

relevant, that files Form 8832, "Entity Classification Election", is deemed relevant only on the date the entity classification election is effective. The commentator neither suggested what the period of deemed relevance should be if not limited to one day nor suggested a principle for when the deemed relevance should terminate such that the 60-month rule would be triggered. In the interest of certainty and administrability of the application of the 60-month rule, Treasury and the IRS have retained the limitation of deemed relevance to the day on which the entity's classification is effective.

One commentator requested further guidance on when and under what circumstances the classification of a foreign eligible entity that was previously relevant ceases to be relevant under the 60-month rule. Treasury and the IRS believe § 301.7701-3(d)(1) and (3) provide sufficient guidance on when an entity's classification becomes relevant and, accordingly, when an entity's classification ceases to be relevant.

One commentator suggested that the regulations be revised to provide that an election by a non-relevant foreign entity to continue its current classification may be filed at any time within the 60-month period starting on the day after the date of the most recent election for that entity, and that such election will start a new 60-month period. Section 301.7701-3(c) provides that an eligible entity may elect to be classified other than as provided under the default classification rules of § 301.7701-3(b), or to change its election. Allowing an eligible entity whose classification is not relevant to renew its election for purposes of the 60-month rule would frustrate the policies underlying that rule. Accordingly, the suggestion was not adopted.

One commentator requested clarification and examples regarding the determination of the classification of a foreign eligible entity whose classification was never relevant or whose classification has not been relevant for 60 months and therefore has lapsed under the 60-month rule. In either case (assuming in the latter case that no election is made following the lapse of the classification), the entity's classification initially will be determined under the default classification rules of § 301.7701-3(b)(2) when the classification of the entity becomes relevant. Under the general rules of § 301.7701-3(c), an eligible entity may elect at such time to be classified other than as provided under the default classification rules, and may elect at some later time to change its

classification. Treasury and the IRS do not believe at this time that further guidance or examples are needed to illustrate these general rules.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these final regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required.

Drafting Information

The principal authors of these regulations are Aaron A. Farmer and Ronald M. Gootzeit, Office of Associate Chief Counsel (International). However, other personnel from Treasury and the IRS participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is proposed to be 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.** Section 301.7701-2 is amended by:

- 1. Removing the language "or" at the end of paragraph (d)(3)(i)(B).
- 2. Removing the period at the end of paragraph (d)(3)(i)(C) and adding "; or" in its place.
- 3. Adding paragraph (d)(3)(i)(D).
- 4. Adding a sentence at the end of paragraph (e).

The additions read as follows:

§ 301.7701-2 Business entities; definitions.

- * * *
- (d) * * *
- (3) * * *
- (i) * * *

(D) The date any person or persons, who were not owners of the entity as of November 29, 1999, own in the

aggregate a 50 percent or greater interest in the entity.

* * * * *

(e) *Effective date.* * * * However, paragraph (d)(3)(i)(D) of this section applies on or after October 22, 2003.

■ **Par. 3.** Section 301.7701-3 is amended as follows:

- 1. The text of paragraph (d)(1) following the paragraph heading is redesignated as paragraph (d)(1)(i), and a paragraph heading is added for paragraph (d)(1)(i).
- 2. Paragraph (d)(1)(ii) is added.
- 3. Paragraph (d)(2) is revised.
- 4. Paragraphs (d)(3) and (d)(4) are added.

The revision and additions read as follows:

§ 301.7701-3 Classification of certain business entities.

* * * * *

(d) *Special rules for foreign eligible entities*—(1) *Definition of relevance*—(i) *General rule.* * * *

(ii) *Deemed relevance*—(A) *General rule.* For purposes of this section, except as provided in paragraph (d)(1)(ii)(B) of this section, the classification for Federal tax purposes of a foreign eligible entity that files Form 8832, "Entity Classification Election", shall be deemed to be relevant only on the date the entity classification election is effective.

(B) *Exception.* If the classification of a foreign eligible entity is relevant within the meaning of paragraph (d)(1)(i) of this section, then the rule in paragraph (d)(1)(ii)(A) of this section shall not apply.

(2) *Entities the classification of which has never been relevant.* If the classification of a foreign eligible entity has never been relevant (as defined in paragraph (d)(1) of this section), then the entity's classification will initially be determined pursuant to the provisions of paragraph (b)(2) of this section when the classification of the entity first becomes relevant (as defined in paragraph (d)(1)(i) of this section).

(3) *Special rule when classification is no longer relevant.* If the classification of a foreign eligible entity is not relevant (as defined in paragraph (d)(1) of this section) for 60 consecutive months, then the entity's classification will initially be determined pursuant to the provisions of paragraph (b)(2) of this section when the classification of the foreign eligible entity becomes relevant (as defined in paragraph (d)(1)(i) of this section). The date that the classification of a foreign entity is not relevant is the date an event occurs that causes the classification to no longer be relevant, or, if no event occurs in a taxable year