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Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Date:
February 6, 2018

LEGEND:

Taxpayer =

Company =

Agency =

Firm =

State =

Country X =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Dear

This ruling responds to a letter dated August 30, 2017, submitted on behalf of Taxpayer and Company (collectively, “Taxpayers”). Taxpayers request an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations (the “Regulations”) to make an election under section 856(l) of the Internal Revenue Code (the “Code”) to treat Company as a taxable REIT subsidiary (“TRS”) of Taxpayer effective as of Date 8.

FACTS

Taxpayer is a State corporation and represents that it made an election to be treated as a real estate investment trust (“REIT”) under sections 856 through 859 of the Code commencing with its taxable year that ended on Date 1. Taxpayer uses the accrual method as its overall method of accounting, and Taxpayer’s taxable year is the calendar year. Taxpayer owns multiple real estate properties located not only in the United States, but also in certain foreign countries.

Company is a private limited company that was formed under the laws of Country X on Date 2. Company is wholly owned by Taxpayer. Taxpayer, through Company, established several property companies in Country X (the “Property Companies") in connection with the acquisition of a real estate portfolio in Country X. The Property Companies have been funded by Taxpayer with a combination of debt (directly and indirectly by Taxpayer) and equity (indirectly through Company).

Company and the Property Companies are Country X tax entities and tax residents and have filed Country X corporate tax returns since their inceptions. Taxpayers represent that at all times from the dates of their organization and for all taxable years prior to Date 3, Company and the Property Companies have been treated as disregarded entities for U.S. federal income tax purposes, and no inconsistent tax or information returns have been filed during any of the taxable years prior to Date 3.

Taxpayers represent that the loans made by Taxpayer to the Property Companies were disregarded for U.S. federal income tax purposes until Date 4.

However, for Country X tax purposes, the Property Companies have been claiming a tax deduction for the arm's length interest payments to Taxpayer.

Country X introduced certain new tax provisions (the "Tax Rules") that became effective on Date 3. Under the Tax Rules, a tax deduction is disallowed for certain interest payments made by a hybrid payer in cases where an investor in the payer does not include the corresponding interest payments in income. This deduction disallowance affects the overall economics of the financial arrangement between Company and Taxpayer.

Taxpayer engaged Firm to assess the effects of the Tax Rules on the deductibility of interest payments made by the Property Companies for Country X tax purposes. Based on the analysis it performed, Firm concluded that it was more likely than not that the Tax Rules would not apply to the inter-company loan arrangement between Taxpayer and the Property Companies. Accordingly, under Firm's conclusion, Country X deductibility would be retained even after the effective date of the Tax Rules, and the current relationship and classifications of Company for U.S. tax purposes did not need to change. Relying on Firm's conclusion, the Property Companies decided to maintain the prior structure, but request a ruling from Agency (Country X's tax and revenue authority) seeking confirmation that the Tax Rules do not disallow a tax deduction for the arm's length interest payments made by the Property Companies to Taxpayer. On Date 5, a request for such a ruling was filed with Agency.

At the time the ruling request was filed, Taxpayer only had a short period of time, by Date 6, to timely file a Form 8832 (Entity Classification Election), and a Form 8875 (Taxable REIT Subsidiary Election), to treat the Company as a corporation and as a TRS for U.S. federal income tax purposes as of Date 3. Taxpayers represent that if the elections had been recommended by Firm and timely made, the elections would have resulted in the Tax Rules not applying to Taxpayer and the Property Companies. However, Taxpayers followed the advice of Firm, and believed that the Tax Rules did not apply, and thus determined that such elections were not necessary to avoid the application of the Tax Rules. Accordingly, Taxpayers did not make an election to treat Company as a TRS of Taxpayer as of Date 3.

On Date 7, Agency responded and reached an adverse determination on the ruling request, causing the Property Companies to lose the Country X tax deductions for its interest payments under the then current arrangement. Taxpayers represent that if Taxpayers had known, or had a reasonable expectation of knowing, how that Agency would apply the Tax Rules to the Taxpayers' situation, Taxpayers would have elected to treat Company as a TRS of Taxpayer as of Date 8. Rather, Taxpayers relied on Firm's conclusion of how the Tax Rules would apply to the Taxpayers' case.

Subsequent to Agency's issuance of the adverse determination on the ruling request, and after further consultation with Firm, Taxpayer and Company decided to file a Form 8832 and a Form 8875. On Date 9, the Taxpayers filed a Form 8832, pursuant to the late classification relief provided for in Rev. Proc. 2009-41, 2009-39 I.R.B. 439, for Company to elect to be classified as an association taxable as a corporation, effective Date 8. Additionally on Date 9, Taxpayer and Company filed a Form 8875 that listed the earliest possible effective date permitted under Form 8875, which was Date 10, although the Taxpayers desired an earlier effective date, Date 8.

Taxpayer and Company make the following additional representations in connection with their request for an extension of time:

1. The request for relief was filed before the failure to make the regulatory election was discovered by the Service.

2. Granting the relief requested will not result in Taxpayer or Company having a lower U.S. federal tax liability in the aggregate for all years to which the election applies than they would have had if the election had been timely made (taking into account the time value of money).

3. Taxpayer and Company do not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time they requested relief and the new position requires or permits a regulatory election for which relief is requested.

4. Being fully informed of the required regulatory election and related tax consequences, Taxpayer and Company did not choose to not file the election.

5. Taxpayer and Company are not using hindsight in making the decision to seek the relief requested. No specific facts have changed since the due date for making the election that make the election advantageous to Taxpayer or Company.

6. The period of limitations on assessment under section 6501(a) has not expired for Taxpayer or Company for the taxable year in which the election should have been filed, nor for any taxable year(s) that would have been affected by the election had it been timely filed.

In addition, affidavits on behalf of Taxpayer and Company have been provided as required by section 301.9100-3(e) of the Regulations.

LAW AND ANALYSIS

Section 856(l) of the Code provides that a REIT and a corporation (other than a REIT) may jointly elect to treat such corporation as a TRS. To be eligible for treatment as a TRS, section 856(l)(1) provides that the REIT must directly or indirectly own stock in the corporation, and the REIT and the corporation must jointly elect such treatment. The election is irrevocable once made, unless both the REIT and the subsidiary consent to its revocation. In addition, section 856(l) specifically provides that the election, and any revocation thereof, may be made without the consent of the Secretary.

In Announcement 2001-17, 2001-1 C.B. 716, the Service announced the availability of new Form 8875, Taxable REIT Subsidiary Election. According to the Announcement, this form is to be used for taxable years beginning after 2000 for eligible entities to elect treatment as a TRS. The instructions to Form 8875 provide that the subsidiary and the REIT can make the election at any time during the taxable year. However, the effective date of the election depends on when the Form 8875 is filed. The instructions further provide that the effective date cannot be more than 2 months and 15 days prior to the date of filing the election, or more than 12 months after the date of filing the election. If no date is specified on the form, the election is effective on the date the form is filed with the Service.

Section 301.9100-1(c) of the Regulations provides that the Commissioner has discretion to 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 Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) through (c)(1) sets forth rules that the Service generally will use to determine whether, under the particular facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of section 301.9100-2. Section 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 section 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.

Section 301.9100-3(b) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer (i) requests relief under this section before the failure to make the regulatory election is discovered by the 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 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. A taxpayer will be deemed to have not 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 that a reasonable extension of time to make a regulatory election will be granted only when the interests of the Government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in the 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). 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.

CONCLUSION

Based on the information submitted and the representations made, we conclude that Taxpayers have satisfied the requirements for granting a reasonable extension of time to elect under section 856(l) to treat Company as a TRS of Taxpayer, effective Date 8. Accordingly, Taxpayers have 90 calendar days from the date of this letter to make the intended election to treat Company as a TRS of Taxpayer, effective Date 8.

This ruling is limited to the timeliness of the filing of Form 8875. This ruling's application is limited to the facts, representations, and Code and regulation sections cited herein.

Except as 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. In particular, no opinion is expressed as to whether Taxpayer qualifies as a REIT, or whether Company otherwise qualifies as a TRS of Taxpayer under part II of subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Taxpayer or Company is not lower in the aggregate for all years to which the election applies than

such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the U.S. federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the U.S. federal income tax effect.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and Company and accompanied by penalty of perjury statements executed by the appropriate parties. 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 taxpayers that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the terms of a power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

_____

Julanne Allen
Assistant to the Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Financial Institutions & Products)

Enclosure:

Copy of this for section 6110 purposes

cc: