

## 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:INTL:06

PLR-102514-23

Date:

August 29, 2023

## Legend

Taxpayer =

Accounting Firm =

Company =

Individual 1 =

Individual 2 =

Individual 3 =

Individual 4 =

Individual 5 =

Individual 6 =

Individual 7 =

Individual 8 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Date 11 =

Date 12 =

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

This responds to a letter dated January 23, 2023, supplemented by additional correspondence dated May 17, 2023, May 25, 2023, and July 10, 2023, submitted by your representatives requesting that the Internal Revenue Service (“Service”) grant Taxpayer an extension of time under Treas. Reg. §§ 301.9100-1 and 301.9100-3 to file Form 4876-A (“Election To Be Treated as an Interest Charge DISC”) for Year 1, Taxpayer’s first taxable year.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and Accounting Firm and accompanied by affidavits and penalty of perjury statements executed by appropriate parties. This office has not verified any of the materials submitted in support of the request for a ruling, including the statements about prior Service actions. It is subject to verification on examination.

### **FACTS**

On Date 1, Taxpayer was formed to operate as an interest charge domestic international sales corporation (“IC-DISC”). Taxpayer is a domestic corporation that, upon incorporation, was wholly owned by Individual 1, Individual 2, and Individual 3. Company is a domestic corporation. Taxpayer functions solely as an IC-DISC, and earns commissions from its supplier, Company.

On Date 2, Accounting Firm prepared Form 4876-A for execution by Taxpayer to elect to be treated as an IC-DISC. Taxpayer signed and filed the form with the Internal Revenue Service, Kansas City, MO. Taxpayer believed Form 4876-A to have been successfully and timely filed, and has since been operating consistently as an IC-DISC.

Taxpayer uses the accrual accounting method, and its year-end is December 31. Taxpayer timely filed its 2018 Form 1120-IC-DISC on August 5, 2019. Tax Year 2018 is the first year Taxpayer transacted business. Taxpayer has timely filed Form 1120-IC-DISC for each subsequent tax year.

Between Year 1 and Year 5, Taxpayer experienced turnover, with three different Chief Financial Officers serving during that period. Individual 4 served as the Taxpayer’s Chief Financial Officer from Taxpayer’s formation on Date 1 to the close of its Year 3 tax year. Individual 5 then served as the Taxpayer’s Chief Financial Officer from Date 3 through Date 4. Individual 6 currently serves as the Taxpayer’s Chief Financial Officer.

On or about Date 5, Taxpayer received a Letter 599C from the Service dated Date 5 stating that the Service could not process Taxpayer’s Form 4876-A because Taxpayer

was not eligible given that it did not reply to previous correspondence requesting information needed to process the form.

Upon receipt of the Letter 599C dated Date 5, Individual 4 contacted Accounting Firm for assistance. The Taxpayer and Accounting Firm confirmed that neither had received any previous correspondence from the IRS regarding Taxpayer's filed Form 4876-A. On Date 6, Accounting Firm sent a response letter to the Service stating that previous correspondence as referenced in the Letter 599C dated Date 5 was not received by Taxpayer and requested a copy of the previous correspondence so that Taxpayer could address the issue. On Date 12, Accounting Firm sent a response letter identical to the letter it sent on Date 6, with additional language stating it was the fourth and final attempt to contact the Service regarding Letter 599C dated Date 5. The previous correspondence referenced in Letter 599C dated Date 5 was never received by Taxpayer or Accounting Firm.

On or about Date 9, Taxpayer received a second Letter 599C dated Date 7 stating the Service could not process Taxpayer's Year 3 Form 1120-IC-DISC because the Taxpayer was not eligible to file a Form 1120-IC-DISC due to the Service not receiving an approved Form 4876-A. On or about Date 8, Taxpayer received a third Letter 599C dated Date 8, stating the Service could not process Taxpayer's Year 4 Form 1120-IC-DISC for the same reason as stated in the second 599C letter.

On Date 10 and Date 11 Accounting Firm sent letters to the Service, stating Taxpayer timely filed Form 4876-A on Date 2 and enclosing the Form 4876-A as filed. Additionally, the letters enclosed the Date 5 Letter 599C, as well as the Taxpayer's response to that letter, and explained that since Taxpayer's Date 6 response to the Date 5 Letter 599C, the Taxpayer had sent "multiple follow up letters" and made phone calls, with no response from the Service. The letter concluded by stating that the Taxpayer was not aware of any issue with its timely filed Form 4876-A, and it requested that the Service provide the Taxpayer with any steps needed to resolve the issue. The Date 10 and Date 11 letters further requested that the Service process Taxpayer's Forms 1120-IC-DISC for Year 3 and Year 4, respectively.

After calls to the Service at the number provided in the Letters 599C, Individual 7 of Accounting Firm, was able to speak with Individual 8 of the Service. Individual 8 provided that the Service received Taxpayer's Form 4876-A and sent correspondence to Taxpayer stating that Form 4876-A was missing a shareholder signature. Upon review, Taxpayer and Accounting Firm concluded that Form 4876-A was missing the signature and date of shareholder, Individual 3, in Part II of the Form 4876-A. Individual 8 provided that the prior correspondence from the Service requested that Taxpayer correct this error. Individual 8 was unable to provide a copy of the prior correspondence

to Taxpayer. Taxpayer was unable to correct the error in a timely manner because it did not receive the prior correspondence.

Taxpayer states that the missing shareholder signature was a scrivener's error. Taxpayer intended to be classified as an IC-DISC as of Date 1, as evidenced by its filing of Form 4876-A and subsequent consistent filing of Forms 1120-IC-DISC for Year 1, Year 2, Year 3, and Year 4.

The period of limitations on assessment under Internal Revenue Code § 6501(a) is closed for at least Year 1. However, Taxpayer has provided a statement from an independent auditor as described in Treas. Reg. § 301.9100-3(c)(1)(ii) considering the relevant circumstances of all affected parties and confirming that the interests of the Government are not prejudiced under the standards contained in Treas. Reg. § 301.9100-3(c)(1).

### **LAW AND ANALYSIS**

Section 992(b)(1)(A) provides that an election by a corporation to be treated as a DISC<sup>1</sup> shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

Section 992(b)(1)(B) provides that such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on such first day of the first taxable year for which such election is effective consent to such election.

Temp. Treas. Reg. § 1.921-1T(b)(1) provides, in part, that a corporation electing IC-DISC status must file Form 4876-A and that a corporation electing to be treated as an IC-DISC for its first taxable year shall make its election within 90 days after the beginning of that year.

Treas. Reg. § 301.9100-1(c) provides, in part, that the Commissioner, in exercising the Commissioner's discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) provides that a regulatory election is 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. For this purpose, an election includes an application for relief in respect of tax.

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<sup>1</sup> As used in this letter, the terms "IC-DISC" and "DISC" have the same meaning.

Treas. Reg. § 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3. Requests for relief subject to Treas. Reg. § 301.9100-3 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 that the grant of relief will not prejudice the interests of the Government.

Treas. Reg. § 301.9100-3(b)(1)(v) provides that a taxpayer is generally deemed to have acted reasonably and in good faith if the taxpayer 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(c)(1) provides the standards the Commissioner will use to determine when the interests of the Government are prejudiced. Treas. Reg. § 301.9100-3(c)(1)(i) provides 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 Code section 6501(a) before the taxpayer's receipt of a ruling granting relief. However, the Service may condition a grant of relief on the taxpayer providing the Service with a statement from an independent auditor (other than an auditor providing an affidavit pursuant to Treas. Reg. § 301.9100-3(e)(3)) certifying that the interests of the Government are not prejudiced under the standards set forth in Treas. Reg. § 301.9100-3(c)(1)(i).

In the present situation, the election described in Temp. Treas. Reg. § 1.921-1T(b)(1) is a regulatory election as defined in Treas. Reg. § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards for relief set forth in Treas. Reg. § 301.9100-3.

## **CONCLUSION**

Based on the facts and representations submitted with Taxpayer's ruling request, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a).

Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file Form 4876-A. Such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year.

The granting of an extension in this ruling letter is not a determination that Taxpayer is otherwise eligible to make the election or to claim IC-DISC status or benefits. See Treas. Reg. § 301.9100-1(a). Taxpayer should attach a copy of this ruling letter to its Form 4876-A and Federal income tax return for the taxable years to which this letter applies.

In accordance with section 996(g), Taxpayer should not accept any income tax treaty claims of reduced withholding under section 1442 with respect to distributions (deemed or otherwise) of accumulated DISC income.

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. 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.<sup>2</sup>

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

Sincerely,

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L. Ulysses Chatman  
Senior Counsel, Branch 6  
(International)

Enclosures (2)

cc:

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<sup>2</sup> For example, no opinion is expressed regarding the consequences to any person under section 996(g).