

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:B05-PLR-127368-01

Date:

August 3, 2001

LEGEND:

Seller =

Purchaser =

Target =

M =

N =

Company Official =

Outside Tax  
Professionals =

Date A =

Date B =

Date C =

d =

Country X =

Country Y =

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This is in response to your letter dated May 16, 2001, submitted on behalf of Purchaser, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. Purchaser is requesting the extension of time to file a “§ 338(g) election” under § 338(g) of the Internal Revenue Code and § 1.338-2T(d) of the Income Tax Regulations with respect to Purchaser’s acquisition of the stock of Target (sometimes hereinafter referred to as the “Election”), on Date A. (All citations in this letter to regulations under § 338 are to the regulations as in effect on Date A). Additional information was received in a letter dated June 26, 2001. The material information submitted for consideration is summarized below.

Purchaser is a Country X holding company. Purchaser is a “controlled foreign corporation” within the meaning of § 957. Purchaser is owned by several hundred shareholders, two of which, M and N, are U.S. shareholders as defined in § 951(b).

Seller and Target are Country Y corporations. Prior to the subject acquisition, Target was wholly owned by Seller.

Effective Date A, pursuant to a Stock Purchase Agreement entered into on Date A, Purchaser acquired all of Seller’s stock of Target for cash and an approximately d% interest in Purchaser’s stock in a fully taxable transaction. It is represented that Purchaser’s acquisition of Seller’s Target stock qualified as a “qualified stock purchase,” as defined in § 338(d)(3).

Prior to the acquisition, Target was not: (1) a controlled foreign corporation within the meaning of § 957(a); (2) a passive foreign investment company for which an election under § 1295 was in effect; (3) a foreign investment company or a foreign corporation the stock ownership of which is described in § 552(a)(2); or (4) required, under § 1.6012-2(g), to file a United States income tax return.

Purchaser intended to file the Election. The Election was due on Date B. However, for various reasons the Election was not filed. On Date C, it was discovered that the Election had not been filed. Subsequently, this request was submitted, under § 301.9100-1, for an extension of time to file the Election. The period of limitations on assessment under § 6501(a) has not expired for the taxable year in which the acquisition occurred, the taxable year in which the Election should have been filed, or for any taxable years that would have been affected by the Election had it been timely filed.

Section 338(a) permits certain stock purchases to be treated as asset purchases if: (1) the purchasing corporation makes or is treated as having made a “§ 338 election” or a “§ 338(h)(10) election” and 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

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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 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 Election is fixed by regulation (i.e., § 1.338-2T(d)). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for Purchaser to file the Election, provided Purchaser shows that it acted reasonably and in good faith, the requirements of §§ 301.9100-1 through 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits and representations submitted by Purchaser, Company Official and Outside Tax Professionals, explain the circumstances that resulted in the failure to file the Election. The information establishes that qualified tax professionals were responsible for the Election and were aware of all relevant facts, that Purchaser relied on the tax professionals to make the Election, and that the interests of the government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(v).

Based on the facts and information submitted, including the representations made, we conclude that Purchaser has shown that it acted reasonably and in good faith in failing to file the Election, the requirements of §§ 301.9100-1 through 301.9100-3 are satisfied, and that granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-1, until 45 days from the date on this letter, for Purchaser to file the Election with respect to the acquisition of the stock of Target, as described above.

The above extension of time is conditioned on (1) the filing, within 120 days of the date on this letter, of all returns and amended returns (if any) necessary to report the transaction in accordance with the Election, and (2) the taxpayers' (i.e., Purchaser's and its U.S. shareholders') tax liability (if any) being not lower, in the aggregate, for all years to which the Election applies than it would have been if the Election 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 Director's office upon examination of the federal income tax returns involved. Further, no opinion is expressed as to the federal income tax effect, if any, if it is determined that taxpayers' liability is lower. Section 301.9100-3(c).

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Purchaser should file the Election in accordance with § 1.338-2T(d) (i.e., a new Election on Form 8023 must be executed on or after the date on this letter, which grants an extension, and filed in accordance with the instructions to the form). A copy of this letter should be attached to the election form. Purchaser and Target must report the transaction as a § 338 transaction on their applicable returns, if they have not already filed accordingly, and they must attach to such returns (or amend the applicable returns, if they have already filed accordingly, to attach) a copy of the election form and a copy of this letter.

We express no opinion regarding: (1) whether the acquisition of the stock of Target qualifies as a "qualified stock purchase" under § 338(d)(3); (2) or any other tax consequences arising from the election.

In addition, we express no opinion as to the tax treatment or consequences of filing the Election late under the provisions of any other section of the Code and regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, filing the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-1 we relied on certain statements and representations made by the taxpayer. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-1 to file the Election, any penalties and interest that would otherwise be applicable shall still apply.

This ruling 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, a copy of this letter is being sent to the taxpayer and to the second representative identified on that power of attorney.

Sincerely yours,  
Associate Chief Counsel (Corporate)  
By: Ken Cohen  
Senior Technical Reviewer, Branch 3