

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.

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CC:PSI:B03

PLR-110908-23

Date:

November 21, 2023

Legend

A =

B =

X =

Y =

Country =

Country 2 =

Date 1 =

Date 2 =

Year =

Dear :

This responds to a letter dated May 16, 2023 and subsequent communications, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for X and Y to file elections to be classified as partnerships, each effective Date 1.

Facts

X was formed under the laws of Country and Y was formed under the laws of Country 2. X and Y are foreign eligible entities whose default entity classifications are associations.

A and B were married individuals and residents of Country. A and B owned all the shares of X and Y. During Year, A and B became United States residents for tax purposes. B died on Date 2. On B's death, A became the sole owner of X and Y.

It is asserted that Forms 5471 Information Return of U.S. Persons with Respect to Certain Foreign Corporations were filed for both X and Y for period ending Date 1, and each tax period after.

It is asserted that granting relief will not result in a lower tax liability in the aggregate for all taxable years affected by the election.

Law

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes. Elections are necessary only when an eligible entity does not want to be classified under the default classification or when an eligible entity chooses to change its classification.

Section 301.7701-3(b)(2)(i) provides that, except for certain existing entities described in § 301-7701-3(b)(3), unless a foreign eligible entity elects otherwise, the entity is: (A) a partnership if it has two or more members and at least one member does not have limited liability; (B) an association if all members have limited liability; or (C) disregarded as an entity separate from its owner if it has a single member that does not have limited liability.

Section 301.7701-3(c)(1)(i) provides that an eligible entity may elect to be classified other than as provided under § 301.7701-(3)(b) by filing Form 8832 with the appropriate service center. Under § 301.7701-3(c)(1)(iii), this election will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified. The date specified on Form 8832 cannot be more than 75 days before the date on which the election is filed.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 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. Section 301.9100-1(b) provides that the term "regulatory election" includes an election whose due date is prescribed by a regulation published in the Federal Register.

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 the election. Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections. Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interest of the Government.

Section 301.9100-3(b)(1) provides that, except as provided in § 301.9100-3(b)(3)(i)-(iii), 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 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 the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the Internal Revenue 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 is deemed to not 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 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 chose not to file the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c)(1) provides the standards the Commissioner will use to determine when the interests of the Government are prejudiced.

Section 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). Similarly, if the tax consequences of more than one taxpayer are affected by the election, the Government's interest are prejudiced if extending the time for making the election may result in the affected taxpayers in the aggregate, having a lower tax liability than if the election had been timely made.

Section 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 under this section.

Section 6501(a) provides, in relevant part, that as except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed).

Conclusion

Based solely on the information provided and the representations made, we conclude the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, X and Y are each granted an extension of time of 120 days from the date of this letter to File Form 8832 with the appropriate service center to elect to be classified as a partnership, effective Date 1. A copy of this letter should be attached to the Form 8832.

This ruling is contingent on X, Y, and their owners filing, within 120 days from the date of this letter, to the extent necessary or appropriate, all required federal income tax returns and information returns (including amended returns) consistent with the requested relief granted in this letter. These returns include, but are not limited to, Forms 8865, Return of U.S. Persons with Respect to Certain Foreign Partnerships, such that these forms reflect the consequences of the relief granted in this letter. A copy of this letter should be attached to the returns.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code and the regulations thereunder. In addition, § 301.9100-1(a) provides that the granting of an extension of time for making an election is not a determination that the taxpayer is otherwise eligible to make the election. If applicable, X's and Y's election to be partnerships effective on Date 1 is disregarded for purposes of determining the amounts of all section 965 elements of all United States shareholders of X and Y, if the election otherwise would change the amount of any section 965 element of any such United States shareholder. See § 1.965-4(c)(2).

We express no opinion concerning the assessment of any interest, additions to tax, additional amounts, or penalties for failure to file a timely tax or information return with respect to any taxable year that may be affected by this ruling. For example, we express no opinion as to whether X or Y and any affected taxpayers are entitled to relief from any penalty on the basis that any taxpayer had reasonable cause for failure to timely file any income tax or information returns.

The rulings contained in this letter are based on information and representations submitted by the 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.

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.

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

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

/s/ Richard T. Probst

By:

Richard T. Probst
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure:

Copy for § 6110 purposes

cc: