

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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CC:CORP:B01

PLR-137709-17

Date:

June 04, 2018

Legend

Foreign
Acquiring =

Foreign
Target =

Foreign
Sub =

Parent =

CFC 1 =

CFC 2 =

CFC 3 =

CFC 4 =

CFC 5 =

CFC 6 =

CFC 7 =

Date 1 =

Date 2 =

Country A =

Country B =

Country C =

Country D =

Company
Official =

Tax
Professional =

Dear :

This letter responds to a letter dated December 18, 2017, submitted on behalf of Foreign Acquiring, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. Foreign Acquiring is requesting an extension to file a “§ 338 election” under § 338(g) with respect to Foreign Acquiring’s deemed acquisition of the stock of CFC 1 through CFC 7 on Date 1 (the “CFC Election”). The material information submitted for consideration in that letter and subsequent correspondence is summarized below.

Foreign Acquiring is a Country A corporation. Foreign Target is a Country B corporation. As of Date 1: (a) Foreign Target owned all of the stock of Foreign Sub, also a Country B corporation, (b) Foreign Sub owned all of the stock of Parent,

(c) Parent was the common parent of an affiliated group of corporations filing a consolidated Federal income tax return (the "Parent Group"), and (d) the members of the Parent Group owned, directly or indirectly, all of the stock of the following controlled foreign corporations (as defined in § 957) - CFC 1, CFC 2, CFC 3, CFC 4, CFC 5, CFC 6 and CFC 7. Each of CFC 1 through CFC 5 is a Country C corporation. Each of CFC 6 and CFC 7 is a Country D corporation.

On Date 1, Foreign Acquiring acquired stock of Foreign Target meeting the definition of a qualified stock purchase within the meaning of § 338(d)(3). Section 338(g) elections were made with respect to the acquisition of Foreign Target and the deemed acquisitions of Foreign Sub and Parent. Additionally, Foreign Acquiring intended to file the CFC Election. However, for various reasons, a valid CFC Election was not filed. After Date 2, the date that the CFC Election was due, it was discovered that a valid election was not filed. Subsequently, this request was submitted for an extension of time to file a valid CFC Election.

The period of limitations on assessment under § 6501(a) has not expired for the taxable year in which the acquisition occurred, the taxable year in which the CFC Election should have been filed, or any taxable years that would have been affected by the CFC Election had it been timely filed. Foreign Acquiring has represented that it is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time it requested relief (taking into account any qualified amended return filed within the meaning of § 1.6664-2(c)(3)) and for which the new return position requires or permits a regulatory election for which relief is requested.

Section 338(a) permits certain stock purchases to be treated as asset acquisitions if: (1) the purchasing corporation makes or is treated as having made a "§ 338 election" or a "§ 338(h)(10) election"; and (2) the acquisition is a "qualified stock purchase."

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the CFC Election is fixed by the regulations (i.e., § 1.338-2(d)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Foreign Acquiring to file the CFC Election, provided it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Foreign Acquiring, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid CFC Election. The information establishes that Foreign Acquiring reasonably relied on a qualified tax professional who failed to make, or advise Foreign Acquiring to make, the CFC Election, and that the request for relief was filed before the failure to make the CFC Election was discovered by the Internal Revenue Service. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that Foreign Acquiring has shown it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-3, until 45 days from the date on this letter, for Foreign Acquiring to file the CFC Election.

WITHIN 45 DAYS OF THE DATE ON THIS LETTER, Foreign Acquiring must file the CFC Election on Form 8023, in accordance with § 1.338-2(d) and the instructions to the form. A copy of this letter must be attached to Form 8023.

WITHIN 120 DAYS OF THE DATE ON THIS LETTER, all relevant parties must file or amend, as applicable, all returns and amended returns (if any) necessary to report the transaction as a § 338 transaction for the taxable year in which the transaction was consummated (and for any other affected taxable year). A copy of this letter and a copy of Form 8883 must be attached to any tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy the requirement of attaching a copy of this letter by attaching a statement to their return that provides the date on and control number of the letter ruling.

Foreign Acquiring must also deliver written notice of the CFC Election (and a copy of Forms 8023 and 8883, their attachments and instructions) to the Parent Group. See § 1.338-2(e)(4).

The above extension of time is conditioned on the taxpayers' tax liability (if any) being not lower, in the aggregate, for all years to which the CFC Election applies, than it would have been if the CFC Election had been timely made (taking into account the time value of money). No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made by the applicable Director's office upon audit of the Federal income tax returns involved.

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. In particular, we express no opinion as to: (1) whether the acquisition of the stock of Foreign Target by Foreign Acquiring qualifies as a “qualified stock purchase” under § 338(d)(3); or (2) any other tax consequences arising from the CFC Election.

In addition, we express no opinion as to the tax consequences of filing the CFC Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the CFC Election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by Foreign Acquiring, Company Official, and Tax Professional. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the CFC Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

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, copies of this letter are being sent to your authorized representatives.

Sincerely,

Ken Cohen

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)

cc: