Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
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Date:
June 03, 2008

TY:

Legend

Taxpayer	=
Shareholder N	=
Shareholder O	=
Shareholder P	=
Individual R	=
Individual S	=
Law Firm 1	=
Law Firm 2	=
Accounting Firm 1	=
FC	=
Country X	=
County Y	=
Z	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
A	=
B	=
C	=
D	=

Dear :

This is in response to your letter, submitted by your authorized representative, requesting an extension of time to file a qualified electing fund ("QEF") election under section 1295 of the Internal Revenue Code ("Code") with respect to your investment in FC.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination.

FACTS

In Year 1, Taxpayer, a U.S. citizen, inherited A shares in FC, a Country X corporation. Taxpayer also held B shares in FC as a custodian on behalf of his nonresident alien niece, Shareholder N, who at the time was a minor. Shareholder O, an unrelated third party with no U.S. ties, held the remaining C shares of FC. In Year 2, Shareholder O sold his shares of FC to Shareholder P, a closely-held company with no U.S. ties or U.S. shareholders.

The principal business activity of FC is the leasing of the land and buildings on an archipelago made up of D islands in the Z of Country X. A portion of the land is inhabitable and/or can be used for agricultural purposes and the remaining portion is forest zoned. The income of FC consists of rents received for the use of the land, as well as, rents received for the use of the buildings.

In Year 3, Taxpayer, Shareholder N, and Shareholder P began investing additional capital in FC to allow for substantial renovations of the land and buildings to further FC's business. However, in Year 4, unable to reach an agreement as to the best strategy with which to exploit FC's resources, Taxpayer, Shareholder N, and Shareholder P began discussing the possibility of winding down FC and separating the land and buildings proportionally amongst FC's shareholders based on their respective percentage interests in the company.

Thereafter, Taxpayer contacted Individual R with Law Firm 1 about the U.S. tax ramifications of different proposed transactions with respect to his investment in FC. Because Individual R's expertise is in U.S. individual income tax, Individual R consulted with Individual S with Law Firm 2 on this matter. After reviewing the proposed transactions with respect to FC, Individual S informed Taxpayer and Individual R that FC was a passive foreign investment company ("PFIC") under section 1297 of the Code

and suggested that Taxpayer file a retroactive QEF election for FC for Taxpayer's Year 2.

For all the years that Taxpayer has been a shareholder of FC, Individual R was Taxpayer's tax advisor. Individual R is an Enrolled Agent under Treasury Department Circular 230 and a lawyer in Country Y. Currently, Individual R is the managing partner of Law Firm, a position that Individual R has held for approximately the last sixteen years. Prior to that, Individual R was a tax partner with Accounting Firm 1 in Country Y. Individual R is competent to render international tax advice and had full access to all relevant information regarding Taxpayer's ownership in FC since Year 1. However, Individual R failed to identify FC as a PFIC and failed to advise Taxpayer of the possibility of making, or the consequences of failing to make, a QEF election with respect to FC.

Taxpayer has submitted an affidavit, under penalties of perjury, describing the events that led to the failure to make the QEF election by the election due date, including the role of Individual R. In addition to preparing and filing Taxpayer's U.S. federal income tax returns, Taxpayer represents that he relied on Individual R for tax advice on various U.S. and international tax issues. Taxpayer has also submitted an affidavit of Individual R corroborating the representations made by Taxpayer.

Taxpayer represents that the PFIC status of FC has not been raised by the IRS on audit for any of the taxable years.

RULING REQUESTED

Taxpayer requests the consent of the Commissioner of the Internal Revenue Service to make a retroactive election under Treas. Reg. §1.1295-3(f) with respect to FC for Taxpayer's Year 2.

LAW AND ANALYSIS

Section 1293(a) of the Code provides that every U.S person who owns stock of a QEF at any time during the taxable year of such fund shall include in gross income 1) as ordinary income, such shareholder's pro rata share of the ordinary earnings of such fund for such taxable year, and 2) as long-term capital gain, such shareholder's pro rata share of the net capital gain of such fund for such taxable year.

Section 1295(a) provides that any PFIC shall be treated as a QEF with respect to a taxpayer if (1) an election by the taxpayer under section 1295(b) applies to such company for the taxable year and (2) the company complies with such requirements as

the Secretary may prescribe for purposes of determining the ordinary earnings and net capital gains of such company.

Under section 1295(b)(2), a QEF election may be made for any taxable year at any time on or before the due date (determined with regard to extensions) for filing the return for such taxable year. To the extent provided in regulations, such an election may be made after such due date if the taxpayer failed to make an election by the due date because the taxpayer reasonably believed the company was not a PFIC.

Under Treas. Reg. §1.1295-3(f), a taxpayer may request the consent of the Commissioner to make a retroactive QEF election for a taxable year if:

1. the shareholder reasonably relied on a qualified tax professional, within the meaning of Treas. Reg. §1.1295-3(f)(2);
2. granting consent will not prejudice the interests of the United States government, as provided in Treas. Reg. §1.1295-3(f)(3);
3. the request is made before a representative of the Internal Revenue Service raises upon audit the PFIC status of the corporation for any taxable year of the shareholder; and
4. the shareholder satisfies the procedural requirements of §1.1295-3(f)(4).

The first requirement is that the shareholder reasonably relied on a qualified tax professional, within the meaning of Treas. Reg. §1.1295-3(f)(2). A shareholder will not be considered to have reasonably relied on a qualified tax professional if the shareholder knew, or reasonably should have known, that the foreign corporation was a PFIC and knew of the availability of a section 1295 election. Treas. Reg. §1.1295-3(f)(2)(i). In addition, a shareholder cannot claim reliance upon a qualified tax professional if he knew or reasonably should have known that the tax professional relied upon was not competent to render tax advice with respect to the ownership of shares of a foreign corporation or did not have access to all the relevant facts and circumstances. Treas. Reg. §§1.1295-3(f)(2)(i)(A) and (B)

According to the facts submitted and the representations made, Taxpayer relied on the advice of Individual R, his tax advisor for over twenty years, to prepare and file Taxpayer's U.S. federal income tax returns and to provide advice on U.S. and international tax issues. Individual R failed to identify FC as a PFIC and failed to advise Taxpayer of the consequences of making, or failing to make, QEF elections. Individual R was a lawyer competent to render tax advice and who had access to all relevant facts and circumstances. Additionally, Taxpayer did not know, and should not reasonably be expected to have known, that FC was a PFIC, or of the availability of a QEF election. Thus, Taxpayer has satisfied the first requirement of Treas. Reg. §1.1295-3(f)(1) because Taxpayer reasonably relied on a qualified tax professional within the meaning of Treas. Reg. §1.1295-3(f)(2).

The second requirement is that granting consent in this case will not prejudice the interests of the United States government as provided in Treas. Reg. §1.1295-3(f)(3). Pursuant to Treas. Reg. §1.1295-3(f)(3)(i), the interests of the United States government are prejudiced if granting relief would result in the shareholder having a lower tax liability, taking into account applicable interest charges, in the aggregate for all years affected by the retroactive election (other than by a de minimis amount) than the shareholder would have had if the shareholder had made the section 1295 election by the election due date. The time value of money is taken into account for purposes of this computation. According to the facts submitted and the representations made, the interests of the United States government are not prejudiced because the granting of relief does not result in Taxpayer having a lower tax liability than Taxpayer would have had if Taxpayer had made the QEF election by the election due date. Because Year 2 is closed, Taxpayer has entered into a closing agreement with the Commissioner that requires Taxpayer to pay an amount sufficient to eliminate any prejudice to the United States government as a consequence of the inability to file an amended return. Further, Taxpayer has agreed to file an amended return for each of his subsequent taxable years affected by the retroactive election. Thus, Taxpayer has satisfied the second requirement of Treas. Reg. §1.1295-3(f)(1) because granting consent in this case will not prejudice the interests of the United States government.

The third requirement under Treas. Reg. §1.1295-3(f)(1) is that the request must be made before a representative of the IRS raises upon audit the PFIC status of the corporation for any taxable year of the shareholder. Taxpayer has satisfied the third requirement of Treas. Reg. §1.1295-3(f)(1) because Taxpayer has represented that the request to make a retroactive QEF election was made before a representative of the IRS raised the PFIC status of FC on audit.

The final requirement under Treas. Reg. §1.1295-3(f)(1) is that the procedural requirements set forth in Treas. Reg. §1.1295-3(f)(4) must be met. The procedural requirements include filing a request for consent to make a retroactive election with, and submitting a user fee to, the Office of the Associate Chief Counsel (International). Treas. Reg. §1.1295-3(f)(4)(i). Additionally, affidavits signed under penalties of perjury must be submitted that describe:

1. the events which led to the failure to make a QEF election by the election due date;
2. the discovery of such failure;
3. the engagement and responsibilities of the qualified tax professional; and
4. the extent to which the shareholder relied on such professional,

Treas. Reg. §§1.1295-3(f)(4)(ii) and (iii).

According to the facts submitted and the representations made, Taxpayer has filed a complete ruling request, including the correct user fee, and submitted complete

and appropriate affidavits. Thus, Taxpayer has satisfied the fourth requirement of Treas. Reg. §1.1295-3(f)(1).

Based on the information submitted and representations made:

Consent is granted to Taxpayer to make a retroactive QEF election with respect to FC for Year 2 under Treas. Reg. §1.1295-3(f), provided that Taxpayer complies with the rules under Treas. Reg. §1.1295-3(g) regarding the time and manner for making the retroactive QEF elections.

This private letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this ruling must be attached to any tax return to which it is relevant.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Taxpayer's first representative.

Sincerely,

Ethan A. Atticks
Senior Technical Reviewer, Branch 2
(International)