

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202245005**

Release Date: 11/11/2022

Index Number: 884.00-00, 884.08-00,
884.08-40, 9100.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:INTL:B01
PLR-106607-22

Date:
July 29, 2022

Legend

Parent =

Subsidiary =

Country X =

State A =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

CPA Firm 1 =

CPA Firm 2 =

Dear :

This replies to a letter dated March 30, 2022, from your authorized representative, in which you request an extension of time pursuant to Treas. Reg. § 301.9100-1(c) and Treas. Reg. § 301.9100-3 to permit Subsidiary to make an election under Treas. Reg. § 1.884-2T(d)(4)(i) to increase its earnings and profits by the amount determined under Treas. Reg. § 1.884-2T(d)(4)(ii) with respect to its Year 1 tax year and to permit Parent to file the appropriate statement under Treas. Reg. § 1.884-2T(d)(5) to perfect this election.

The rulings contained in this letter are based upon facts and representations submitted by Parent and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

Parent, a Country X Entity, is classified as a corporation for federal income tax purposes and is a calendar-year taxpayer. As of the beginning of its Year 1 tax year, Parent wholly owned Subsidiary, a State A limited liability company that was treated as a disregarded entity for federal tax purposes pursuant to Treas. Reg. § 301.7701-3(b)(1)(ii) and that was engaged in a U.S. trade or business. Parent timely filed its Year 1 Form 1120-F to report its income effectively connected with the U.S. trade or business of Subsidiary and branch profits tax with respect to the earnings of Subsidiary.

On Date 1, Year 3, Subsidiary, based on advice of CPA Firm 1, filed a Form 8832 (Entity Classification Election) pursuant to Rev. Proc. 2009-41, 2009-39 I.R.B. 43, to elect to be treated as a corporation for federal income tax purposes with retroactive effect to Date 2, Year 2. Subsidiary received a letter dated Date 3, Year 3, from the IRS granting its classification election. Pursuant to Treas. Reg. § 301.7701-3(g)(1)(iv), as a consequence of the election, Parent was deemed to have contributed all of the assets and liabilities of Subsidiary to a newly formed association in exchange for stock of the association in a transaction that Parent states was described in section 351. Pursuant to Treas. Reg. § 301.7701-3(g)(3)(i), the transaction deemed to occur as a result of Subsidiary's change in classification is treated as occurring immediately before the close of the day before the entity classification election effective date (i.e., on Date 4, Year 1).

Under Treas. Reg. § 1.884-2T(d)(3), if a foreign corporation (transferor) engaged in the conduct of a U.S. trade or business makes a transfer under section 351(a) of the Code of all or part of its U.S. assets to a U.S. corporation (transferee) in exchange for stock or securities in the transferee, the transferor's dividend equivalent amount will be determined without regard to the section 351 transfer, provided the transferee makes an election under Treas. Reg. § 1.884-2T(d)(4)(i) to increase its earnings and profits by an allocable portion of the transferor's effectively connected earnings and profits and non-previously taxed accumulated earnings. The election is generally only effective if the transferee attaches the requisite statement described in Treas. Reg. § 1.884-2T(d)(4)(i) to its timely filed (including extensions) income tax return for the taxable year in which the transaction occurs. The transferor must also file a statement agreeing that, upon disposition of part or all of the stock or securities it owns in the transferee, it will treat as a dividend equivalent amount for the taxable year in which the disposition occurs an amount equal to the lesser of (A) the amount realized upon such disposition or (B) the total amount of the effectively connected earnings and profits and non-previously taxed accumulated earnings and profits that was allocated from the transferor corporation to the transferee corporation pursuant to the election under Treas. Reg. § 1.884-

2T(d)(4)(i). Treas. Reg. § 1.884-2T(d)(5)(i). This statement must be attached to a timely filed (including extensions) return of the transferor for the taxable year in which the section 351 transaction occurs. Treas. Reg. § 1.884-2T(d)(5)(iv).

At the time CPA Firm 1 advised Subsidiary to file Form 8832, CPA Firm 1 did not identify or advise on the possibility of making an election under Treas. Reg. § 1.884-2T(d)(4)(i). Subsequently, CPA Firm 1 determined that, because the election could not be made on a timely-filed return for Year 1, Subsidiary should instead make the election under Treas. Reg. § 1.884-2T(d)(4)(i) on its income tax return for Year 2 and Parent should attach a statement pursuant to Treas. Reg. § 1.884-2T(d)(5)(i) on its income tax return for Year 2. CPA Firm 1 prepared and timely filed both Parent's and Subsidiary's income tax returns for Year 2 accordingly.

In Year 4, Parent engaged CPA Firm 2 which determined that Subsidiary failed to make a timely election in accordance with Treas. Reg. § 1.884-2T(d)(4)(i) and Parent failed to timely file the appropriate statement in accordance with Treas. Reg. § 1.884-2T(d)(5)(iv). Upon learning this information, Parent authorized CPA Firm 2 to begin the process to request late election relief, which Parent filed as soon as practicable thereafter. The IRS did not discover Subsidiary's failure to timely make the election or Parent's failure to timely file the required statement before this request for relief was filed.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the standards 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 provides standards for extensions of time for making regulatory elections when the deadline for making the election is other than a due date prescribed by statute.

Treas. Reg. § 301.9100-3(a) provides that requests for relief subject to this section 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. Except as otherwise provided in Treas. Reg. § 301.9100-3(b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief before the failure to make the regulatory election is discovered by the IRS. Treas. Reg. § 301.9100-3(b)(1)(i).

In the present situation, Treas. Reg. § 1.884-2T(d)(4)(i) fixes the time for Subsidiary to make the election and Treas. Reg. § 1.884-2T(d)(5)(iv) fixes the time for Parent to file the statement. Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Parent and Subsidiary an extension of time, provided that each satisfies the standards set forth in Treas. Reg. § 301.9100-3(a).

Based on the facts and circumstances of this case, we conclude that Parent and Subsidiary acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government. Accordingly, under Treas. Reg. § 301.9100-3, Subsidiary is granted an extension of time until 30 days from the date of this ruling letter to make an election under Treas. Reg. § 1.884-2T(d)(4)(i) to increase its earnings and profits by the amount determined under Treas. Reg. § 1.884-2T(d)(4)(ii) with respect to its Year 1 tax year, and Parent is granted an extension of time until 30 days from the date of this ruling letter to file the appropriate statement under Treas. Reg. § 1.884-2T(d)(5) to perfect this election. The granting of an extension of time is not a determination that Subsidiary is otherwise eligible to make the election. Treas. Reg. § 301.9100-1(a).

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 under other provisions of the Code and regulations, or about the tax treatment of any conditions existing at the time of, or effects resulting from the transactions not specifically covered by the above rulings. In particular, no opinion is expressed with respect to (i) the application of Treas. Reg. § 301.7701-3(g) or section 351 and related provisions to the transactions discussed, and (ii) whether the federal income tax returns for Year 1 or Year 2 were timely filed (including extensions).

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Richard F. Owens
Senior Technical Reviewer, Branch 1
Associate Chief Counsel (International)

PLR-106607-22

5

Enclosure:
Copy for 6110 Purposes

cc: