

**Internal Revenue Service**

Department of the Treasury  
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, ID No.

Telephone Number:

Refer Reply To:  
CC:INTL:B01  
PLR-119638-23

Date:  
February 2, 2024

TY:

Legend

Taxpayer:  
Country A:  
Country B:  
Country C:  
Real Property:  
State A:  
Date 1:  
Year 1:  
Date 2:

Tax Preparer:

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

This is in reply to a letter dated \_\_\_\_\_, requesting an extension of time under Treas. Reg. § 301.9100-3 for Taxpayer to file a Form 8848, *Consent to Extend the Time to Assess the Branch Profits Tax Under Regulations Sections 1.884-2(a) and (c)*. The ruling contained in this letter is based upon facts and representations submitted by Taxpayer 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.

## FACTS

Taxpayer is a foreign corporation organized in Country A, and owned by an individual, a Country B citizen residing in Country C.

Taxpayer acquired ownership of Real Property located in State A on Date 1. The sole activity of Taxpayer was to hold Real Property located in State A for long-term investment purposes and not rental income. Other than Real Property and some cash to pay for property-related expenses, Taxpayer held no other assets. Taxpayer later sold its interest in Real Property in Year 1 on Date 2 to an unrelated party. The sale was subject to Federal income tax on a net basis under section 897 of the Code and withholding under section 1445 as well as State A income tax and withholding. At the end of Year 1, Taxpayer did not have any assets from which it derived effectively connected income or with respect to which a disposition would result in gain constituting income effectively connected with the conduct of a U.S. trade or business.

Taxpayer did not have a filing requirement before Year 1 as it was not conducting a trade or business within the United States and did not otherwise have U.S. source income. Taxpayer engaged Tax Preparer to prepare and file Taxpayer's Form 1120-F, *U.S. Income Tax Return of a Foreign Corporation*, for Year 1 to report the gain from the sale of Real Property and other reportable expenses, and to claim a refund for amounts withheld in excess of Taxpayer's liability. Tax Preparer was a Certified Public Accountant with over twenty years of tax experience. Taxpayer provided Tax Preparer with all relevant facts.

In the course of preparing the return, Tax Preparer determined that the refunds receivable with respect to Year 1 would be considered U.S. assets within the meaning of Treas. Reg. § 1.884-1(d)(2) and that, as a result, Taxpayer would not be considered to have completely terminated its U.S. trade or business for purposes of Treas. Reg. § 1.884-2T(a) until Taxpayer received the refunded amounts. Accordingly, Form 8848 was not attached to Taxpayer's Form 1120-F for Year 1. Due to delays in the processing of Taxpayer's refund, Tax Preparer consulted with an international tax specialist who advised that Taxpayer had completely terminated its U.S. trade or business in Year 1 and that Form 8848 should have been attached to Taxpayer's Form 1120-F for Year 1.

By the time Tax Preparer consulted with an international tax specialist, the due date to timely file Form 8848 had passed as had the automatic late election relief available under Treas. Reg. § 301.9100-2. Therefore, Taxpayer requests an extension of time under Treas. Reg. § 301.9100-3 to file Form 8848.

## LAW AND ANALYSIS

Treas. Reg. § 1.884-2T(a)(1) provides, in relevant part, that “[a] foreign corporation shall not be subject to the branch profits tax for the taxable year in which it completely terminates all of its U.S. trade or business within the meaning of [Treas. Reg. § 1.884-2T(a)(2)].” Taxpayer represents that the proceeds from the Real Property sale would not be used to reinvest in a U.S. trade or business and Taxpayer would not engage in a U.S. trade or business for at least three years from the year of termination, as required by Treas. Reg. § 1.884-2T(a)(2).

Treas. Reg. § 1.884-2T(a)(2)(i)(D) also requires that the foreign corporation attaches to its income tax return a waiver of the period of limitations for the branch profits tax in the year of complete termination. Treas. Reg. § 1.884-2(a)(2)(ii) provides that this waiver must be executed on Form 8848, or substitute form, on or before the date (including extensions) prescribed for filing the foreign corporation's income tax return for the year of complete termination and extend the period of assessment of the branch profits tax for the year of complete termination to a date not earlier than the close of the sixth taxable year following that taxable year.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant 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 provides rules for extensions of time for making regulatory elections.

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.

Based on the facts and circumstances of this case, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a) and hereby grant Taxpayer an extension of time to file a signed Form 8848 and attach it to an amended Form 1120-F within 60 days from the date of this ruling letter.

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.

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.

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

Sincerely,

Richard F. Owens  
Branch Chief, Branch 1  
(International)

cc: