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:ITA:B02
PLR-122242-22

Date:
May 12, 2023

In Re:

TY: Tax Year ended on

LEGEND:

Taxpayer	=
A	=
B	=
C	=
Accounting Firm	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Year 1	=
Year 2	=
Month 1	=
Month 2	=
Month 3	=
Month 4	=
Country 1	=
Country 2	=

Dear :

This letter responds to your correspondence dated Date 1, and supplemental correspondence submitted on Date 2 and Date 3, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations for Taxpayer to make the real property trade or business election under § 163(j)(7)(B) of the Internal Revenue Code and § 1.163(j)-9 of the Income Tax Regulations ("RPTOB Election"), with respect to its real property trade or business for its taxable year ended Date 4 ("Year 1"). This letter ruling is being issued electronically, as permissible under sections 7.02(2) and 9.04(3) of Rev. Proc. 2022-1, 2022-1 I.R.B. 1, 33, 49.

FACTS AND REPRESENTATIONS

Taxpayer represents the following:

Taxpayer is a partnership formed under the laws of Country 1, for the purpose of investing in a diversified portfolio of European real estate assets. Taxpayer is one of B foreign real estate funds managed by A, a real estate investment manager and fund sponsor based in Country 2. Taxpayer is classified as a partnership for U.S. Federal income tax purposes.

Taxpayer has been engaged in real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business. Taxpayer owned certain foreign real estate assets through lower-tier disregarded entities. Therefore, all of the assets held by the underlying disregarded entities are treated as held by Taxpayer for U.S. Federal income tax purposes. Since its formation, Taxpayer has neither held any U.S. assets nor generated any U.S. source income. Taxpayer generally has not been required to file a Form 1065 (U.S. Return of Partnership Income) nor has it provided Form 1065, Schedules K-1 (Partner's Share of Income, Deductions, Credits, etc.) to its partners. Taxpayer has instead provided certain pro forma U.S. tax statements to C of its partners that may have U.S. Federal income tax filing obligations.

Taxpayer, because it had not been required to file an annual U.S. Federal income tax return and because it did not have any deductible business interest subject to § 163(j), did not make an RPTOB Election with a timely filed original U.S. Federal income tax return prior to Year 1. Certain other non-U.S. partnerships managed by A, however, had previously filed U.S. Federal income tax returns solely to make the RPTOB Election.

Since its formation, Taxpayer has engaged Accounting Firm to provide tax compliance and tax advisory services. These services included preparation of pro forma U.S. Schedules K-1 and various other U.S. tax advisory services. Taxpayer does

not have in-house U.S. tax professionals and relies on Accounting Firm for all U.S. tax advice.

In Year 1, Taxpayer's real estate assets were held for sale, and Taxpayer generated interest expense. The interest expense gave rise to the application of § 163(j) in the calculation of Taxpayer's Year 1 taxable income for the purpose of providing the pro forma U.S. tax statements to its applicable partners.

In Month 1, during the process of preparing pro forma information for Taxpayer's U.S. limited partners for Year 1, Accounting Firm verbally advised A's chief financial officer that it would be prudent for Taxpayer to make the RPTOB Election for Year 1. Accounting Firm then prepared the pro forma information and tax statements for Taxpayer's U.S. limited partners for Year 1 as if the RPTOB Election was made. Specifically, Taxpayer completed its calculation of Year 1 taxable income by including its interest expense in ordinary income (loss) as fully deductible under the RPTOB Election. The Year 1 pro forma U.S. tax statements included a footnote that stated, "The Partnership has made the real property trade or business election under section 163(j)(7)(B)."

In Month 2, Accounting Firm sent A's chief financial officer Year 1 U.S. Federal income tax returns for review and signature for other entities managed by A. Accounting Firm, however, failed to send A's chief financial officer a Year 1 U.S. Federal income tax return for Taxpayer and the RPTOB Election for filing. Taxpayer relied on Accounting Firm to prepare any filings needed for making the RPTOB Election. Due to the transition to the virtual work environment and staff turnover during the COVID-19 global pandemic, Accounting Firm inadvertently failed to prepare a Year 1 U.S. Federal income tax return and the RPTOB Election for Taxpayer.

In Month 3, while preparing pro forma U.S. tax information for Taxpayer's Year 2, Accounting Firm realized that no U.S. Federal income tax return was filed and hence, no RPTOB Election was filed with a timely original U.S. Federal income tax return for Year 1.

In Month 4, Accounting Firm advised Taxpayer to request relief under §§ 301.9100-1 and 301.9100-3 for an extension of time to make the RPTOB Election.

LAW AND ANALYSIS

Section 163(j)(1)(A) limits a taxpayer's deduction for "business interest." The term "business interest" means any interest paid or accrued on indebtedness property allocable to a "trade or business." § 163(j)(5). The term "business interest," however, does not include "any electing real property trade or business." § 163(j)(7)(A)(ii). An "electing real property trade or business" is any trade or business that is described in § 469(c)(7)(C) and that makes an election under § 163(j)(7)(B).

Section 1.163(j)-9(d)(1) provides that a taxpayer makes a RPTOB Election by attaching a statement to the taxpayer's timely filed original Federal income tax return, including extensions.

Section 1.6031(a)-1(b)(5) provides that, for a partnership not otherwise required to file a partnership return, if an election that only the partnership may make is required to be made by or for the partnership, a return on the form prescribed for the partnership return must be filed for the partnership.

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 an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make certain regulatory elections. Section 301.9100-1(b) defines a "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) provides that 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(b)(1) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer: (i) requests relief before the failure to make the regulatory election is discovered by the 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 the 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 Service; 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.

Section 301.9100-3(b)(3) provides that a taxpayer will not be deemed to have 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 § 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 chose not to file the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c)(1) provides that the interests of the government are prejudiced if granting relief would result in the 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. 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.

Taxpayer's election is a regulatory election, as defined under § 301.9100-1(b) because the requirements and due date of the election are prescribed in § 1.163(j)-9(d). The Commissioner has the authority under §§ 301.9100-1 and 301.9100-3 to grant an extension of time to file a late regulatory election.

Taxpayer has represented that it requested relief before the failure to make the regulatory election was discovered by the Service and that it reasonably relied on qualified tax professionals, and the tax professionals failed to make, or advise Taxpayer to make, the election. Thus, under § 301.9100-3(b)(1)(i) and (v), Taxpayer will be deemed to have acted reasonably and in good faith. Taxpayer has also represented that none of the circumstances listed in § 301.9100-3(b)(3) apply.

Based on the facts Taxpayer provided, granting an extension of time to file the election will not prejudice the interests of the government under § 301.9100-3(c)(1). Taxpayer has represented that granting relief would not result in a lower tax liability in the aggregate for all taxable years affected by the election than Taxpayer would have had if the election had been timely made (taking into account the time value of money). Furthermore, Taxpayer has represented that the taxable year in which the regulatory election should have been made and any taxable years that would have been affected had it been timely made, are not closed by the period of assessment.

CONCLUSION

Based solely on the information provided and representations made, we conclude that Taxpayer acted reasonably and in good faith and granting relief will not prejudice the interests of the Government. In so doing, we likewise conclude that Taxpayer has met the requirements of §§ 301.9100-1 and 301.9100-3.

Taxpayer is granted an extension of 60 calendar days from the date of this letter ruling to file an election statement in accordance with the procedures set forth in § 1.163(j)-9(d) for Year 1 electing for Taxpayer's qualifying real property trades or businesses to be electing real property trades or businesses under section 163(j)(7)(B).

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. In particular, we are not expressing any opinion concerning

whether Taxpayer qualifies to make the RPTOB Election, and we are not expressing any opinion concerning whether any property of Taxpayer qualifies for the RPTOB Election. Moreover, we also are not expressing any opinion concerning whether Taxpayer is filing a return that meets the requirements under § 1.6031(a)-1(b)(5).

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.

A copy of this letter must be attached to any income tax return to which it is relevant. Taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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

Sincerely,

Robert A. Martin
Senior Technician Reviewer, Branch 2
(Income Tax & Accounting)

Enclosure: Copy of the letter for 6110 purposes

cc: