

## Internal Revenue Service

Department of the Treasury

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Telephone Number:

Refer Reply To:

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Date:

October 23, 2001

### LEGEND

X =

d1 =

Country =

Shareholders =

Dear

This letter responds to your letter dated March 16, 2001, and subsequent correspondence on behalf of X, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for X to file an election to be classified as a partnership for federal tax purposes under § 301.7701-3(c).

### FACTS

According to the information submitted, X was formed on d1 as an International Business Company pursuant to the International Business Companies Act under the laws of Country. The owners of X are the Shareholders, who are all U.S. citizens. The Shareholders had intended for X to elect, effective d1, under § 301.7701-3(c) to be treated as a partnership for federal income tax purposes. However, due to inadvertence, X did not make the election.

### LAW AND ANALYSIS

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. An eligible entity with more than one owner can elect to be classified as an association or as a partnership.

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

foreign eligible entity is 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. To be valid, an election must generally be signed by each member of the electing entity, or any officer, manager, or member of the electing entity who is authorized (under local law or the entity's organizational documents) to make the election and who represents to having such authorization under penalties of perjury. See § 301.7701-3(c)(2)(i).

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).

Section 301.9100-3(b)(1)(iii) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue) the taxpayer was unaware of the necessity for the election.

## CONCLUSIONS

Based solely on the facts and representations submitted, 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 make the election to be a partnership for federal tax

purposes, effective d1, 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.

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to the taxpayer.

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

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