

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:INTL:PLR-162242-01
Date:
November 1, 2002

In re:

LEGEND

Taxpayer =

FC =

DC1 =

DC2 =

Date A =

Date B =

Individual A =

Dear :

This replies to letters dated August 9, 2001 and August 21, 2002, in which Taxpayer requests a ruling under Treas. Reg. § 301.9100-3 for an extension of time to satisfy the statement, notice and withholding requirements of § 1.897-2(g), § 1.897-2(h) and § 1.1445-2(c)(3) with respect to the transfers that occurred on Dates A and B. The information submitted is substantially as set forth below.

PLR-162242-01

The ruling contained in this letter is predicated upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

Taxpayer is a foreign corporation, and holds interests in FC, DC1 and DC2. FC is a foreign corporation, and DC1 and DC2 are domestic corporations.

On Date A, Taxpayer transferred its interest in DC1 to FC. However, Taxpayer did not request and therefore did not receive a statement from DC1 certifying that the interest in DC1 was not a U.S. real property interest as of the date of the transfer. Consequently, the required notice was not sent to the IRS.

On Date B, Taxpayer transferred its interest in DC2 to FC. However, Taxpayer did not request and therefore did not receive a statement from DC2 certifying that the interest in DC2 was not a U.S. real property interest as of the date of the transfer. Consequently, the required notice was not sent to the IRS.

Individual A was an officer of Taxpayer at the time of the transfers. The affidavit of Individual A acknowledges a misunderstanding regarding the U.S. tax consequences of the transfers. Consequently, Taxpayer did not comply with the statement, notice and withholding requirements of § 1.897-2(g), § 1.897-2(h) and § 1.1445-2(c)(3).

Treas. Reg. § 301.9100 -1(b) provides that an election includes an application for relief in respect of tax, and defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant a taxpayer a reasonable extension of time, under the rules set forth in § 301.9100-3, to make a regulatory election under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

In the present situation, the statements and notices fall within the definition of a regulatory election. Therefore, the Commissioner has discretionary authority under § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards set forth in § 301.9100-3(a).

PLR-162242-01

Based on the facts and circumstances of this case, we conclude that Taxpayer satisfies § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time until 30 days from the date of this letter ruling to satisfy the statement, notice and withholding requirements of § 1.897-2(g), § 1.897-2(h) and § 1.1445-2(c)(3) with respect to the transfers that occurred on Dates A and B.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to comply with the statement and notice requirements. § 301.9100-1(a).

This ruling is directed only to the taxpayer who requested it. I.R.C. § 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter should be associated with the copies of the statements and the notices mailed to the IRS.

No ruling has been requested, and none is expressed, as to the application of any other section of the Code or regulations to the facts presented.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to Taxpayer and the other authorized representative.

Sincerely,

/s/ Allen Goldstein
Allen Goldstein
Reviewer
Office of the Associate Chief Counsel (International)