provided, income from an installment sale shall be taken into account under the installment method. Section 453(d)(1) provides that the installment method will not apply to a disposition if the taxpayer elects to have the installment method not apply to such disposition.

Under § 453(d)(2), except as otherwise provided by regulations, an election out of the installment method with respect to a disposition may be made only on or before the due date prescribed by law (including extensions) for filing the taxpayer's tax return for the taxable year in which the disposition occurs. Such an election shall be made in the manner prescribed by regulations.

Section 15a.453-1(d)(3)(i) of the Temporary Regulations under the Installment Sales Revision Act of 1981 provides, in general, that an election out of the installment method must be made on or before the due date prescribed by law (including extensions) for filing the taxpayer's return for the taxable year in which the installment sale occurs.

Section 15a.453-1(d)(3)(ii) provides that elections after the due date prescribed by law (including extensions) for filing the taxpayer's return will be permitted only in those rare circumstances when the IRS concludes that the taxpayer had good cause for failing to make a timely election.

Regarding allowing a taxpayer to extend the period of assessment of the branch profits tax for Tax Year 1, § 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 [§ 1.884-2T(a)(2)].”

Section 1.884-2(a)(2)(ii) provides that the waiver referred to in § 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 shall 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.

Section 301.9100-1(a) of the Procedure and Administration Regulations provides rules for granting an extension of time to make a regulatory election. Section 301.9100-1(b)(1) provides that a regulatory election means an election whose due date is prescribed by a regulation published in the Federal Register or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the standards set forth in § 301.9100-3 to make a

regulatory election under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) provides that requests for extension of time for regulatory elections (other than automatic extensions covered in § 301.9100-2) will be granted when the taxpayer provides evidence (including affidavits) to establish that the taxpayer acted reasonably and in good faith and the grant of relief will not prejudice the interests of the government.

Under § 301.9100-3(b) a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief before the failure to make the regulatory election is discovered by the Internal Revenue Service. In addition, § 301.9100-3(b)(3) provides that a taxpayer is deemed not to have acted reasonably and in good faith if the taxpayer—

- (i) Seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested;
- (ii) Was informed in all respects of the required election and related consequences, but chose not to make the election; or
- (iii) Uses hindsight in requesting relief.

Section 301.9100-3(c)(1) provides that the Commissioner will grant a reasonable extension of time to make the regulatory election only when the interests of the government will not be prejudiced by the granting of relief.

Section 301.9100-3(c)(1)(i) provides that the interests of the government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

## CONCLUSIONS

Based on the facts and circumstances of this case, we conclude as follows:

1. Taxpayer is granted an extension of time to elect out of the installment method on its Tax Year 1 Form 1120-F filed on Date 4 because Taxpayer satisfies § 15a.453-1(d)(3)(ii) and § 301.9100-3(a), if, within 60 days from the date of this letter ruling, Taxpayer sends a copy of this letter ruling to the IRS office with jurisdiction over the Taxpayer's Tax Year 1 Form 1120-F.

2. Taxpayer satisfies § 301.9100-3(a) and is granted an extension of time to file a signed Form 8848 for Tax Year 1 within 60 days from the date of this ruling letter. A copy of this ruling letter should be attached to Form 8848.

Except as expressly provided under CONCLUSIONS (1) and (2) above, we do not express or imply an opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, as provided in § 301.9100-1(a), the granting of an extension of time is not a determination that Taxpayer is otherwise eligible to file Form 8848.

Pursuant to section 7.06 of Rev. Proc. 2017-1, 2017-1 I.R.B 1, a taxpayer must attach a copy of this letter ruling to any federal income tax to which it is relevant. If a taxpayer files its returns electronically, it may satisfy this requirement by attaching a statement to the return that provides the date and control number of this letter ruling.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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.

In accordance with a power of attorney on file in this office, we are sending copies of this letter ruling to your authorized representatives.

Sincerely,

Michael J. Montemurro  
Branch Chief  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

cc Internal Revenue Service Center  
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Ogden, UT 84409