

Facts

According to the information submitted, X was formed under the laws of Country. On Date 1, X, XX, and YY were acquired by Y, through its foreign subsidiary, Z. X intended to be treated as a flow through entity, but an election to be a partnership was not timely made.

Law and Analysis

Section 301.7701-3(a) provides, in part, that a business entity that is not classified as a corporation under section 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible party) can elect its classification for federal tax purposes as provided in this section. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under section 301.7701-2(b)(2)), or a partnership.

Section 301.7701-3(b)(2)(i) provides that 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(c)(1)(i) provides, in part, that an eligible entity may elect to be classified other than as provided under section 301.7701-3(b) by filing Form 8832, Entity Classification Election, with the applicable service center.

Section 301.7701-3(c)(1)(iii) provides, in part, that an election made under section 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 can not be more than 75 days prior to the date on which the election is filed and can not be more than 12 months after the date on which the election is filed.

Under section 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I, if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting the relief will not prejudice the interests of the government.

Section 301.9100-2 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section

301.9100-3 provides extensions of time for making elections that do not meet the requirements of section 301.9100-2. Requests for relief under section 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Conclusion

Based solely on the facts and representations submitted, we conclude that the requirements of section 301.7701 and 301.9100-3 have been satisfied. Accordingly, X is granted an extension of time of 60 days from the date of this written determination to file Form 8832, effective on Date 1, with the appropriate service center. A copy of this letter should be attached to the election. A copy is enclosed for such a purpose.

Except as specifically ruled upon, this letter expresses no opinion concerning the federal tax consequences of the facts described under any other provision of the Code or regulations.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, a copy of this letter will be provided to X's authorized representatives.

Sincerely,

Curt G. Wilson

Curt G. Wilson
Associate Chief Counsel
(Passthrough & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes

cc: