

CHECK-THE-BOX RELIEF FOR FOREIGN ENTITIES

Foreign entities that provide limited liability to their owners, shareholders, or members will generally be classified by the U.S. as corporations/associations for U.S. income tax purposes. However, if such entities make a check-the-box election with the IRS, they can be classified as a disregarded entity (if there is one owner) or a partnership (if there is more than one owner) - although some types of entities are not eligible at all for such elections.

Since the election is due within 60 days of formation of the entity, as a practical matter it may be difficult to know at the time of filing how many owners there will be. Therefore, some entities may be filing check-the-box elections as partnerships when they end up having only one owner, and some entities may be filing as disregarded entities when they actually have more than one owner.

The IRS is now allowing such entities to correct their elections, without being stuck with an erroneous/invalid election. There are some conditions attached, but they are not too onerous:

1. Original or amended returns must be filed by the owners and the entity consistent with the revised/corrected treatment;
2. All required amended returns must be filed by the expiration of period of statute of limitations on assessments for the applicable tax years; and
3. A corrected Form 8832 is filed with the IRS and attached to the appropriate returns.

While I don't know how often this problem actually arises, any relief for taxpayer errors is always welcome.

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