

**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:CORP:1

PLR-102906-23

Date:

May 18, 2023

Legend

Parent =

GroupMember =

ForeignPurchaser =

ForeignTarget1 =

ForeignTarget2 =

ForeignTarget3 =

Date 1 =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated February 6, 2023, submitted on behalf of Parent, the common parent of the consolidated group that includes GroupMember, the United States shareholder of ForeignPurchaser, requesting an extension of time under

§301.9100-3 of the Procedure and Administration Regulations to file elections. Parent is requesting an extension to file “section 338 elections” under section 338(g) with respect to ForeignPurchaser's acquisition of more than 80% of the stock of each of ForeignTarget1, ForeignTarget2, and ForeignTarget3 on Date 1 (the “Elections”). The material information submitted is summarized below.

Parent is the common parent of a consolidated group that includes GroupMember, which wholly owns ForeignPurchaser, a foreign entity classified as a corporation for federal tax purposes. On Date 1, ForeignPurchaser acquired more than 80% of the stock of each of ForeignTarget1, ForeignTarget2, and ForeignTarget3 (collectively, “Foreign Targets”). Parent has represented that each of the foregoing acquisitions on Date 1 qualified as a “qualified stock purchase,” as defined in section 338(d)(3). Parent has also represented that each of Foreign Targets was a controlled foreign corporation as defined in section 957(a) at the time of the acquisitions, and that ForeignPurchaser is a controlled foreign corporation as defined in section 957 (taking into account section 953(c)) and is not required under §1.6012-2(g) (other than §1.6012-2(g)(2)(i)(b)(2)) to file a United States income tax return for its taxable year that includes the acquisition date.

Parent, as common parent of the consolidated group that includes GroupMember, the United States shareholder of ForeignPurchaser, intended to file the Elections, but for various reasons valid Elections were not timely filed. After the due date for the Elections, it was discovered that the Elections had not been timely filed. Subsequently, this request was submitted, under §301.9100-3, for an extension of time to file the Elections. Parent has represented that it is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662. Parent has also represented that no person filed a United States tax return treating the transaction or transactions constituting the qualified stock purchase in a manner that is inconsistent with valid section 338(g) elections having been made.

Section 338(a) permits certain stock purchases to be treated as asset acquisitions if: (1) the purchasing corporation makes or is treated as having made a “section 338 election” or a “section 338(h)(10) election”; and (2) the acquisition is a “qualified stock purchase.”

Under §301.9100-1(c), the Commissioner has discretion to 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 Internal Revenue Code except subtitles E, G, H, and I.

Sections 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(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Requests for relief under §301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that

the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Elections is fixed by the regulations (*i.e.*, §1.338-2(d)). Therefore, the Commissioner has discretionary authority under §301.9100-3 to grant an extension of time for Parent to file the Elections, provided Parent acted reasonably and in good faith, the requirements of §§301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file valid Elections. The information establishes that the request for relief was filed before the failure to make the Elections was discovered by the Internal Revenue Service. See §301.9100-3(b)(1)(i).

Based on the facts and information submitted, including the representations made, we conclude that Parent has shown it acted reasonably and in good faith, the requirements of §§301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under §301.9100-3, until 75 days from the date on this letter, for Parent to file the Elections with respect to the acquisitions of the stock of Foreign Targets, as described above.

WITHIN 75 DAYS OF THE DATE ON THIS LETTER, Parent must file the Elections on Form 8023, in accordance with §1.338-2(d) and (e)(3) and the instructions to the form. A copy of this letter must be attached to Form 8023.

WITHIN 150 DAYS OF THE DATE ON THIS LETTER, all relevant parties must file or amend, as applicable, all returns and amended returns (if any) necessary to report the transactions as section 338 transactions for the taxable year in which the transactions were consummated (and for any other affected taxable year). A copy of this letter and a copy of Form 8883 must be attached to any tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy the requirements of attaching a copy of this letter by attaching a statement to their return that provides the date on, and control number (PLR-102906-23) of, the letter ruling.

Parent must also deliver written notice of the Elections (and a copy of Forms 8023 and 8883, their attachments and instructions) to any U.S. persons selling or holding stock in Foreign Targets, in accordance with §1.338-2(e)(4).

The above extension of time is conditioned on all relevant taxpayers' tax liability (if any) being not lower, in the aggregate, for all years to which the Elections apply, than it would have been if the Elections had been timely made (taking into account the time value of money). No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made by the applicable Director's office upon audit of the federal income tax returns involved.

We express no opinion as to: (1) whether the acquisitions of the stock of Foreign Targets qualified as a “qualified stock purchases” under section 338(d)(3); or (2) any other tax consequences arising from the Elections.

In addition, we express no opinion as to the tax consequences of filing the Elections late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Elections late that are not specifically set forth in the above ruling. For purposes of granting relief under §301.9100-3, we relied on certain statements and representations made by Parent, Company Official, and Tax Professional. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under §301.9100-3 to file the Elections, penalties and interest that would otherwise be applicable, if any, continue to apply.

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 in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

*Thomas J. Russell*

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Thomas I. Russell  
Chief, Branch 1  
Office of Associate Chief Counsel (Corporate)

cc: