

## Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

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Refer Reply To:

CC:PSI:3 / PLR-107178-01

Date:

June 28, 2001

### LEGEND

X =

Country =

d1 =

d2 =

Dear

This letter responds to a letter dated February 1, 2001, and subsequent correspondence submitted by your authorized representative on behalf of X, requesting an extension of time under § 301.9100-3 of the Procedure and Administration regulations to file an election under § 301.7701-3.

### FACTS

According to the information submitted, X, a Country exempted limited duration company, was incorporated on d1 and commenced operations on d2. X sold interests in itself to foreign and U.S. investors. It is represented that investors in X have limited liability. X intended to elect to be treated as a partnership for federal income tax purposes effective d2. However, due to inadvertence, X did not timely make the election.

### LAW AND ANALYSIS

Section 301.7701-3(a) provides 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. 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.

Section 301.7701-3(b)(2)(i) provides, in part, that 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, or (B) an association if all members have limited liability.

Section 301.7701-3(c)(1)(i) provides, in part, that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b) by filing Form 8832, Entity Classification Election, with the applicable service center.

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 can not be more than 75 days prior to the date on which the election is filed and can not be more than 12 months after the date on which the election is filed.

Under § 301.9100-1(c), the Commissioner may 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 Code, except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term "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 an announcement published in the Internal Revenue Bulletin.

Sections 301.9100-1 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

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 301.9100-3(a).

## CONCLUSIONS

Based on the facts submitted and representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, X is granted an extension of time to file Form 8832 with the appropriate service center to elect to be treated as a partnership for federal tax purposes effective d2, until 60 days following the date of this letter. The election should be made by following the procedures set forth in Form 8832 and a copy of this letter should be attached to the

election. A copy is enclosed for that purpose.

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.

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.

Under a power of attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

Sincerely yours,  
Paul F. Kugler  
Associate Chief Counsel  
(Passthroughs and Special Industries)

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