CALIFORNIA LAWYERS ASSOCIATION
TAXATION SECTION
INTERNATIONAL COMMITTEE

REQUEST FOR GUIDANCE REGARDING THE RELEVANCY REQUIREMENT OF THE CHECK-THE-BOX REGULATIONS[1][2]

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[1] The comments contained in this paper are the individual views of the authors who prepared them, and do not represent the position of the California Lawyers Association.
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EXECUTIVE SUMMARY

Selecting the appropriate business entity for a new venture or investment requires thoughtful consideration of legal and tax issues, which often drive the decision-making process. Regulations issued by the United States ("U.S.") Treasury define and classify business entities for Federal tax purposes as corporations, partnerships or disregarded entities, based on several factors[5] (the "CTB Regulations"). The CTB Regulations offer unique planning opportunities, since under certain circumstances a business entity can elect its classification for Federal tax purposes.

In the international context, a foreign business entity that is not classified as a "per se" corporation is a "foreign eligible entity" which can elect its classification for Federal tax purposes as set forth by the CTB Regulations.[6] The Regulations seem to require that the classification of a foreign eligible entity be "relevant" in order for such an election to be effective. If a foreign eligible entity is not "relevant," such entity must use the default rules to determine its classification once it first becomes relevant.[7] Under the CTB Regulations, a foreign entity's classification is relevant:

> "[W]hen its classification affects the liability of any person for **federal tax** or **information purposes** … The date that the classification of a foreign eligible entity is relevant is the date an event occurs that creates an obligation to file a **federal tax return**, **information return**, or **statement** for which the classification of the entity must be determined."[8] (Emphasis added.)

As discussed in our paper, it is not clear what constitutes a "statement" where the entity classification must be determined for purposes of the CTB Regulations. The enactment of the Foreign Account Tax Compliance Act[9] ("FATCA"), magnified this question and introduced new inquiries, *e.g.*, "Is a Form W-8BEN-E an "information return" or a "statement" that makes such entity relevant for purposes of the CTB

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[5] Treas. Reg. § 301.7701-2(a).
[6] *Id.*
[7] Treas. Reg. § 301.7701-3(d)(2).
[8] Treas. Reg. § 301.7701-3(d)(1)(i).
[9] The Act was part of the Hiring Incentives to Restore Employment (HIRE) Act of 2010.

Regulations?" The recent Tax Cuts and Jobs Act[10] make such questions more relevant than ever as taxpayers and tax professionals explore ownership structures that require a clear understanding of the CTB Regulations.

The authors believe it is important to obtain guidance and clarification on the relevancy requirement on several issues. Specifically, the authors request clarification regarding the following: What is a "statement" for purposes of the CTB Regulations? Is a Form SS-4 or W-8BEN-E an "information return" or a "statement" that makes a foreign eligible entity relevant? If a foreign eligible entity that files a check-the-box election is relevant only on the date the entity classification is effective, is the classification effective thereafter? What are the consequences to a foreign eligible entity that is relevant at the time of making a "check-the-box election", but then ceases to be relevant?

[10] Pub. L. No. 115-97, as described below.

DISCUSSION

I. INTRODUCTION AND BACKGROUND

A. Choice of Entity and Check-the-Box Regulations

Any new business enterprise requires thoughtful consideration of many business, legal and tax aspects. The decision on the business structure, or choice of entity, is key because the type of entity will determine many of the legal and tax issues for the new business venture. The same applies to an investment project or the holding of personal or business assets.

The process of selecting the appropriate business entity has been influenced significantly by federal tax legislation enacted throughout the years. The most recent amendments to the Internal Revenue Code[11] (the "Code"), commonly referred to as the Tax Cuts and Jobs Act[12] ("TCJA"), made significant changes to the tax law that will have a substantial impact on choice of entity decisions. For example, for tax years beginning after December 31, 2017, the TCJA permanently reduces the corporate tax rate from 35% to 21% and repeals the corporate alternative minimum tax ("AMT"). Also impacting choice of entity considerations, the TCJA introduces a deduction of up to 20% of "qualified business income" from a passthrough entity, including a partnership, S corporation, or sole proprietorship/disregarded entity.[13]

In addition to legislative changes, regulatory developments can also impact choice of entity decisions. In December of 1996, the Department of the Treasury (the "Treasury") issued final regulations that classify certain business organizations under an elective regime, replacing the then-existing entity classification rules.[14] The previous entity classification regime was based upon historical differences under local law between partnerships and corporations. The Treasury and the IRS believed those rules became increasingly formalistic, and opted to replace such system with a simpler, elective approach to entity classification.[15] The final regulations, known as

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[11] Unless otherwise provided, all references to the Code or the IRC are references to the Internal Revenue Code of 1986, as amended, 26. U.S.C. §§ 1 et. seq., as in effect during the relevant period, and references to "Sections" are references to sections of the Code.
[12] The official title of the TCJA is: "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018," Pub. L. No. 115-97.
[13] IRC § 199A introduced by the TCJA, IRC § 11011(a).
[14] T.D. 8697, 61 Fed. Reg. 66584 (Dec. 18, 1996).
[15] TD 8697, Preamble to Final Regulations Effective 1-1-1997.

the "check-the-box" regulations ("CTB Regulations") and first effective January 1, 1997, provide that certain types of organizations are required to be classified as corporations for Federal tax purposes (so-called "per se corporations") and that any "business entity" that is not required to be treated as a per se corporation, including foreign entities, is an "eligible entity" that may choose its classification.[16] Absent an affirmative choice, the eligible entity is classified per its default classification. Many legal and tax professionals rely on these provisions for tax planning purposes, however, the interpretation of the CTB Regulations often differs among practitioners.

B. The Check-the-Box Election

The election is made by filing Form 8832, "Entity Classification Election", commonly referred to as a "check-the-box election" ("CTBE") with the Internal Revenue Service ("IRS").[17] The entity must select its desired classification by checking the appropriate box and specifying the effective date of the election. If no effective date is specified on Form 8832, the effective date will be the filing date.[18] However, the effective date specified on the Form cannot be more than 75 days prior to the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed.[19] Taxpayers make CTBEs for a myriad of legitimate business and tax reasons.

Since the CTB Regulations became effective, and especially since the CTB Regulations were last substantively amended in the early 2000s, there have been many changes to international reporting requirements of U.S. and foreign individuals and entities. The most notable change is arguably the Foreign Account Tax Compliance Act ("FATCA"), which was part of the Hiring Incentives to Restore Employment (HIRE) Act of 2010. The newest overhaul of the Code, the TCJA, introduced additional rule changes that apply to certain foreign corporations considered Controlled Foreign Corporations ("CFC") under the Code.

As mentioned above, the effect of a CTBE is to change an eligible entity's default classification to a tax classification other than its default

[16] Treas. Reg. § 301.7701-3(a).
[17] Treas. Reg. § 301.7701-3(c)(1)(i).
[18] Treas. Reg. § 301.7701-3(c)(1)(iii).
[19] *Id.*

classification. For example, a Delaware limited liability company, by default classified as a disregarded entity if it only has one member or a partnership if it has more than one member, could make an election to be classified as an association (taxable as a corporation). Such classification is only effective for Federal tax purposes.[20]

Although the filing of a CTBE is fairly simple and straightforward procedure, the planning surrounding the election and the timing requires detailed consideration given the tax consequences of the election. The CTB Regulations describe what occurs, from a tax standpoint, in various changes in classification. For example, if an entity elects to change from an association (*i.e.*, taxable corporation) to a disregarded entity (*i.e.*, wholly-owned eligible entity), the CTB Regulations state the following is deemed to occur: "The association distributes all of its assets and liabilities to its single owner in liquidation of the association."[21]

The corporation is deemed to liquidate by distributing all of its assets and liabilities to its single owner (the "deemed liquidation"). The tax treatment of the deemed liquidation is determined under all relevant provisions of the Code and general principles of tax law, including the step-transaction doctrine.[22]

The Regulations provide that the deemed liquidation occurs immediately before the close of the day before the effective date of the disregarded entity election.[23] Thus, if an entity classified as a corporation files a disregarded entity election effective on January 1, the deemed liquidation is treated as occurring immediately before the close of December 31.

When dealing with a foreign entity, the CTB Regulations place additional requirements upon the entity in order for a CTBE to be effective, referring to an election by a foreign eligible entity as being "relevant". The subject of this paper is the "relevancy" requirement. As discussed in Part III of this paper, the authors request guidance and clarification on certain issues. For example, whether certain IRS Forms or certifications provided by a

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[20] Treas. Reg. § 301.7701-3(a).
[21] Treas. Reg. § 301.7701-3(g)(1)(iii).
[22] Treas. Reg. § 301.7701-3(g)(2)(i).
[23] Treas. Reg. § 301.7701-3(g)(3)(i).

foreign entity under FATCA are "information returns" or "statements" which would make the entity relevant under the CTB Regulations.

II. RELEVANCE

A. "Definition" of Relevance and Deemed Relevance

The Regulations seem to require that the classification of a foreign eligible entity be "relevant" in order for such an election to be effective. If a foreign eligible entity has never been "relevant," such entity must look to the default classification rules to determine the entity's classification once it first becomes relevant.[24] The CTB Regulations define relevance under Treas. Reg. Section 301.7701-3(d)(1)(i) by explaining *when* the classification of a foreign eligible entity is relevant:

> "For purposes of this section, a foreign eligible entity's classification is relevant when its classification affects the liability of any person for federal tax or information purposes … The date that the classification of a foreign eligible entity is relevant is the date an event occurs that creates an obligation to file a federal tax return, information return, or statement for which the classification of the entity must be determined."[25]

Furthermore, the CTB Regulations contain a special rule when an entity classification is no longer relevant, commonly referred to as the "60-Month Rule" under Treas. Reg. Section 301.7701-3(d)(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

[24] Treas. Reg. § 301.7701-3(d)(2).
[25] Treas. Reg. § 301.7701-3(d)(1)(i).

taxable year that causes the classification to be relevant, then the date is the first day of that taxable year."[26]

Finally, the CTB Regulations include a confusing "Deemed-Relevancy" rule, which states the following:

> "*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."[27]

Many practitioners assume that pursuant to the Deemed-Relevancy Rule all foreign eligible entities can make an effective CTBE, because the entity shall be "deemed relevant" only on the date that the Form 8832 is filed. This would mean that the any foreign eligible entity is relevant simply by filing Form 8832. This is likely not correct, because such an interpretation would render the relevancy requirement moot in many ways.

The preamble to the CTB Regulations also seems to clarify this is not the case. Rather, when the Deemed-Relevancy Rule was added in 1999, Treasury stated that the Deemed-Relevancy Rule is for purposes of the 60-Month Rule:

> "*Relevance*. The check-the-box regulations provide a special rule when the Federal tax classification of a foreign eligible entity is no longer relevant. The rule states that if the classification of a foreign eligible entity which was previously relevant for Federal tax purposes ceases to be relevant for sixty consecutive months, the entity's classification will initially be determined under the default classification when the classification of the foreign eligible entity again becomes relevant (hereinafter 60-month rule). Several practitioners have requested guidance on whether the act of filing an entity classification election (Form 8832, Entity Classification Election) causes an entity to be relevant for purposes of the 60-month rule. Practitioners also have requested clarification regarding whether a newly formed foreign eligible entity, that has never been relevant, is subject to the 60-month rule.

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[26] Treas. Reg. § 301.7701-3(d)(3).
[27] Treas. Reg. 301.7701-3(d)(1)(ii).

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> These proposed regulations provide that if a foreign eligible entity files an entity classification election, it is considered relevant on the effective date of the election <u>for purposes of the 60-month rule</u>. However, if the foreign eligible entity is otherwise not relevant within the meaning of §301.7701 3(d)(1)(i), then for purposes of applying the 60-month rule the entity will be considered to be not relevant on the day after the date the entity classification election was effective.
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> The preamble to the conversion regulations stated that a foreign eligible entity that is not relevant has a Federal tax classification. The proposed regulations clarify that such an entity is subject to the 60-month rule. <u>However, the proposed regulations provide an exception for a foreign eligible entity that was never relevant (within the meaning of §301.7701-3(d)(1)) during its existence. Such entity's classification will initially be determined pursuant to the provisions of §301.7701-3(b)(2) when the entity first becomes relevant.</u>"[28] [Emphasis added.]

Another interpretation of the Regulations is that the filing of Form 8832 makes a foreign entity relevant and causes the initial classification of the entity.[29] However, if the entity is not otherwise relevant, then the period for the 60-month rule begins the day after the CTBE and the foreign entity will lose its classification after the 60-months lapse.[30] Thereafter, if the entity becomes relevant again, its classification will be an initial classification and not a change of classification (which would cause a contribution or a deemed liquidation, as the case may be). Therefore, the need for clarification is important.

B. Significant Tax Law Changes

Since the CTB Regulations were last amended in the early 2000s, there have been two major changes in the international tax landscape: FATCA and the TCJA.

FATCA, which was part of the Hiring Incentives to Restore Employment (HIRE) Act of 2010,[31] was introduced to uncover U.S. tax evaders with unreported funds or assets in foreign accounts, holding

[28] REG 110385-99, Preamble to Proposed Regulations.
[29] Treas. Reg. § 301.7701-3(d)(1)(ii)(A).
[30] Treas. Reg. § 301.7701-3(d)(3).
[31] P.L. 111-147.

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investments directly or indirectly through legal entities. FATCA established new reporting requirements for U.S. individuals with foreign assets and introduced new provisions related to foreign trusts. To identify U.S. taxpayers with undisclosed foreign assets, FATCA requires foreign financial institutions[32] ("FFIs") to provide certain information to the IRS on U.S. accounts. In addition, passive non-financial foreign entities ("NFFEs") are required to provide information on substantial U.S. owners to withholding agents. To enforce compliance, a 30% withholding tax is imposed on certain payments made to FFIs and NFFEs that fail to make the required disclosures.

In order to collect the information and documentation required to comply with FATCA and make the necessary classifications, FFIs around the world require that <u>all</u> entities complete, sign and return a Form W-9 ("Request for Taxpayer Identification Number and Certification") or Form W-8BEN-E ("Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)") to confirm whether or not such entity is a U.S. taxpayer.

More recently, the TCJA changed various CFC rules, possibly the most notable being the elimination of the 30-day minimum holding period for a CFC. The TJCA also added provisions to tax certain global intangible low-taxed income (or "GILTI"),[33] to prevent U.S. tax base erosion, and altered CFC attribution rules in significant ways.[34] These legal updates are causing practitioners to look into new structuring options that have never been needed before which makes relevancy very important. For example, if a taxpayer owns a foreign eligible entity which in turn owns another foreign eligible entity, both of which plan to make CTBEs at different times, it is very important that such taxpayer understands (1) if such entities are "relevant", and (2) the tax consequences of filing CTBEs. Depending on the answers to these questions, practitioners may or may not be engaging in unnecessary relevancy planning to be confident in the tax consequences in absence of further guidance.

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[32] An FFI is any non-U.S. entity (*i.e.*, created or organized outside the U.S.) that (i) accepts deposits in the ordinary course of a banking or similar business (*e.g.* a bank), (ii) holds, as a substantial part of its business, financial assets for the account of others (*e.g.* a custodian), (iii) is engaged, or holds itself out as being engaged, in the business of investing, reinvesting, or trading in financial instruments, including derivative contracts (*e.g.* mutual funds, hedge funds, private equity funds), or (iv) an insurance company that issues annuities or cash value insurance policies.
[33] IRC § 951A.
[34] Repeal of IRC § 958(b)(4).

III. REQUEST FOR GUIDANCE

Clearly, it is important for taxpayers and tax practitioners to understand if/when a foreign eligible entity is "relevant", and what the consequences might be if a foreign eligible entity files a Form 8832 when it is not relevant.

To reiterate, the CTB Regulations provide the following definition of relevancy under Treas. Reg. Section 301.7701-3(d)(1)(i):

> "[A] foreign eligible entity's classification is relevant when its classification affects the liability of any person for federal tax or information purposes … The date that the classification of a foreign eligible entity is relevant is the date an event occurs that creates an obligation to file a **federal tax return**, **information return**, or **statement** for which the classification of the entity must be determined."[35] [Emphasis added.]

The bolded terms above are not defined in the CTB Regulations, although "federal tax return" and "federal information return" are fairly common nomenclature. The authors of the CTB Regulations even included an example of what an "information return" is, directly following the language quoted above:

> "Thus, the classification of a foreign entity is relevant, for example, on the date that an interest in the entity is acquired which will require a U.S. person to file an information return on Form 5471."[36]

What is not clear is what was intended by the drafters of the CTB regulations by a "statement" where the entity classification must be determined. The advent of FATCA magnifies this question and introduces new questions. Is a Form W-8BEN-E an "information return" or a "statement" that makes such entity relevant for purposes of the CTB Regulations?" It is also unclear if these types of IRS forms could be considered a "federal information return."

Furthermore, with the TCJA and elimination of the 30-day minimum holding period for a foreign entity to be a CFC, taxpayers need to understand more than ever what constitutes a "relevant" entity.

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[35] Treas. Reg. § 301.7701-3(d)(1)(i).
[36] *Id*.

Accordingly, the authors believe it is important to obtain guidance and clarification on the state of the relevancy requirement, specifically:

1. What is a "statement for which the classification of a foreign eligible entity must be determined?" Are any of the following considered "statements?"

    a. Form W8-BEN-E;

    b. Form SS-4 ("Application for Employer Identification Number");

    c. Form W-7 ("Application for IRS Individual Taxpayer Identification Number");

    d. Form 8832;

    e. Form 1042-S ("Foreign Person's U.S. Source Income Subject to Withholding");

    f. An application to open an account with a FFI (or a domestic financial institution), where the foreign eligible entity must specify its entity type; and

    g. An entity self-certification form requested by a hedge fund as part of the subscription documents that a foreign eligible entity is signing to acquire an interest in the fund.[37]

2. What is an "information return … for which the classification of the entity must be determined?" Do any of the following IRS Forms qualify as such?

    a. Form W8-BEN-E;

    b. Form SS-4;

    c. Form W-7; or

    d. Form 8938 ("Statement of Foreign Financial Assets").

[37] Forms prepared pursuant to the Organization for Economic Co-operation and Development ("OECD") Standard Automatic Exchange of Financial Account Information in Tax Matters, referred to as the Common Reporting Standard, or CRS.

3. What is the effect of filing a Form 8832 when the foreign eligible entity is not "relevant" on its effective date, but the entity later becomes relevant?

4. What are the consequences to a foreign eligible entity that is relevant at the time of making a CTBE, but then ceases to be relevant?

IV. PRACTICAL PROBLEMS ADDRESSED

The authors believe that there has been no guidance on the CTB Regulations, and specifically on the relevancy requirement, since the CTB Regulations were last amended approximately 15 years ago. In the authors' experience, practitioners with professional experience in this area have varied interpretations of the relevancy requirement of the CTB Regulations.

Without clarity on what "relevancy" means, taxpayers and practitioners cannot have certainty as to the tax treatment of certain transactions without planning (that may be completely unnecessary).

The following two scenarios illustrate some of the practical problems tax practitioners may encounter in tax planning matters involving a CTBE by a foreign eligible entity.

A. Deemed Liquidations

When dealing with foreign entities, CTBEs are often used to cause such entity to have a deemed liquidation for Federal tax purposes. By affirmatively making such election at a strategic juncture, such as before a non-resident alien ("NRA") immigrates to the U.S. (or becomes a U.S. person), or before the death of an NRA, it may be possible to achieve a step-up in tax basis.

Not having a deemed liquidation when a foreign taxpayer believes it has, or triggering a deemed liquidation earlier or later than the taxpayer believes is occurring, creates substantial uncertainty for foreign taxpayers and practitioners. This forces many practitioners to recommend "relevancy planning," whereby a foreign entity will purchase a share of a U.S. corporation or gift/sell a portion of the foreign entity to a U.S. person. These steps may be unnecessary because, for example, such entity was already relevant because it was previously required to furnish a Form W-8BEN-E.

The deemed liquidation scenario in the pre-immigration context can be illustrated by the following example. Mr. Wang is a citizen and resident of the People's Republic of China. He is the sole owner of a Private Limited Company formed under the laws of Hong Kong (the foreign corporation or "FC"), which holds investment assets such as stock of U.S. publicly traded corporations and Treasury debt instruments. The account is held with a U.S. financial institution. Mr. Wang will apply for an EB-5 visa to acquire lawful permanent resident status[38] and move to the U.S. Mr. Wang's U.S. tax counsel has advised him that it would be preferable if the FC were not treated as a CFC or a passive foreign investment company ("PFIC") when Mr. Wang becomes a U.S. person. The FC is not a "per se" foreign corporation under Treas. Reg. Section 301.7701–2(b)(8),[39] and can file Form 8832 to change its classification to a disregarded entity.

On the effective date of the CTBE, the FC will be treated as making a liquidating distribution of its underlying investment assets to Mr. Wang. As a result, the basis of the investment assets should be stepped up (or down) in the hands of Mr. Wang to its fair market value ("FMV") on the date of the election. This deemed liquidation should not be taxable to Mr. Wang because U.S. tax is generally not imposed on capital gains of NRAs.[40] Any step-up in the basis of the investment assets can reduce future realization of capital gain after Mr. Wang obtains his EB-5 visa and becomes a U.S. income tax resident. The FC is not a CFC or PFIC when Mr. Wang becomes a U.S. person.

The classification of the FC should be relevant if the FC provided the U.S. financial institution (the withholding agent) documentation to determine the classification of the FC for withholding under chapter 3 of the Code. For example, Form W-8BEN-E in order for the financial institution to issue Form 1042-S to the FC for the portfolio interest on the account.

However, assume the account of the FC is held with a FFI in Hong Kong when the FC files Form 8832. None of the investments held in the account of the FC generate portfolio interest; thus, no U.S. "statements" were likely required by the FFI. Mr. Wang obtains an EB-5 visa after the

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[38] In our example, Mr. Wang is not a U.S. citizen, he does not satisfy the substantial presence test under IRC § 7701(b)(3) and has not made a first year election under IRC § 7701(b)(4).

[39] A Public Limited Company formed under the laws of Hong Kong is by definition a foreign corporation, and therefore cannot make a CTBE to change its classification for Federal tax purposes.

[40] IRC § 871.

filing of Form 8832. In this case, the classification of the FC upon the filing of Form 8832 was probably not relevant and probably not effective. The FC is likely relevant once Mr. Wang becomes a U.S. person. If a deemed liquidation occurs at that point in time, Mr. Wang (who has become a U.S. person) would have a taxable event in the U.S. because the FC distributes all of the underlying investments to Mr. Wang, in liquidation, and immediately thereafter Mr. Wang contributes all of the distributed investments back to the newly formed FC. Would the result be different if the FC had provided the FFI a Form W-8BEN-E as part of the FFI's compliance with FATCA?

With current guidance, it is impossible to know what the IRS' position would be.

B. Additional Issues if Entity Not Relevant

It is also unclear what the tax consequences are of filing a Form 8832 if such entity is not relevant. What happens when such entity later becomes relevant (*e.g.*, when a requirement to file Form 5471 arises)? Was there a delayed liquidation? Must the foreign eligible entity file a second Form 8832 if it was not relevant on the effective date of the first filing of Form 8832? Some practitioners believe that filing a CTBE for an entity that is not relevant would be treated as an "initial classification" for such entity without the deemed liquidation and associated tax basis step-up, while others believe that filing Form 8832 for an entity that is not eligible will start the "clock" for the 60-Month Rule.

V. CONCLUSION

In the authors' view, it is important to obtain clarification on the "relevancy" requirement of the CTB Regulations, in particular, as it relates to the effect of filing certain "statements" and IRS forms, and in the pre-immigration context, in order to provide certainty to both practitioners and taxpayers who are unsure of the effectiveness or the effective date of a CTBE. The effective date of a CTBE could be very important for the U.S. tax treatment of certain transactions, making it a matter of great concern for taxpayers and their U.S. tax advisors. Since a deemed liquidation can generate a taxable event, clarification is important to avoid, or plan accordingly for, the tax that may result from such liquidation. Clarification on this point may also assist taxpayers that are unnecessarily engaging in transactions to confirm that a foreign eligible entity is already "relevant" in certain situations.