

federal tax purposes is a matter of federal tax law and does not depend on whether the organization is recognized as an entity under local law.

(2) *Certain joint undertakings give rise to entities for federal tax purposes.* A joint venture or other contractual arrangement may create a separate entity for federal tax purposes if the participants carry on a trade, business, financial operation, or venture and divide the profits therefrom. For example, a separate entity exists for federal tax purposes if co-owners of an apartment building lease space and in addition provide services to the occupants either directly or through an agent. Nevertheless, a joint undertaking merely to share expenses does not create a separate entity for federal tax purposes. For example, if two or more persons jointly construct a ditch merely to drain surface water from their properties, they have not created a separate entity for federal tax purposes. Similarly, mere co-ownership of property that is maintained, kept in repair, and rented or leased does not constitute a separate entity for federal tax purposes. For example, if an individual owner, or tenants in common, of farm property lease it to a farmer for a cash rental or a share of the crops, they do not necessarily create a separate entity for federal tax purposes.

(3) *Certain local law entities not recognized.* An entity formed under local law is not always recognized as a separate entity for federal tax purposes. For example, an organization wholly owned by a State is not recognized as a separate entity for federal tax purposes if it is an integral part of the State. Similarly, tribes incorporated under section 17 of the Indian Reorganization Act of 1934, as amended, 25 U.S.C. 477, or under section 3 of the Oklahoma Indian Welfare Act, as amended, 25 U.S.C. 503, are not recognized as separate entities for federal tax purposes.

(4) *Single owner organizations.* Under §§ 301.7701-2 and 301.7701-3, certain organizations that have a single owner can choose to be recognized or disregarded as entities separate from their owners.

(b) *Classification of organizations.* The classification of organizations that are recognized as separate entities is determined under §§ 301.7701-2, 301.7701-3, and

301.7701-4 unless a provision of the Internal Revenue Code (such as section 860A addressing Real Estate Mortgage Investment Conduits (REMICs)) provides for special treatment of that organization. For the classification of organizations as trusts, see § 301.7701-4. That section provides that trusts generally do not have associates or an objective to carry on business for profit. Sections 301.7701-2 and 301.7701-3 provide rules for classifying organizations that are not classified as trusts.

(c) *Qualified cost sharing arrangements.* A qualified cost sharing arrangement that is described in § 1.482-7 of this chapter and any arrangement that is treated by the Commissioner as a qualified cost sharing arrangement under § 1.482-7 of this chapter is not recognized as a separate entity for purposes of the Internal Revenue Code. See § 1.482-7 of this chapter for the proper treatment of qualified cost sharing arrangements.

(d) *Domestic and foreign entities.* For purposes of this section and §§ 301.7701-2 and 301.7701-3, an entity is a domestic entity if it is created or organized in the United States or under the law of the United States or of any State; an entity is foreign if it is not domestic. See sections 7701(a)(4) and (a)(5).

(e) *State.* For purposes of this section and § 301.7701-2, the term *State* includes the District of Columbia.

(f) *Effective date.* The rules of this section are effective as of January 1, 1997.

[T.D. 8697, 61 FR 66588, Dec. 18, 1996]

### § 301.7701-2 Business entities; definitions.

(a) *Business entities.* For purposes of this section and § 301.7701-3, a *business entity* is any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner under § 301.7701-3) that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Internal Revenue Code. A business entity with two or more members is classified for federal tax purposes as either a corporation or a partnership. A business entity with only one owner is classified as a corporation or is disregarded; if the entity is disregarded, its activities are

treated in the same manner as a sole proprietorship, branch, or division of the owner.

(b) *Corporations.* For federal tax purposes, the term *corporation* means—

(1) A business entity organized under a Federal or State statute, or under a statute of a federally recognized Indian tribe, if the statute describes or refers to the entity as incorporated or as a corporation, body corporate, or body politic;

(2) An association (as determined under § 301.7701-3);

(3) A business entity organized under a State statute, if the statute describes or refers to the entity as a joint-stock company or joint-stock association;

(4) An insurance company;

(5) A State-chartered business entity conducting banking activities, if any of its deposits are insured under the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811 *et seq.*, or a similar federal statute;

(6) A business entity wholly owned by a State or any political subdivision thereof;

(7) A business entity that is taxable as a corporation under a provision of the Internal Revenue Code other than section 7701(a)(3); and

(8) *Certain foreign entities*—(i) *In general.* Except as provided in paragraphs (b)(8)(ii) and (d) of this section, the following business entities formed in the following jurisdictions:

American Samoa, Corporation  
 Argentina, Sociedad Anonima  
 Australia, Public Limited Company  
 Austria, Aktiengesellschaft  
 Barbados, Limited Company  
 Belgium, Societe Anonyme  
 Belize, Public Limited Company  
 Bolivia, Sociedad Anonima  
 Brazil, Sociedade Anonima  
 Canada, Corporation and Company  
 Chile, Sociedad Anonima  
 People's Republic of China, Gufen Youxian Gongsi  
 Republic of China (Taiwan), Ku-fen Yu-hsien Kung-szu  
 Colombia, Sociedad Anonima  
 Costa Rica, Sociedad Anonima  
 Cyprus, Public Limited Company  
 Czech Republic, Akciova Spolecnost  
 Denmark, Aktieselskab  
 Ecuador, Sociedad Anonima or Compania Anonima  
 Egypt, Sharikat Al-Mossahamah  
 El Salvador, Sociedad Anonima

Finland, Julkinen Osakeyhtio/Publik Aktiebolag  
 France, Societe Anonyme  
 Germany, Aktiengesellschaft  
 Greece, Anonymos Etairia  
 Guam, Corporation  
 Guatemala, Sociedad Anonima  
 Guyana, Public Limited Company  
 Honduras, Sociedad Anonima  
 Hong Kong, Public Limited Company  
 Hungary, Reszvenytarsasag  
 Iceland, Hlutafelag  
 India, Public Limited Company  
 Indonesia, Perseroan Terbuka  
 Ireland, Public Limited Company  
 Israel, Public Limited Company  
 Italy, Societa per Azioni  
 Jamaica, Public Limited Company  
 Japan, Kabushiki Kaisha  
 Kazakhstan, Ashyk Aktsionerlik Kogham  
 Republic of Korea, Chusik Hoesa  
 Liberia, Corporation  
 Luxembourg, Societe Anonyme  
 Malaysia, Berhad  
 Malta, Public Limited Company  
 Mexico, Sociedad Anonima  
 Morocco, Societe Anonyme  
 Netherlands, Naamloze Vennootschap  
 New Zealand, Limited Company  
 Nicaragua, Compania Anonima  
 Nigeria, Public Limited Company  
 Northern Mariana Islands, Corporation  
 Norway, Allment Aksjeselskap  
 Pakistan, Public Limited Company  
 Panama, Sociedad Anonima  
 Paraguay, Sociedad Anonima  
 Peru, Sociedad Anonima  
 Philippines, Stock Corporation  
 Poland, Spolka Akcyjna  
 Portugal, Sociedade Anonima  
 Puerto Rico, Corporation  
 Romania, Societe pe Actiuni  
 Russia, Otkrytoye Aktsionerney Obshchestvo  
 Saudi Arabia, Sharikat Al-Mossahamah  
 Singapore, Public Limited Company  
 Slovak Republic, Akciova Spolocnost  
 South Africa, Public Limited Company  
 Spain, Sociedad Anonima  
 Surinam, Naamloze Vennootschap  
 Sweden, Publika Aktiebolag  
 Switzerland, Aktiengesellschaft  
 Thailand, Borisat Chamkad (Mahachon)  
 Trinidad and Tobago, Limited Company  
 Tunisia, Societe Anonyme  
 Turkey, Anonim Sirket  
 Ukraine, Aktsionerne Tovaristvo Vidkritogo Tipu  
 United Kingdom, Public Limited Company  
 United States Virgin Islands, Corporation  
 Uruguay, Sociedad Anonima  
 Venezuela, Sociedad Anonima or Compania Anonima

(ii) *Clarification of list of corporations in paragraph (b)(8)(i) of this section—(A)*

*Exceptions in certain cases.* The following entities will not be treated as corporations under paragraph (b)(8)(i) of this section:

(1) With regard to Canada, a Nova Scotia Unlimited Liability Company (or any other company or corporation all of whose owners have unlimited liability pursuant to federal or provincial law).

(2) With regard to India, a company deemed to be a public limited company solely by operation of section 43A(1) (relating to corporate ownership of the company), section 43A(1A) (relating to annual average turnover), or section 43A(1B) (relating to ownership interests in other companies) of the Companies Act, 1956 (or any combination of these), provided that the organizational documents of such deemed public limited company continue to meet the requirements of section 3(1)(iii) of the Companies Act, 1956.

(3) With regard to Malaysia, a Sendirian Berhad.

(B) *Inclusions in certain cases.* With regard to Mexico, the term Sociedad Anonima includes a Sociedad Anonima that chooses to apply the variable capital provision of Mexican corporate law (Sociedad Anonima de Capital Variable).

(iii) *Public companies.* For purposes of paragraph (b)(8)(i) of this section, with regard to Cyprus, Hong Kong, and Jamaica, the term Public Limited Company includes any Limited Company that is not defined as a private company under the corporate laws of those jurisdictions. In all other cases, where the term Public Limited Company is not defined, that term shall include any Limited Company defined as a public company under the corporate laws of the relevant jurisdiction.

(iv) *Limited companies.* For purposes of this paragraph (b)(8), any reference to a Limited Company includes, as the case may be, companies limited by shares and companies limited by guarantee.

(v) *Multilingual countries.* Different linguistic renderings of the name of an entity listed in paragraph (b)(8)(i) of this section shall be disregarded. For example, an entity formed under the laws of Switzerland as a Societe Anonyme will be a corporation and

treated in the same manner as an Aktiengesellschaft.

(c) *Other business entities.* For federal tax purposes—

(1) The term *partnership* means a business entity that is not a corporation under paragraph (b) of this section and that has at least two members.

(2) *Wholly owned entities*—(i) *In general.* A business entity that has a single owner and is not a corporation under paragraph (b) of this section is disregarded as an entity separate from its owner.

(ii) *Special rule for certain business entities.* If the single owner of a business entity is a bank (as defined in section 581), then the special rules applicable to banks will continue to apply to the single owner as if the wholly owned entity were a separate entity.

(d) *Special rule for certain foreign business entities*—(1) *In general.* Except as provided in paragraph (d)(3) of this section, a foreign business entity described in paragraph (b)(8)(i) of this section will not be treated as a corporation under paragraph (b)(8)(i) of this section if—

(i) The entity was in existence on May 8, 1996;

(ii) The entity's classification was relevant (as defined in § 301.7701-3(d)) on May 8, 1996;

(iii) No person (including the entity) for whom the entity's classification was relevant on May 8, 1996, treats the entity as a corporation for purposes of filing such person's federal income tax returns, information returns, and withholding documents for the taxable year including May 8, 1996;

(iv) Any change in the entity's claimed classification within the sixty months prior to May 8, 1996, occurred solely as a result of a change in the organizational documents of the entity, and the entity and all members of the entity recognized the federal tax consequences of any change in the entity's classification within the sixty months prior to May 8, 1996;

(v) A reasonable basis (within the meaning of section 6662) existed on May 8, 1996, for treating the entity as other than a corporation; and

(vi) Neither the entity nor any member was notified in writing on or before May 8, 1996, that the classification of

the entity was under examination (in which case the entity's classification will be determined in the examination).

(2) *Binding contract rule.* If a foreign business entity described in paragraph (b)(8)(i) of this section is formed after May 8, 1996, pursuant to a written binding contract (including an accepted bid to develop a project) in effect on May 8, 1996, and all times thereafter, in which the parties agreed to engage (directly or indirectly) in an active and substantial business operation in the jurisdiction in which the entity is formed, paragraph (d)(1) of this section will be applied to that entity by substituting the date of the entity's formation for May 8, 1996.

(3) *Termination of grandfather status—*  
(i) *In general.* An entity that is not treated as a corporation under paragraph (b)(8)(i) of this section by reason of paragraph (d)(1) or (d)(2) of this section will be treated permanently as a corporation under paragraph (b)(8)(i) of this section from the earliest of:

(A) The effective date of an election to be treated as an association under §301.7701-3;

(B) A termination of the partnership under section 708(b)(1)(B) (regarding sale or exchange of 50 percent or more of the total interest in an entity's capital or profits within a twelve month period); or

(C) A division of the partnership under section 708(b)(2)(B).

(ii) *Special rule for certain entities.* For purposes of paragraph (d)(2) of this section, paragraph (d)(3)(i)(B) of this section shall not apply if the sale or exchange of interests in the entity is to a related person (within the meaning of sections 267(b) and 707(b)) and occurs no later than twelve months after the date of the formation of the entity.

(e) *Effective date.* Except as otherwise provided in this paragraph (e), the rules of this section apply as of January 1, 1997. The reference to the Finnish, Maltese, and Norwegian entities in paragraph (b)(8)(i) of this section is applicable on November 29, 1999. The reference to the Trinidadian entity in paragraph (b)(8)(i) of this section applies to entities formed on or after November 29, 1999. Any Maltese or Norwegian entity that becomes an eligible

entity as a result of paragraph (b)(8)(i) of this section in effect on November 29, 1999 may elect by February 14, 2000 to be classified for federal tax purposes as an entity other than a corporation retroactive to any period from and including January 1, 1997. Any Finnish entity that becomes an eligible entity as a result of paragraph (b)(8)(i) of this section in effect on November 29, 1999 may elect by February 14, 2000 to be classified for federal tax purposes as an entity other than a corporation retroactive to any period from and including September 1, 1997.

[T.D. 8697, 61 FR 66589, Dec. 18, 1996, as amended by T.D. 8844, 64 FR 66583, Nov. 29, 1999]

#### § 301.7701-3 Classification of certain business entities.

(a) *In general.* A business entity that is not classified as a corporation under §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 section. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under §301.7701-2(b)(2)) or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner. Paragraph (b) of this section provides a default classification for an eligible entity that does not make an election. Thus, elections are necessary only when an eligible entity chooses to be classified initially as other than the default classification or when an eligible entity chooses to change its classification. An entity whose classification is determined under the default classification retains that classification (regardless of any changes in the members' liability that occurs at any time during the time that the entity's classification is relevant as defined in paragraph (d) of this section) until the entity makes an election to change that classification under paragraph (c)(1) of this section. Paragraph (c) of this section provides rules for making express elections. Paragraph (d) of this section provides