

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

In Re:

Refer Reply To:
CC:INTL:B02
PLR-102845-22

Date:
June 30, 2022

TY:

Legend

Taxpayers =

Partnership =

Accounting Firm =

Year 1 =

Dear :

This responds to a letter dated January 31, 2022, submitted by Accounting Firm requesting an extension of time under Treas. Reg. § 301.9100-3 to make an election under section 962 of the Internal Revenue Code to be subject to tax at corporate rates effective for Year 1.

The ruling contained in this letter is based upon information and representations submitted by Taxpayers 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 ruling, it is subject to verification on examination.

FACTS

Taxpayers, husband and wife, filed their U.S. federal income tax return jointly. Husband was a partner in Partnership, which owned controlled foreign corporations. In Year 1, Taxpayers included amounts in their gross income under section 951(a) due to husband's ownership interest in Partnership. Taxpayers relied on Accounting Firm to prepare their tax return for Year 1 and to make the election under section 962, which included filing the election statement as required under Treas. Reg. § 1.962-2(b). Due

to an oversight, Accounting Firm did not file the election statement with the Taxpayers' return for the Year 1 taxable year. Therefore, Taxpayers did not make a section 962 election as prescribed by Treas. Reg. § 1.962-2(b) for that year.

The Taxpayers have represented that:

1. Taxpayers are 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 Taxpayers' request for relief and, therefore, there is no new return position that requires or permits a regulatory election for which relief is requested.
2. It is not the case that Taxpayers were informed in all material respects of the election and related tax consequences, but chose not to file the election.
3. Taxpayers did not use hindsight in requesting relief, and no specific facts have changed since the due date for making the election that make the election more advantageous to Taxpayers than if the election had been timely made.
4. Granting relief would not result in a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayers would have had if the election had been timely made.
5. The taxable year in which the regulatory election should have been made and any taxable years that would have been affected by the election had it been timely made are not closed by the period of limitations on assessment.

LAW AND ANALYSIS

Section 962(a) provides that, under regulations prescribed by the Secretary, an individual United States shareholder of a controlled foreign corporation may elect to be subject to tax at corporate rates on amounts included in their gross income under section 951(a) and to have the benefits of a credit for certain foreign income taxes paid with respect to such amounts.

Section 962(b) provides that such election shall be made by a United States shareholder at such time and in such manner as the Secretary shall prescribe by regulations.

Treas. Reg. § 1.962-2(b) provides that a United States shareholder shall make an election under section 962 by filing a statement to such effect with their return for the taxable year with respect to which the election is made.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant a taxpayer a reasonable extension of time, under the rules set forth in Treas. Reg. §

301.9100-3, to make a regulatory election under all subtitles of the Internal Revenue Code, except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-3(a) provides that requests for relief will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Treas. Reg. § 301.9100-3(b)(1) provides that, except as provided in paragraph (b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer—

- i. requests relief under this section before the failure to make the regulatory election is discovered by the Internal Revenue Service;
- ii. failed to make the election because of intervening events beyond the taxpayer's control;
- iii. failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and complexity of the return at issue), the taxpayer was unaware of the necessity for the election;
- iv. reasonably relied on the written advice of the IRS; or
- v. reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Treas. Reg. § 301.9100-3(b)(3) provides that a taxpayer is deemed to have not 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 section 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 material respects of the required election and related tax consequences, but those not to file the election; or
- iii. uses hindsight in requested relief. If specific facts have changed since the due date for making the election that make the election advantageous to the taxpayer, the IRS will not ordinarily grant relief. In such a case, the IRS will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

Treas. Reg. § 301.9100-3(c)(1)(i) provides, in relevant part, 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).

Treas. Reg. § 301.9100-3(c)(1)(ii) provides that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief.

In this case, Treas. Reg. § 1.962-2(b) fixes the time to make the election under section 962, which makes the election a regulatory election. Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayers an extension of time provided that Taxpayers satisfy the standards set forth under Treas. Reg. § 301.9100-3(a).

Under Treas. Reg. § 301.9100-3(b)(1)(v), Taxpayers acted reasonably and in good faith because they reasonably relied on Accounting Firm, which was a qualified tax professional employed by Taxpayers, and Accounting Firm failed to make, or advise Taxpayers to make, the section 962 election.

Taxpayers have represented that none of the conditions in Treas. Reg. § 301.9100-3(b)(3)(i)-(iii) were present such that the Taxpayers would be deemed not to have acted reasonably or in good faith.

Taxpayers have represented that granting relief would not result in Taxpayers having a lower tax liability in the aggregate for all taxable years affected by the election than Taxpayers would have had if the election had been timely made. Further, Taxpayers have represented that the taxable year in which the regulatory election would have been made and any taxable years that would have been affected had it been timely made, are not closed by the period of limitations on assessment. Accordingly, the interests of the Government will not be prejudiced by the granting of relief.

CONCLUSIONS

Based solely on the information and representations set forth above, we conclude that Taxpayers satisfy Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayers are granted an extension of time until 60 days from the date of this ruling letter to make the election under section 962 for the Year 1 taxable year.

Taxpayers should attach a copy of this letter ruling to their federal income tax return for the relevant year.

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

Pursuant to a power of attorney on file in this office, a copy of this ruling letter is being furnished to your authorized representative.

Sincerely,

/s/ Kristine A. Crabtree

Kristine A. Crabtree
Senior Technical Reviewer, Branch 2
(International)

cc: