

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

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Date:

May 05, 1999

Legend

X =

Y =

D1 =

D2 =

D3 =

Country =

This responds to your representative's letter dated February 22, 1999, written on behalf of X, requesting a ruling that Y be given an extension of time to elect to be treated as a disregarded entity for federal tax purposes for its taxable year beginning D1.

FACTS

X is a domestic corporation that elected to be taxed as a subchapter S corporation as of D1. Y is a wholly owned foreign subsidiary of X, formed on D2 under the laws of Country. Y intended to elect to be disregarded for federal tax purposes as of D1. X's foreign counsel, however, represented to X that Y was a per se corporation under § 301.7701-2(b)(8) of the Procedure and Administration Regulations and thus

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ineligible to be disregarded for federal tax law. On D3, however, X represents that its foreign counsel determined that Y was not a per se corporation under § 301.7701-2(b)(8), but rather was an entity eligible to be disregarded for federal tax purposes. A timely election to have Y disregarded for federal tax purposes was not made.

### LAW AND ANALYSIS

Section 301.7701-3(a) provides 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 entity") can elect its classification for federal tax purposes. A "business entity" is any entity recognized for federal tax purposes that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Code. Section 301.7701-2(a). An eligible entity with a single owner can elect either to be classified as an association (and thus a corporation under § 301.7701-2(b)(2)) or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(2)(i) provides that unless a foreign eligible entity elects otherwise, the 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 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.

To elect to be classified other than as provided in § 301.7701-3(b), an eligible entity must file Form 8832, Entity Classification Election, with the designated service center. Section 301.7701-3(c)(1)(i). An election can be effective on the date specified on the Form 8832 or on the date filed if no such date is specified. The effective date specified on the Form 8832 cannot be more than 75 days prior to the date the election is filed. Section 301.7701-3(c)(2)(iii).

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in § 301.9100-3 to make a regulatory election. Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Requests for relief under § 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. Section

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301.9100- 3(a).

### CONCLUSIONS

Based solely on the facts submitted and representations made, we conclude that the requirements of § 301.9000-3 have been satisfied. As a result, Y is granted an extension of time to elect to be treated as a disregarded entity for federal tax purposes as of D1. Y has until 30 days from the date of this letter to file the appropriate form with the applicable service center to elect to be treated as a disregarded entity for federal tax purposes.

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. Specifically, no opinion is expressed or implied concerning X's status as a subchapter S corporation or any election made by X with regard to any of its other subsidiaries.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. 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 taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

**Signed/Paul F. Kugler**

Paul F. Kugler  
Assistant Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2)  
Copy of this letter  
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