Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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PLR-121646-18

Date:
November 06, 2018

TY:

Legend

Taxpayer   =

Company X   =

Date 1   =
Date 2   =
Country Y   =
Z   =
Accounting Firm   =
Date 3   =
Tax Year 1   =

Dear

      This is in response to a letter received by our office on July 11, 2018, submitted on behalf of Taxpayer by its parent company, Company X, requesting an extension of time under Treas. Reg. § 301.9100-3 to make the election provided under section 953(d) for Taxpayer's taxable year ending Date 1.

      The ruling contained in this letter is predicated upon facts and representations submitted by the 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 part of the audit process.

FACTS

On Date 2, Taxpayer was organized under the laws of Country Y and was licensed to issue various Z insurance contracts. Taxpayer is wholly owned by Company X. Company X is a parent company of an affiliated group which files a consolidated federal income tax return under Company X. Taxpayer will be a member of such affiliated group as a result of its election under section 953(d).

Taxpayer represents that it meets the requirements to be taxed as an insurance company for federal income tax purposes. Taxpayer along with Company X have contracted the services of Accounting Firm to prepare Taxpayer's federal income tax returns, including making valid elections, when appropriate.

Accounting Firm timely Taxpayer's federal income tax return for tax year ending in Date 1 pursuant to a valid request to extend the filing due date. In addition, Accounting Firm prepared and on Date 3, filed Company X's consolidated federal income tax return for Tax Year 1 as if a valid section 953(d) election were made to treat Taxpayer as a domestic corporation and member of the consolidated group. However, Taxpayer failed to timely file the section 953(d) election statement with the IRS Plantation, Florida office as prescribed by Rev. Proc. 2003-47, 2003-2 C.B. 55. Accordingly, Taxpayer did not have a valid section 953(d) election.

Taxpayer's failure to make the section 953(d) election was not discovered by the Internal Revenue Service prior to the time it submitted its ruling request. In addition, Taxpayer represents that it does not seek to alter a return position for which the accuracy-related penalty has been or could have been imposed under section 6662 at the time Taxpayer requested relief, and the new position requires or permits a regulatory election for which relief is requested. Finally, Taxpayer represents that it has not used hindsight to seek an extension of time to make the election. Taxpayer represents that granting relief will not result in a lower tax liability than it would have had if it had filed the section 953(d) timely.

LAW AND ANAYLSIS

Under section 953(d), certain foreign insurance companies may elect to be treated as domestic corporations for U.S. tax purposes. The substantive and procedural rules for making a section 953(d) election are contained in Notice 89-79, 1989-2 C. B. 392, and Rev. Proc. 2003-47, 2003-2 C.B. 55. Rev. Proc. 2003-47 provides that the election must be filed by the due date prescribed in section 6072(b) (including extensions) for the U.S. income tax return that is due if the election becomes effective. Rev. Proc. 2003-47, section 4.04(2). In addition, an electing corporation must

use the calendar year as its annual accounting period for U.S. tax purposes, unless it joins in the filing of a consolidated return and adopts the parent corporation's tax year. Notice 89-79, section 1. Rev. Proc. 2003-47 fixes the time to make the election under section 953(d). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards set forth under Treas. Reg. § 301.9100-3(a).

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.

Treas. Reg. § 301.9100-3(b)(1) provides that except as provided in paragraphs (b)(3)(i) through (iii) of that section, a taxpayer is deemed to have acted reasonably and in good faith if it meets one of the conditions described in Treas. Reg. § 301.9100-3(b)(1)(i) through (v):

(i) Requests relief before the failure to make the regulatory election is discovered by the Internal Revenue 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 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 Internal Revenue 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.

Further, the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief. Treas. Reg. § 301.9100-3(c)(1). The interests of the Government are prejudiced if granting relief would result in a 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). Treas. Reg. § 301.9100-3(c)(1)(i).

Lastly, Treas. Reg. § 301.9100-1(a) cautions that granting an extension of time to make an election is not a determination that the taxpayer is otherwise eligible to make the election.

CONCLUSION

Based on the facts and information submitted, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Taxpayer qualifies for an extension of time to make the election under section 953(d). Taxpayer is deemed to have acted in good faith, as defined by Treas. Reg. § 301.9100-3(b), and the grant of relief will not prejudice the interests of the Government. Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to make the election provided by section 953(d), in accordance with the procedural rules set forth in Rev. Proc. 2003-47, to be treated as a domestic corporation for federal income tax purposes effective for tax year ending Date 1.

The above extension of time is conditioned on Taxpayer's tax liability (if any) being not lower, in the aggregate, for all years to which the section 953(d) election applies than it would have been if the election had been timely filed (taking into account the time value of money). No opinion is expressed as to Taxpayer's tax liability for the taxable years involved. Further, the granting of the above extension is not a determination that Taxpayer is otherwise eligible to make the section 953(d) election. Treas. Reg. § 301.9100-1(a). Also, no ruling is granted with respect to Taxpayer's entity classification for federal income tax purposes.

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 representatives.

Sincerely,

Jeffery G. Mitchell
Branch Chief, Branch 2
(International)

cc: