Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-112551-20
Date:
April 01, 2021

Legend

X =

FSub =

US Parent =

Country =

Date 1 =

Date 2 =

Date 3 =

State =

a =

Dear :

This responds to a letter dated May 19, 2020, submitted on behalf of X by its authorized representative, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election under § 301.7701-3(c) to be treated as a disregarded entity for U.S. federal tax purposes.

Facts

US Parent is a publicly traded corporation, headquartered in State, that owns various foreign subsidiaries (US Parent and its subsidiaries, the "Group"). US Parent wholly owns FSub, a Country corporation that is treated as a corporation for U.S. federal tax purposes. FSub wholly owns X, a Country corporation formed on Date 1 that is treated as a corporation for U.S. federal tax purposes.

On Date 3, FSub contributed assets to X in exchange for newly issued common and preferred shares of X (the "Contribution"). The Group and X represent that the Contribution did not qualify for nonrecognition under section 351(a). As a result, FSub recognized $a of gain and X's basis in the contributed assets was increased by $a.

After the Contribution, Treasury regulations were issued under section 245A with an applicability date prior to Date 3. The Treasury regulations affect the tax treatment of future dividend distributions that FSub may make out of earnings and profits generated from the gain recognized in the Contribution. The tax advisors for the Group did not advise it of the possibility that the Treasury regulations issued after Date 3 could impact the tax treatment of future dividend distribution made by FSub.

In light of the Treasury regulations, the Group realized that X should have filed Form 8832, Entity Classification Election, to be treated as disregarded for federal tax purposes as of Date 2. If X were disregarded, the Contribution would have been disregarded for U.S. federal tax purposes and, as a result, no gain would have been recognized by FSub, the contributed assets would still be treated as held by FSub, and the basis in the contributed assets would not have increased.

X represents that it acted reasonably and in good faith, and that the interests of the government will not be prejudiced by granting relief. X represents that it was not informed in all material respects of the election and consequences because neither its tax advisors nor the Group's tax advisors advised X of the ability to make the entity classification election to mitigate the possible negative tax consequences resulting from the Treasury regulations. X also represents that no hindsight is involved in seeking the relief requested because no facts have changed since Date 2 that makes the election more advantageous to X. X further represents that the interests of the government will not be prejudiced by granting relief because neither US Parent nor X will have a lower tax liability in the aggregate for all taxable years affected by the election than they would have had the election been timely made, and the statute of limitations is not closed. The requested relief results in no gain being recognized by FSub and no increase in the basis of the contributed assets, which is the same result as if the election had been timely made.

Law

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 301.9100-1(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.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 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) provides that the term “regulatory election” includes an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections. Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2.

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 deemed to have acted reasonably and in good faith as those terms are used in § 301.9100-3, based on representations made by X. Specifically, X represents that it met one or more of the conditions in § 301.9100-3(b)(1), including that it failed to make the election because, after exercising reasonable diligence, X was unaware of the negative tax consequences that could result if an election was not made. Although the Treasury regulations were published after Date 3, because the Treasury regulations were applicable before both Date 2 and Date 3, X did not use hindsight in requesting relief because no facts have changed as of Date 2. Further, X was not informed in all material respects of the election and consequences because its tax advisors did not advise them of the negative tax consequences that could result if an election was not made. Finally, the interests of the government will not be prejudiced by the granting of relief to make a late election because the relief results in no gain being recognized by FSub and no increase in the basis of the contributed assets, which is the same result as if the election had been timely made. Thus, based solely on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied.

Accordingly, X is granted an extension of time of 60 days from the date of this letter to make an election to be treated as a disregarded entity for federal tax purposes effective Date 2. X should make the election by filing a properly executed Form 8832 with the appropriate service center, and a copy of this letter should be attached to the election. A copy is enclosed for that purpose.

This ruling is contingent on the owners of X filing within 60 days of this letter all required returns for all open years consistent with the requested relief. These returns may include, but are not limited to the Forms 8858, Information Return of U.S. Persons With Respect to Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs), such that these forms reflect the consequences of the relief granted in this letter. A copy of this letter ruling should be attached to any such returns.

Except as expressly 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.

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 the 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) 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 X's authorized representatives.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

Caroline Hay
Caroline Hay
Senior Counsel, Branch 1
(Passthroughs & Special Industries)

Enclosures (2):
Copy of this letter
Copy for 6110 purposes

cc: