

## Internal Revenue Service

Department of the Treasury

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Date:

March 27, 2001

### LEGEND:

X =

Date 1 =

Country =

This letter responds to a letter, dated October 27, 2000, written on behalf of X, requesting a ruling that X be granted an extension of time pursuant to section 301.9100-3 of the Procedure and Administration Regulations to file an election for X to be treated as a partnership for federal tax purposes under section 301.7701-3(c)

### FACTS

According to the information submitted, X, was formed as a Private Limited Company on Date 1 under the laws of Country. X intended to elect to be treated as a partnership for Federal tax purposes as of Date 1. However, X failed to file the election timely.

It has been represented that 1) under section 301.7701-3(a), X is a foreign entity that is not required to be classified as a corporation for federal tax purposes; 2) at all times since its organization, X has had at least two members, each of whom has limited liability as defined in section 301.7701-3(b)(2)(ii).

### LAW AND ANALYSIS

Section 301.7701-3(a) provides, in part, that a business entity that is not classified as a corporation under section 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes as provided in this

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section. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under section 301.7701-2(b)(2)) or a partnership.

Section 301.7701-3(b) provides a default classification for an eligible entity that does not make an election. Section 301.7701-3(b)(2)(i) provides that, unless the entity elects otherwise, a foreign eligible entity is (A) a partnership if it has two members and at least one member does not have limited liability; (B) an association if all members have limited liability; or (C) disregarded as an entity separate from its owner if it has a single owner that does not 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 section 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 section 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 section 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, if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting the relief will not prejudice the interests of the government.

Sections 301.9100-2 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 section 301.9100-2. Requests for relief under section 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.

## CONCLUSIONS

Based solely on the facts and representations submitted, we conclude that the requirements of sections 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, X is granted an extension of time of 60 days from the date of this letter to

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file Form 8832, effective on Date 1, with the appropriate service center. A copy of this letter should be attached to the election. A copy is enclosed for that purpose.

Except as specifically set forth above, we express no opinion concerning the federal income tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X is, in fact, an eligible entity within the meaning of section 301.7701-2(b).

This ruling 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 with this office a copy of this letter is being sent to your authorized representative.

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

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