

**Internal Revenue Service**

Number: **202208013**

Release Date: 2/25/2022

Index Number: 7701.00-00, 9100.00-00,  
9100.31-00

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:PSI:B01

PLR-126948-20

Date:

November 24, 2021

Legend

X =

FSub =

US Parent =

USSub =

Country 1 =

Country 2 =

Date 1 =

Date 2 =

Date 3 =

State =

a =

b =

Dear \_\_\_\_\_ :

This responds to a letter dated November 19, 2020, and subsequent correspondence, submitted on behalf of X by its authorized representative, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election under § 301.7701-3(c) to be treated as a disregarded entity for U.S. federal tax purposes.

### Facts

USSub is a domestic corporation that is a member of a consolidated group whose common parent is US Parent, a domestic corporation organized under the laws of State. USSub wholly owns FSub, a Country 1 corporation that is treated as a corporation for U.S. federal tax purposes. FSub wholly owns X, a Country 2 corporation that is treated as a corporation for U.S. federal tax purposes.

On Date 2, X distributed assets to FSub (the “Asset Distribution”). US Parent represents that the distribution of assets on Date 2 generated \$a of gain under section 311(b), and FSub’s basis in the assets was increased by \$a. On Date 3, X distributed \$b to FSub (together with Asset Distribution, the “Distributions”).

After the Distributions, Treasury regulations were issued under section 245A with an applicability date prior to Date 2. The Treasury regulations affected the tax treatment of the Distributions to the extent the Distributions were made out of earnings and profits generated in the Asset Distribution.

In light of the Treasury regulations, X should have filed Form 8832, Entity Classification Election, to be treated as disregarded for U.S. federal tax purposes as of Date 1. X represents that the election would have resulted in a liquidation of X in which no gain or loss would have been recognized pursuant to section 332. If X were disregarded, FSub would be treated as owning the assets of X, the basis of those assets (including those distributed in the Asset Distribution) would not have increased, and the Distributions would be treated as disregarded for U.S. federal tax purposes.

X represents that it acted reasonably and in good faith, and that the interests of the government will not be prejudiced by granting relief. X represents that it was not informed in all material respects of the election and consequences. X also represents that no hindsight is involved in seeking the relief requested because no facts have changed since Date 1 that makes the election more advantageous to X. X further represents that the interests of the government will not be prejudiced by granting relief because neither US Parent nor FSub nor X will have a lower tax liability in the aggregate for all taxable years affected by the election than they would have had the election been timely made, and the statute of limitations is not closed. The requested

relief results in no gain being recognized by X and no increase in the basis of the distributed assets, which is the same result as if the election had been timely made.

### Law

Section 301.7701-3(a) provides, in part, that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes as provided in § 301.7701-3. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(2)(i) provides that, except as provided in § 301.7701-3(b)(3), unless the entity elects otherwise, a foreign eligible entity is: (A) a partnership if it has two or more members and at least one member does not have limited liability; (B) an association if all members have limited liability; or (C) disregarded as an entity separate from its owner if it has a single owner that does not have limited liability. Section 301.7701-3(b)(2)(ii) provides, in part, that for purposes of § 301.7701-3(b)(2)(i), a member of a foreign eligible entity has limited liability if the member has no personal liability for the debts of or claims against the entity by reason of being a member.

Section 301.7701-3(c)(1)(i) provides, in part, that, except as provided in § 301.7701-3(c)(1)(iv) and (v), an eligible entity may elect to be classified other than as provided under § 301.7701-3(b), or to change its classification, by filing Form 8832 with the service center designated on Form 8832.

Section 301.7701-3(c)(1)(iii) provides, in part, that an election made under § 301.7701-3(c)(1)(i) will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified on the election form. The effective date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed.

Section 301.9100-1(a) provides that §§ 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(c) provides that the Commissioner may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I. Section 301.9100-1(b) provides that the term "regulatory election" includes an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections. Section 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 § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in § 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.

#### Conclusion

X is deemed to have acted reasonably and in good faith as those terms are used in § 301.9100-3, based on representations made by X. Specifically, X represents that it met one or more of the conditions in § 301.9100-3(b)(1), including that it failed to make the election because, after exercising reasonable diligence, X was unaware of the need to make the election because the Treasury Regulations were issued after the election due date but applicable prior to the election due date. Although the Treasury regulations were published after Date 1, because the Treasury regulations were applicable before Date 1, X did not use hindsight in requesting relief because no facts had changed as of Date 1. Finally, the interests of the government will not be prejudiced by the granting of relief to make a late election because the relief results in no gain being recognized by X and no increase in the basis of the distributed assets, which is the same result as if the election had been timely made. Thus, based solely on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied.

Accordingly, X is granted an extension of time of 120 days from the date of this letter to make an election to be treated as a disregarded entity for federal tax purposes effective Date 1. X should make the election by filing a properly executed Form 8832 with the appropriate service center, and a copy of this letter should be attached to the election. This ruling is contingent on the owners of X filing within 120 days of the date of this letter all required returns for all open years consistent with the requested relief. These returns may include, but are not limited to the Forms 8858, Information Return of U.S. Persons With Respect to Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs), such that these forms reflect the consequences of the relief granted in this letter. A copy of this letter ruling should be attached to any such returns.

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.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed

by the appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

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.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

*Joy Spies*  
Joy Spies  
Senior Technician Reviewer, Branch 1  
(Passthroughs & Special Industries)

Enclosures (2):  
Copy for 6110 purposes

cc: