

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **202226008**  
Release Date: 7/1/2022

Third Party Communication: None  
Date of Communication: Not Applicable

Index Number: 338.00-00, 338.01-00,  
9100.00-00, 9100.06-00

Person To Contact: \_\_\_\_\_, ID No.

Telephone Number: \_\_\_\_\_

Refer Reply To:  
CC:CORP:4  
PLR-123551-21

Date:  
April 05, 2022

Legend

Taxpayer =

Foreign Purchaser =

Foreign Target =

Date1 =

Company Official =

Tax Professional =

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

This letter responds to a letter dated November 3, 2021, submitted on behalf of Taxpayer, the United States shareholder of Foreign Purchaser, requesting an extension of time under §301.9100-3 of the Procedure and Administration Regulations to file an

election. Taxpayer is requesting an extension to file a "section 338 election" under section 338(g) with respect to Foreign Purchaser's acquisition of the stock of Foreign Target on Date1 (the "Election"). The material information is summarized below.

On Date1, Foreign Purchaser acquired all the stock of Foreign Target. Taxpayer has represented that Foreign Purchaser's acquisition of the stock of Foreign Target qualified as a "qualified stock purchase" as defined in section 338(d)(3). Taxpayer has also represented that Foreign Purchaser was a controlled foreign corporation as defined in section 957 (taking into account section 953(c)) and was not required under §1.6012-2(g) (other than §1.6012-2(g)(2)(i)(B)(2)) to file a United States income tax return for its taxable year that includes the acquisition date.

Taxpayer intended to file the Election, but for various reasons a timely Election was not filed. After the due date for the Election, it was discovered that the Election had not been filed. Subsequently, this request was submitted, under §301.9100-3, for an extension of time to file the Election. Taxpayer 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 (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 "section 338 election" or a "section 338(h)(10) election"; and (2) the acquisition is a "qualified stock purchase." Pursuant to §1.338-2(e)(3), the statement of section 338 election may be filed by the United States shareholders of a foreign purchasing corporation that is a controlled foreign corporation, if certain requirements are met.

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 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 Taxpayer to file the Election, provided 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 Taxpayer, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See §301.9100-3(b)(1)(i).

Based on the facts and information submitted, including the representations made, we conclude that Taxpayer 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 Taxpayer to file the Election with respect to Foreign Purchaser's acquisition of the stock of Foreign Target.

WITHIN 75 DAYS OF THE DATE ON THIS LETTER, Taxpayer must file the Election 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 amend any relevant return to attach a copy of this letter and a copy of Form 8883. 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 (PLR-123551-21) of, the letter ruling.

Taxpayer must also deliver written notice of the election (and a copy of Forms 8023 and 8883, their attachments and instructions) to any United States persons selling or holding stock in Foreign Target in accordance with §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 Election applies, than it would have been if the 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.

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

In addition, we express no opinion as to the tax consequences of filing the 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 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 Taxpayer, 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 Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

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

Pursuant to the power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

*Thomas I. Russell*

Thomas I. Russell

Chief, Branch 1

Office of Associate Chief Counsel (Corporate)

cc: