

designated in the employee notice earlier furnished to the employee under this paragraph (g)(2) that new certificate and a written statement to support the claims made by the employee on the new certificate.

(3) *Definition of employer.* For purposes of this paragraph (g), the term employer includes any person authorized by the employer to receive withholding exemption certificates, to make withholding computations, or to make payroll distributions.

(4) *Effective date.* This paragraph (g) applies on April 14, 2005. The applicability of this paragraph (g) expires on or before April 14, 2008.

■ **Par. 4.** Section 31.3402(f)(5)–1 is amended by revising paragraph (a) to read as follows:

**§ 31.3402(f)(5)–1 Form and contents of withholding exemption certificates.**

(a) For further guidance, see § 31.3402(f)(5)–1T(a).

\* \* \* \* \*

■ **Par. 5.** Section 31.3402(f)(5)–1T is added to read as follows:

**§ 31.3402(f)(5)–1T Form and contents of withholding exemption certificates (temporary).**

(a)(1) *Form W–4.* Form W–4, “Employee’s Withholding Allowance Certificate,” is the form prescribed for the withholding exemption certificate required to be furnished under section 3402(f)(2). A withholding exemption certificate must be prepared in accordance with the instructions and regulations applicable thereto, and must set forth fully and clearly the data therein called for. Blank copies of paper Forms W–4 will be supplied to employers upon request to the Internal Revenue Service (IRS). An employer may also download and print Form W–4 from the IRS Internet site at <http://www.irs.gov>. In lieu of the prescribed form, employers may prepare and use a form the provisions of which are identical with those of the prescribed form, but only if employers also provide employees with all the tables, instructions, and worksheets contained in the Form W–4 in effect at that time and only if employers comply with all revenue procedures relating to substitute forms in effect at that time. Employers may refuse to accept a substitute form developed by an employee and the employee submitting such form will be treated as failing to furnish a withholding exemption certificate. For further guidance regarding the employer’s obligations when an employee is treated as failing to furnish a withholding exemption certificate, see § 31.3402(f)(2)–1.

(2) *Effective date.* This paragraph (a) applies on April 14, 2005. The applicability of this paragraph (a) expires on or before April 14, 2008.

(b) through (c) [Reserved]. For further guidance, see § 31.3402(f)(5)–1(b) through (c).

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: March 28, 2005.

**Eric Solomon,**

*Acting Deputy Assistant Secretary of the Treasury.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 301

[TD 9197]

RIN 1545–BD78

#### Classification of Certain Foreign Entities

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains temporary and final regulations relating to certain business entities included on the list of foreign business entities that are always classified as corporations for Federal tax purposes. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

**DATES:** *Effective Date:* These regulations are effective on October 7, 2004.

*Applicability Date:* For the dates of applicability of these regulations, see § 301.7701–2T(e).

**FOR FURTHER INFORMATION CONTACT:** Ronald M. Gootzeit, (202) 622–3860 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### Background

The IRS and Treasury Department issued final regulations concerning the classification of entities under section 7701 of the Internal Revenue Code (Code) on December 18, 1996 (final regulations). See generally TD 8697 (1997–1 C.B. 215) and §§ 301.7701–1 through 301.7701–3. Under the final regulations, a business entity that is not specifically classified as a corporation is

an eligible entity that can elect its classification for Federal tax purposes under certain circumstances. However, § 301.7701–2(b)(8) provides a list of certain foreign business entities that are always classified as corporations for Federal tax purposes (the per se corporation list). These foreign business entities are generally referred to as per se corporations.

On October 8, 2001, the Council of the European Union adopted Council Regulation 2157/2001 2001 O.J. (L 294) (the EU Regulation) to provide for a new business entity, the European public limited liability company (Societas Europaea or SE). The EU Regulation entered into force on October 8, 2004, and has effect in all the Member States of the European Economic Area (which includes all Member States of the European Union plus Norway, Iceland, and Liechtenstein). An SE must have a registered office in one of the Member States.

The SE is a public limited liability company. The EU Regulation provides general rules that govern the formation and operation of an SE and supplements those rules for specified issues and issues it does not address by reference to the laws with respect to public limited liability companies for the country in which the SE has its registered office. Most of the countries in which an SE can have its registered office have a business entity that constitutes a public limited liability company and that currently is on the per se corporation list. However, an SE can have its registered office in the following countries that have a business entity that is a public limited liability company but that is not yet on the per se corporation list: Estonia, Latvia, Lithuania, Slovenia, and Liechtenstein.

#### Explanation of Provisions

In Notice 2004–68 (2004–43 IRB 706), the IRS and Treasury stated that the SE is properly classified as a per se corporation because it will function as a public limited liability company. The Notice also stated that the IRS and Treasury will issue temporary and proposed regulations that will modify § 301.7701–2(b)(8) to include the SE on the per se corporation list. The Notice further stated that the temporary and proposed regulations will modify § 301.7701–2(b)(8) to include as per se corporations the Estonian Aktsiaselts, Latvian Akciju Sabiedriba, Lithuanian Akcine Bendroves, Slovenian Delniska Druzba, and Liechtenstein Aktiengesellschaft. These entities are the public limited liability companies in their respective countries. The temporary regulations in this document

make these modifications to § 301.7701-2(b)(8). In addition, in accordance with Notice 2004-68, these regulations will be effective for the Estonian, Latvian, Liechtenstein, Lithuanian, and Slovenian entities formed on or after October 7, 2004, and for the European Economic Area entity formed on or after October 8, 2004. See also section 7805(b)(1)(C).

The status of an SE may be relevant to the application of various Federal income tax provisions, such as the subpart F same-country exception under section 954(c)(3). Treasury and the IRS are considering these issues and invite comments on any additional areas in which guidance on the Federal tax treatment of an SE may be warranted.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. As a result of the issuance of Notice 2004-68, good cause is found for dispensing with prior notice and comment pursuant to 5 U.S.C. 553(b). For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the notice of proposed rulemaking published in the proposed rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

### Drafting Information

The principal author of these regulations is Ronald M. Gootzeit of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

### List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

### Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

#### PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read, in part, as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ **Par. 2.** In § 301.7701-2, paragraph (b)(8)(vi) is added to read as follows:

#### § 301.7701-2 Business entities; definitions.

\* \* \* \* \*

(b) \* \* \*

(8) \* \* \*

(vi) *Certain European entities.*

[Reserved]. For further guidance, see § 301.7701-2T.

\* \* \* \* \*

■ **Par. 3.** Section 301.7701-2T is amended by adding paragraphs (b)(8)(vi) and (e) to read as follows:

#### § 301.7701-2T Business entities; definitions (temporary).

(a) through (b)(8)(v) [Reserved]. For further guidance, see § 301.7701-2(a) through (b)(8)(v).

(b)(8)(vi) *Certain European entities.* The following business entities formed in the following jurisdictions:

Estonia, Aktsiaselts;

European Economic Area/European Union, Societas Europaea;

Latvia, Akciju Sabiedriba;

Liechtenstein, Aktiengesellschaft;

Lithuania, Akcine Bendroves;

Slovenia, Delniska Druzba.

(c) and (d) [Reserved]. For further guidance, see § 301.7701-2(c) and (d).

(e) *Effective dates.*

(1) and (2) [Reserved]. For further guidance, see § 301.7701-2(e)(1) and (2).

(3) The reference to the Estonian, Latvian, Liechtenstein, Lithuanian, and Slovenian entities in paragraph (b)(8)(vi) of this section applies to such entities formed on or after October 7, 2004, and to any such entity formed before such date from the date any person or persons, who were not owners of the entity as of October 7, 2004, own in the aggregate a 50 percent or greater interest in the entity. The reference to the European Economic Area/European Union entity in paragraph (b)(8)(vi) of this section applies to such entities formed on or after October 8, 2004.

\* \* \* \* \*

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: March 28, 2005.

**Eric Solomon,**

*Acting Deputy Assistant Secretary of the Treasury.*

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**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 946

[VA-121-FOR]

#### Virginia Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are approving a proposed amendment to the Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment revises Virginia's Coal Surface Mining Reclamation Regulations concerning performance bonds furnished pursuant to the Coal Surface Mining Reclamation (Pool Bond) Fund. The amendment is intended to conform the performance bond release procedures that are applied to Virginia's "alternative bonding system" with bond release procedures used for other performance bonds. The amendment is also intended to clarify language regarding minimum bond amounts for phased bond release.

**DATES:** Effective April 14, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert A. Penn, Director, Big Stone Gap Field Office; Telephone: (540) 523-4303. Internet: [rpenn@osmre.gov](mailto:rpenn@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background on the Virginia Program
- II. Submission of the Amendment
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

#### I. Background on the Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "\* \* \* a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Virginia program on December 15, 1981. You can find background information on the Virginia program, including the