

Section 7701.—Definitions

26 CFR 301.7701–2: Business entities; definitions.

T.D. 9197

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 301

Classification of Certain Foreign Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary and final regulations relating to certain business entities included on the list of foreign business entities that are always classified as corporations for Federal tax purposes. The text of the temporary regulations also serves as the text of the proposed regulations (REG–148521–04) set forth in the notice of proposed rulemaking on this subject in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective on October 7, 2004.

Applicability Date: For the dates of applicability of these regulations, see §301.7701–2T(e).

FOR FURTHER INFORMATION CONTACT: Ronald M. Gootzeit, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The IRS and Treasury Department issued final regulations concerning the classification of entities under section 7701 of the Internal Revenue Code (Code) on December 18, 1996 (final regulations). See

generally T.D. 8697, 1997–1 C.B. 215, and §§301.7701–1 through 301.7701–3. Under the final regulations, a business entity that is not specifically classified as a corporation is an eligible entity that can elect its classification for Federal tax purposes under certain circumstances. However, §301.7701–2(b)(8) provides a list of certain foreign business entities that are always classified as corporations for Federal tax purposes (the per se corporation list). These foreign business entities are generally referred to as per se corporations.

On October 8, 2001, the Council of the European Union adopted Council Regulation 2157/2001 2001 O.J. (L 294) (the EU Regulation) to provide for a new business entity, the European public limited liability company (Societas Europaea or SE). The EU Regulation entered into force on October 8, 2004, and has effect in all the Member States of the European Economic Area (which includes all Member States of the European Union plus Norway, Iceland, and Liechtenstein). An SE must have a registered office in one of the Member States.

The SE is a public limited liability company. The EU Regulation provides general rules that govern the formation and operation of an SE and supplements those rules for specified issues and issues it does not address by reference to the laws with respect to public limited liability companies for the country in which the SE has its registered office. Most of the countries in which an SE can have its registered office have a business entity that constitutes a public limited liability company and that currently is on the per se corporation list. However, an SE can have its registered office in the following countries that have a business entity that is a public limited liability company but that is not yet on the per se corporation list: Estonia, Latvia, Lithuania, Slovenia, and Liechtenstein.

Explanation of Provisions

In Notice 2004–68, 2004–43 I.R.B. 706, the IRS and Treasury stated that the SE is properly classified as a per se corporation because it will function as a public limited liability company. The notice also stated that the IRS and Treasury will issue temporary and proposed regulations that will modify §301.7701–2(b)(8) to include the SE on the per se corporation list. The

notice further stated that the temporary and proposed regulations will modify §301.7701–2(b)(8) to include as per se corporations the Estonian Aktsiaselts, Latvian Akciju Sabiedriba, Lithuanian Akcine Bendroves, Slovenian Delniska Druzba, and Liechtenstein Aktiengesellschaft. These entities are the public limited liability companies in their respective countries. The temporary regulations in this document make these modifications to §301.7701–2(b)(8). In addition, in accordance with Notice 2004–68, these regulations will be effective for the Estonian, Latvian, Liechtenstein, Lithuanian, and Slovenian entities formed on or after October 7, 2004, and for the European Economic Area entity formed on or after October 8, 2004. See also section 7805(b)(1)(C).

The status of an SE may be relevant to the application of various Federal income tax provisions, such as the subpart F same-country exception under section 954(c)(3). Treasury and the IRS are considering these issues and invite comments on any additional areas in which guidance on the Federal tax treatment of an SE may be warranted.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. As a result of the issuance of Notice 2004–68, good cause is found for dispensing with prior notice and comment pursuant to 5 U.S.C. 553(b). For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the notice of proposed rulemaking published in this issue of the Bulletin. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Drafting Information

The principal author of these regulations is Ronald M. Gootzeit of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301 — PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In §301.7701–2, paragraph (b)(8)(vi) is added to read as follows:

§301.7701–2 Business entities; definitions.

* * * * *

(b) * * *

(8) * * *

(vi) *Certain European entities.* [Reserved]. For further guidance, see §301.7701–2T.

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Par. 3. Section 301.7701–2T is amended by adding paragraphs (b)(8)(vi) and (e) to read as follows:

§301.7701–2T Business entities; definitions (temporary).

(a) through (b)(8)(v) [Reserved]. For further guidance, see §301.7701–2(a) through (b)(8)(v).

(b)(8)(vi) *Certain European entities.* The following business entities formed in the following jurisdictions:

Estonia, Aktsiaselts
European Economic Area/European Union, Societas Europaea
Latvia, Akciju Sabiedriba
Liechtenstein, Aktiengesellschaft
Lithuania, Akcine Bendroves
Slovenia, Delniska Druzba.

(c) and (d) [Reserved]. For further guidance, see §301.7701–2(c) and (d).

(e) *Effective dates—*

(1) and (2) [Reserved]. For further guidance, see §301.7701–2(e)(1) and (2).

(3) The reference to the Estonian, Latvian, Liechtenstein, Lithuanian, and Slovenian entities in paragraph (b)(8)(vi) of this section applies to such entities formed on or after October 7, 2004, and to any such entity formed before such date from the date any person or persons,

who were not owners of the entity as of October 7, 2004, own in the aggregate a 50 percent or greater interest in the entity. The reference to the European Economic Area/European Union entity in paragraph (b)(8)(vi) of this section applies to such entities formed on or after October 8, 2004.

Mark E. Matthews,
*Deputy Commissioner for
Services and Enforcement.*

Approved March 28, 2005.

Eric Solomon,
*Acting Deputy Assistant Secretary
of the Treasury.*

(Filed by the Office of the Federal Register on April 13, 2005, 8:45 a.m., and published in the issue of the Federal Register for April 14, 2005, 70 F.R. 19697)