

Part III. Administrative, Procedural, and Miscellaneous

Classification of Certain Foreign Entities

Notice 2007-10

This notice announces that Treasury and the Internal Revenue Service (IRS) will amend § 301.7701-2(b)(8) of the Procedure and Administration Regulations to add the Bulgarian aktsionerno druzhestvo entity to the list of entities that are always treated as corporations under section 7701 of the Internal Revenue Code (Code).

BACKGROUND

The IRS and Treasury issued final regulations concerning the classification of business entities under section 7701 of the Code on December 18, 1996 (check-the-box regulations). See generally, T.D. 8697, 1997-1 C.B. 215 [61 FR 66584] and §§ 301.7701-1 through 3. Under the check-the-box regulations, a business entity generally can elect its classification for federal tax purposes. 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).

On December 16, 2005, the IRS and Treasury published regulations (T.D. 9235, 2006-4 I.R.B. 338 [70 FR 74658]) under section 7701 of the Code adding certain foreign business entities to the *per se* list of corporations. These regulations were in response to the adoption by the Council of the European Union of a Council Regulation (2157/2001 2001 O.J. (L 294)) (the EU Regulation) that recognized a new business entity, the European public limited liability company (Societas Europaea or SE).

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 otherwise address by reference to the laws with respect to public limited liability companies for the country in which the SE has its registered office. An SE must have a registered office in one of the Member States of the European Economic Area (which includes all Member

States of the European Union plus Norway, Iceland, and Liechtenstein). For further background see T.D. 9197, 2005-1 C.B. 985 [70 FR 19697] and Notice 2004-68, 2004-2 C.B. 706.

As of January 1, 2007, Bulgaria will become a member of the European Union. Accordingly, an SE will be eligible to have its registered office in Bulgaria and those SEs with a registered office in Bulgaria will, to a certain extent, be subject to the laws of the public limited liability company in Bulgaria. As a result, and consistent with T.D. 9235, it is appropriate for the IRS and Treasury to add the public limited liability company for Bulgaria to the *per se* list.

DISCUSSION

The IRS and Treasury will issue temporary and proposed regulations that will modify § 301.7701-2 to include the Bulgarian aktsionerno druzhestvo on the *per se* corporation list. This entity has been identified as the public limited liability company in Bulgaria.

EFFECTIVE DATE

The temporary and proposed regulations to be issued adding the Bulgarian aktsionerno druzhestvo to § 301.7701-2(b)(8) generally will apply to such entities formed on or after January 1, 2007. However, they shall also apply to an entity formed before such date upon a 50 percent or greater change of ownership subsequent to such date.

The principal author of this notice is Ronald M. Gootzeit of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Ronald M. Gootzeit at (202) 622-3860 (not a toll-free call).

26 CFR 601.602: Tax forms and instructions.
26 CFR 1.6045-4: Information reporting on real estate transactions with dates of closing on or after January 1, 1991.

Rev. Proc. 2007-12

SECTION 1. PURPOSE

This revenue procedure supersedes Rev. Proc. 98-20, 98-1 C.B. 549, and sets forth the acceptable form of the written assurances (certification) that a real estate reporting person must obtain from the seller of a principal residence to except the sale or exchange of such principal residence from the information reporting requirements for real estate transactions under § 6045(e)(5) of the Internal Revenue Code (Code). This revenue procedure incorporates amendments to section 121 of the Code made by section 840 of the American Jobs Creation Act of 2004, Pub. L. No. 108-357, 118 Stat. 1418 (October 22, 2004) (AJCA), as amended by section 403(ee) of the Gulf Opportunity Zone Act of 2005, Pub. L. No. 109-135, 119 Stat. 2631 (December 21, 2005) (the GO Zone Act).

SECTION 2. BACKGROUND

.01 Section 6045(e) and § 1.6045-4 of the Income Tax Regulations generally require a real estate reporting person (as defined in § 6045(e)(2) and § 1.6045-4(e)) to file an information return regarding a real estate transaction and to furnish a payee statement to the seller regarding that transaction. The information return and statement must include the name, address, and taxpayer identification number (TIN) of the seller, and the gross proceeds of the real estate transaction. This information is reported on Form 1099-S, *Proceeds From Real Estate Transactions*.

.02 Section 312 of the Taxpayer Relief Act of 1997 (TRA 1997), Pub. L. No. 105-34, 111 Stat. 788 (August 5, 1997), as amended by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 805 (July 22, 1998), effective for sales or exchanges after May 6, 1997, amended § 6045(e) by adding a new paragraph (5), which excepts a sale or exchange of a principal residence

from the § 6045(e) information reporting requirements if the seller provides the real estate reporting person with a certification setting forth certain written assurances, including an assurance that the residence is the seller's principal residence (within the meaning of § 121) and an assurance that the full amount of the gain on the sale or exchange of the principal residence is excludable from gross income under § 121.

.03 Section 312 of TRA 1997 also amended § 121 to provide new rules for the exclusion of gain on certain sales or exchanges of a principal residence. Section 121, as amended, provides that a taxpayer may exclude from gross income up to \$250,000 of gain on the sale or exchange of a principal residence if certain conditions are met. In certain circumstances, a married individual filing a joint return for the taxable year of the sale or exchange may exclude from gross income up to \$500,000 of gain. This exclusion also applies to the sale or exchange of stock held by a tenant-stockholder in a cooperative housing corporation (as defined in § 216) and may apply to the sale or exchange of a remainder interest in a principal residence if the taxpayer so elects. *See* Code §§ 121(d)(4) and (d)(8).

.04 Section 840 of the AJCA, as amended by the GO Zone Act, amended § 121 to provide that the exclusion for gain on the sale or exchange of a principal residence does not apply if the principal residence was acquired by the taxpayer in a like-kind exchange in which any gain was not recognized under § 1031(a) or (b) within the prior five years.

SECTION 3. SCOPE

This revenue procedure applies to the information reporting requirements under § 6045(e) for a sale or exchange of a principal residence.

SECTION 4. SELLER CERTIFICATION

.01 To be excepted from the information reporting requirements in § 6045(e) on the sale or exchange of a principal residence (including stock in a cooperative housing corporation), the real estate reporting person must obtain from the seller a written certification, signed by the seller under penalties of perjury, that assurances (1) through (6) set forth in section 4.02

of this revenue procedure are true (or, in the case of assurance (6), not applicable). For purposes of this certification, the term "seller" includes each owner of the residence that is sold or exchanged. Thus, if a residence has more than one owner, a real estate reporting person must either obtain a certification from each owner (whether married or not) or file an information return and furnish a payee statement for any owner that does not make the certification.

.02 The assurances are:

(1) The seller owned and used the residence as the seller's principal residence for periods aggregating 2 years or more during the 5-year period ending on the date of the sale or exchange of the residence.

(2) The seller has not sold or exchanged another principal residence during the 2-year period ending on the date of the sale or exchange of the residence.

(3) No portion of the residence has been used for business or rental purposes after May 6, 1997, by the seller (or by the seller's spouse or former spouse, if the seller was married at any time after May 6, 1997).

(4) At least one of the following three statements applies:

The sale or exchange is of the entire residence for \$250,000 or less.

OR

The seller is married, the sale or exchange is of the entire residence for \$500,000 or less, and the gain on the sale or exchange of the entire residence is \$250,000 or less.

OR

The seller is married, the sale or exchange is of the entire residence for \$500,000 or less, and (a) the seller intends to file a joint return for the year of the sale or exchange, (b) the seller's spouse also used the residence as his or her principal residence for periods aggregating 2 years or more during the 5-year period ending on the date of the sale or exchange of the residence, and (c) the seller's spouse also has not sold or exchanged another principal residence during the 2-year period ending on the date of the sale or exchange of the residence.

(5) During the 5-year period ending on the date of the sale or exchange of the residence, the seller did not acquire the residence in an exchange to which section 1031 applied.

(6) In cases where the seller's basis in the residence is determined by reference to the basis in the hands of a person who acquired the residence in an exchange to which section 1031 applied, the exchange to which section 1031 applied occurred more than 5 years prior to the date of the seller's sale or exchange of the residence.

SECTION 5. FORMAT FOR MAKING SELLER CERTIFICATION

A sample certification form that may be used by a real estate reporting person to obtain the applicable assurances from the seller is provided in the Appendix of this revenue procedure. Use of this sample certification form is not required. The requirements of the certification under § 6045(e)(5) will be met if the content and wording of a written certification provide the same information as required by section 4 of this revenue procedure.

SECTION 6. OBTAINING AND RETAINING SELLER CERTIFICATION

The real estate reporting person may obtain a certification at any time on or before January 31 of the year following the year of the sale or exchange of the residence. The certification must be retained by the real estate reporting person for 4 years after the year of the sale or exchange of the residence to which the certification applies.

SECTION 7. PENALTIES

A real estate reporting person who relies on a certification made in compliance with this revenue procedure will not be liable for the penalties under § 6721 for failure to file an information return, or under § 6722 for failure to furnish a payee statement to the seller, unless the real estate reporting person has actual knowledge that any assurance is incorrect.

SECTION 8. EFFECT ON OTHER DOCUMENTS (when applicable)

Rev. Proc. 98-20 is superseded.

SECTION 9. EFFECTIVE DATE

This revenue procedure is effective for sales or exchanges of a principal residence occurring after January 22, 2007.

SECTION 10. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1592.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in section 4 and 5 of this revenue procedure. This information is required to exempt a real estate re-

porting person from the requirement to file an information return and furnish a payee statement reporting the sale or exchange of a principal residence. The likely respondents are individual taxpayers who sell or exchange a principal residence and real estate businesses.

The estimated total annual reporting burden for respondents is 383,000 hours.

The estimated burden per respondent is 10 minutes. The estimated number of respondents is 2,300,000. The frequency of responses is on occasion.

The estimated total annual burden for recordkeepers is 37,500 hours.

The estimated annual burden per recordkeeper is 25 minutes. The estimated number of recordkeepers is 90,000.

Books or records relating to a collection of information must be retained as long as their content may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

SECTION 11. DRAFTING INFORMATION

The principal author of this revenue procedure is Timothy S. Sheppard of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue procedure, contact Mr. Sheppard at (202) 622-4910 (not a toll-free call).

APPENDIX

CERTIFICATION FOR NO INFORMATION REPORTING ON THE SALE OR EXCHANGE OF A PRINCIPAL RESIDENCE

This form may be completed by the seller of a principal residence. This information is necessary to determine whether the sale or exchange should be reported to the seller, and to the Internal Revenue Service on Form 1099-S, *Proceeds From Real Estate Transactions*. If the seller properly completes Parts I and III, and makes a "true" response to assurances (1) through (6) in Part II (or a "not applicable" response to assurance (6)), no information reporting to the seller or to the Service will be required for that seller. The term "seller" includes each owner of the residence that is sold or exchanged. Thus, if a residence has more than one owner, a real estate reporting person must either obtain a certification from each owner (whether married or not) or file an information return and furnish a payee statement for any owner that does not make the certification.

Part I. Seller Information

- 1. Name _____
- 2. Address or legal description (including city, state, and ZIP code) of residence being sold or exchanged _____

- 3. Taxpayer Identification Number (TIN) _____

Part II. Seller Assurances

Check "true" or "false" for assurances (1) through (5), and "true", "false", or "not applicable" for assurance (6).

True False

- (1) I owned and used the residence as my principal residence for periods aggregating 2 years or more during the 5-year period ending on the date of the sale or exchange of the residence.
- (2) I have not sold or exchanged another principal residence during the 2-year period ending on the date of the sale or exchange of the residence.
- (3) I (or my spouse or former spouse, if I was married at any time during the period beginning after May 6, 1997, and ending today) have not used any portion of the residence for business or rental purposes after May 6, 1997.

True False

(4) At least one of the following three statements applies:

The sale or exchange is of the entire residence for \$250,000 or less.

OR

I am married, the sale or exchange is of the entire residence for \$500,000 or less, and the gain on the sale or exchange of the entire residence is \$250,000 or less.

OR

I am married, the sale or exchange is of the entire residence for \$500,000 or less, and (a) I intend to file a joint return for the year of the sale or exchange, (b) my spouse also used the residence as his or her principal residence for periods aggregating 2 years or more during the 5-year period ending on the date of the sale or exchange of the residence, and (c) my spouse also has not sold or exchanged another principal residence during the 2-year period ending on the date of the sale or exchange of the principal residence.

(5) During the 5-year period ending on the date of the sale or exchange of the residence, I did not acquire the residence in an exchange to which section 1031 of the Internal Revenue Code applied.

True False N/A

(6) If my basis in the residence is determined by reference to the basis in the hands of a person who acquired the residence in an exchange to which section 1031 of the Internal Revenue Code applied, the exchange to which section 1031 applied occurred more than 5 years prior to the date I sold or exchanged the residence.

Part III. Seller Certification

Under penalties of perjury, I certify that all the above information is true as of the end of the day of the sale or exchange.

Signature of Seller

Date

*26 CFR 601.204: Changes in accounting periods and in methods of accounting.
(Also Part I, §§ 446, 461, 481; 1.446-1.)*

Rev. Proc. 2007-14

SECTION 1. PURPOSE

This revenue procedure provides procedures by which a taxpayer may obtain the automatic consent of the Commissioner under § 446(e) of the Internal Revenue Code to change its method of accounting for liabilities for services or insurance to comply with Rev. Rul. 2007-3, page 350, this Bulletin.

SECTION 2. BACKGROUND

.01 In Rev. Rul. 2007-3, the Internal Revenue Service addressed the issue of when a taxpayer using an accrual method of accounting incurs a liability for services or insurance under § 461. The ruling holds that a liability for services or insurance is

not fixed by the mere execution of a contract for the future provision of services or insurance. Instead, all the events have occurred that establish the fact of the liability when (1) the event fixing the liability, whether that be the required performance or other event, occurs, or (2) payment is due, whichever happens earliest.

.02 Under § 446(e) and § 1.446-1(e)(2)(i) of the Income Tax Regulations, a taxpayer generally must secure the consent of the Commissioner before changing a method of accounting for federal income tax purposes. To obtain the Commissioner's consent to a change in method, § 1.446-1(e)(3)(i) generally requires a taxpayer to file Form 3115, *Application for Change in Accounting Method*, during the taxable year in which the taxpayer wants to make the proposed change. Section 1.446-1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures that provide the terms and conditions necessary for a taxpayer to obtain consent to change a method of accounting. The terms and conditions the Commissioner may prescribe include whether the change

is to be made with a § 481(a) adjustment, and if so, the § 481(a) adjustment period, or on a cut-off basis.

.03 Rev. Proc. 2002-9, 2002-1 C.B. 327 (as modified and clarified by Announcement 2002-17, 2002-1 C.B. 561, modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, and amplified, clarified and modified by Rev. Proc. 2002-54, 2002-2 C.B. 432), provides procedures under § 446(e) and § 1.446-1(e) for obtaining the automatic consent of the Commissioner to change certain methods of accounting for federal income tax purposes. Specifically, Rev. Proc. 2002-9 applies to a taxpayer requesting the Commissioner's consent to change to a method of accounting described in the APPENDIX of that revenue procedure. Rev. Proc. 2002-9 is the exclusive procedure for a taxpayer within its scope to obtain the Commissioner's consent. See Rev. Proc. 2002-9, sections 1 and 4.01.