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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:01

PLR-100497-20

Date:

February 18, 2021

Legend

X =

Y =

Z =

Country =

Date 1 =

Date 2 =

N1 =

N2 =

N3 =

Dear :

This letter responds to a letter dated December 16, 2019, submitted on behalf of X by its authorized representative, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for X to file an entity classification election to be treated as an association taxable as a corporation for federal tax purposes.

## FACTS

The information submitted states that X was formed under the laws of Country on Date 1, as a foreign eligible entity that, by default, was taxed as a corporation. X was, in part, founded by Y, who is a U.S. citizen. On Date 2, Z, a domestic LLC taxed as a partnership, through a domestic, wholly owned subsidiary taxed as a disregarded entity, acquired n1% of X. After Z's acquisition, Y owned n2% of X and other U.S. persons owned n3% of X. X represents that in connection with the acquisition, X sought advice from a qualified tax professional regarding X's potential status as a controlled foreign corporation and a comparison of the tax burden of X being treated as a partnership instead of a corporation. Following the advice provided, X filed an entity classification election to be treated as a partnership effective Date 2. X now seeks relief to make a late entity classification election to be treated as an association taxable as a corporation effective Date 2 in the hopes of effectively reverting to its original classification, as if X had never elected to be a partnership.

## LAW AND ANALYSIS

Section 301.7701-3(a) provides, in part, 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 as provided in § 301.7701-3. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(2)(i) provides that, except as provided in § 301.7701-3(b)(3), unless the entity elects otherwise, a foreign eligible 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 owner that does not have limited liability. Section 301.7701-3(b)(2)(ii) provides, in part, that for purposes of § 301.7701-3(b)(2)(i), a member of a foreign eligible entity has limited liability if the member has no personal liability for the debts of or claims against the entity by reason of being a member.

Section 301.7701-3(c)(1)(i) provides, in part, that, except as provided in § 301.7701-3(c)(1)(iv) and (v), an eligible entity may elect to be classified other than as provided under § 301.7701-3(b), or to change its classification, by filing Form 8832 with the service center designated on Form 8832.

Section 301.7701-3(c)(1)(iii) provides, in part, that an election made under § 301.7701-3(c)(1)(i) will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified on the election form. The effective date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed.

Section 301.7701-3(c)(1)(iv) provides that an entity that makes an election to change its classification under § 301.7701(c)(1)(i) cannot again change its classification by election during the sixty months succeeding the effective date of the election. However, if more than fifty percent of the ownership interests of the entity as of the effective date of the subsequent election are owned by persons that did not own any interests in the entity on the filing date or effective date of the prior election, the Commissioner may permit the entity to change its classification by election within the sixty months. An election by a newly formed eligible entity that is effective on the date of formation is not considered a change for purposes of § 301.7701-3(c)(1)(iv).

Section 301.7701-3(g)(1) states that if an eligible entity classified as a partnership elects under § 301.7701-3(c)(1)(i) to be classified as an association, the following is deemed to occur: The partnership contributes all of its assets and liabilities to the association in exchange for stock in the association, and immediately thereafter, the partnership liquidates by distributing the stock of the association to its partners. Similarly, § 301.7701-3(g)(2) explains that if an eligible entity classified as an association elects under § 301.7701-3(c)(1)(i) to be classified as a partnership, the following is deemed to occur: The association distributes all of its assets and liabilities to its shareholders in liquidation of the association, and immediately thereafter the shareholders contribute all of the distributed assets and liabilities to a newly formed partnership.

Section 301.7701-3(g)(3)(i) provides that an election under § 301.7701-3(c)(1)(i) that changes the classification of an eligible entity for federal tax purposes is treated as occurring at the start of the day for which the election is effective. Any transactions that are deemed to occur under § 301.7701-3(g) as a result of a change in classification are treated as occurring immediately before the close of the day before the election is effective. Section 301.7701-3(g)(3)(iii) provides ordering rules for elections made for a series of tiered entities that are effective on the same date.

Section 301.9100-1(a) provides that §§ 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 a regulatory election. An extension of time is available for elections that a taxpayer is otherwise eligible to make.

Section 301.9100-1(d) provides that extensions of time will not be granted for elections that are expressly excepted from relief or where alternative relief is provided by a statute, regulation, revenue ruling, revenue procedure, notice, or announcement.

Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) the grant of relief will not prejudice the interests of the Government.

### CONCLUSION

X is requesting relief to make a late election to elect to be an association taxable as a corporation effective Date 2. X had previously made an election to change its entity classification from a corporation to a partnership effective Date 2.

Section 301.7701-3(c)(1)(iv) prohibits an entity from changing its classification by election during the 60 months succeeding the effective date of a prior election unless there has been more than a 50 percent change of ownership or if the first election was by a newly formed eligible entity that is effective on the date of its formation. We conclude that X is not permitted to change its entity classification to be treated as an association taxable as a corporation effective Date 2 because that would be a change of classification within 60 months of X's previous change in classification which, when made, was not a newly formed eligible entity and where there has not been a more than 50 percent ownership change in the interests of X.

Under Section 301.9100-1(d), the Commissioner cannot provide relief to make late elections that are expressly excepted from relief by another regulation. Providing relief to make a late entity classification within 60 months of a previous entity classification election is inconsistent with the 60-month limitation under § 301.7701-3(c)(1)(iv). That regulation strives for consistency in classification status for a fixed period of time in order to ease the IRS's administrative burdens in the enforcement of the tax law.

X contends that § 301.7701-3(c)(1)(iv) does not preclude its requested relief and is not inconsistent with the objectives of the regulatory election because the requested relief to allow a late change in entity classification is not a change during the 60 months *succeeding* the effective date of the unwanted election because it is an election made *on* the date of the unwanted election, so that the 60-month limitation under § 301.7701-3(c)(1)(iv) is not triggered. X also states that the effect of the second election would be to restore the status quo ante such that X would be treated as always having been classified as a corporation.

The wording, structure and intent of the regulations under § 301.7701-3, however, is not consistent with permitting a later election to be made with the same effective date as an earlier election. The reference to the period "succeeding the effective date" does not suggest that an overlapping and inconsistent election may be made on the effective date itself, nor does anything else in the regulations. The regulations specifically provide exceptions to the 60-month limitation, but do not include an exception for changes in classification made effective on the day of the previous election. The suggestion that there can be two elections made on the same day is incompatible with § 301.7701-3(g)(3)(i) which provides that a change of classification occurs at the start of the day for which the election is effective, with the corresponding deemed liquidation occurring immediately before the close of the day before. Further, such an election would be tantamount to a revocation of the original election. Revocation of an election is not an election contemplated or permitted under the regulations as written.

Further, though X's request is made in the form of a late election, in substance X is seeking a ruling permitting the rescission of the deemed transaction that occurred in a prior year. Using an overlapping election to rescind a transaction is different than making a second election and is not provided for in the regulations under § 301.7701-3. Moreover, rescissions, in general, raise other considerations. See, e.g., Rev. Rul. 80-58, 1980-1 C.B. 181 (the annual accounting period principle precludes rescission of a transaction completed in a prior year).

We therefore conclude that the requirements of § 301.9100-3 have not been satisfied. As a result, X is not granted an extension of time to make an election to be treated as a corporation for federal tax purposes effective Date 2.

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. 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 a taxpayer is entitled to relief from any penalty on the basis that the taxpayer had reasonable cause for failure to file timely any income tax or information returns.

The ruling contained in this letter is based upon 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 ruling request, 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,

*Laura Fields*

Laura Fields  
Senior Technician Reviewer, Branch 1  
(Passthroughs & Special Industries)