

**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:CORP:B03  
PLR-115347-21

Date:  
December 15, 2021

Legend

Parent =

Seller =

DE =

Target =

U.S. Affiliate =

Foreign Affiliates =

Date 1 =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated July 26, 2021, submitted on behalf of Parent, the common parent of a consolidated group, requesting an extension of time under §301.9100-3 of the Procedure and Administration Regulations to file elections. Parent is requesting an extension of time to file "section 338 elections" under section 338(g) with respect to the deemed acquisitions of the stock of Foreign Affiliates (sometimes hereinafter referred to as the "Elections") on Date 1. The material information submitted is summarized below.

Immediately prior to Date 1, Seller, a U.S. corporation, owned through DE (a disregarded entity for federal income tax purposes) all the stock of Target and Target's affiliates, which included U.S. Affiliate and Foreign Affiliates (which were controlled foreign corporations under section 957(a)). On Date 1, Parent acquired from Seller all the ownership interests in DE, and through DE, all the stock of Target, U.S. Affiliate and Foreign Affiliates. Parent has represented that the acquisition of Target was a "qualified stock purchase" within the meaning of section 338(d)(3).

Parent timely made section 338 elections with respect to Target and U.S. Affiliate but, for various reasons, valid section 338 elections for Foreign Affiliates were not made. Subsequently, this request was submitted under §301.9100-3 for an extension of time to file the Elections. Parent 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 section 6662 at the time of the request for relief. Parent also has represented that it would have made the Elections as of the due date for the Elections regardless of the enactment of the Tax Cuts and Jobs Act (TCJA) and the issuance of regulations relating to the TCJA.

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 "section 338 election" or a "section 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, 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 Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file the Elections. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Elections. See §301.9100-3(b)(1)(v).

Based on the facts and information submitted, including the representations made, we conclude that Parent 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 75 days from the date on this letter, for Parent to file the Elections with respect to the deemed acquisitions of Foreign Affiliates, as described above.

WITHIN 75 DAYS OF THE DATE ON THIS LETTER, Parent must file the Elections on Form 8023, in accordance with §§1.338-2(d) and (e)(3) and the instructions to the form. A copy of this letter must be attached to Form 8023.

WITHIN 150 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 transactions as section 338 transactions for the taxable year in which the transactions were 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 requirements of attaching a copy of this letter by attaching a statement to their return that provides the date on, and control number (PLR-115347-21) of, the letter ruling.

Parent must also deliver written notice of the Elections (and a copy of Forms 8023 and 8883, their attachments and instructions) to any U.S. persons selling or holding stock in Foreign Affiliates in accordance with §1.338-2(e)(4).

The above extension of time is conditioned on the relevant taxpayers' tax liability (if any) being not lower, in the aggregate, for all years to which the Elections apply, than it would have been if the Elections 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.

We express no opinion as to: (1) whether any acquisition qualified as a "qualified stock purchase" under section 338(d)(3); or (2) any other tax consequences arising from the Elections.

In addition, we express no opinion as to the tax consequences of filing the Elections 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 Elections 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 Parent, 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 Elections, 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,

*Thomas I. Russell*

Thomas I. Russell  
Chief, Branch 1  
Associate Chief Counsel (Corporate)

cc: