

## Internal Revenue Service

## Department of the Treasury

Washington, DC 20224

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Person To Contact:

ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B02

PLR-129666-07

Date:

August 17, 2009

TY:

A =

B =

FC =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

Country X =

N =

Accountant O =

Dear :

This is in response to your letter dated April 10, 2007, requesting an extension of time to file a qualified electing fund ("QEF") election with respect to A's and B's ("Taxpayers") investment in FC.

The rulings contained in this letter are based upon information and representations submitted by A and B, and accompanied by a penalty of perjury statement executed by appropriate parties. While this office has not verified any of the

material submitted in support of this request for ruling, such material is subject to verification upon examination.

## FACTS

Taxpayers are U.S. citizens who currently reside in Country X. On Date 1, Taxpayers, together with two unrelated Country X individuals, co-founded FC. Taxpayers owned N percent of the outstanding common shares of FC. On Date 2, FC underwent an Initial Public Offering ("IPO"). After the IPO, Taxpayers sold some of their FC shares and donated some of their FC share to a Country X charity. FC did not make any distributions to Taxpayers until the sale of their FC shares.

At all time since the formation of FC, Taxpayers engaged Accountant O to advise them of their U.S. federal income tax matters and to prepare their U.S. federal income tax returns. Taxpayers represent that Accountant O was a qualified tax professional who was competent to render advice on U.S. tax laws. In Year 2, Accountant O informed Taxpayers that FC was a PFIC in Year 1.

Taxpayers have submitted an affidavit, signed under penalties of perjury, describing the events that led Accountant O's discovery that FC was a PFIC. That discovery was not made until Year 2 which led to the failure to make the QEF election by the election due date. Taxpayers have also submitted an affidavit of Accountant O corroborating the representations made by Taxpayers.

As of the date of this request for ruling, no representative of the Internal Revenue Service has raised upon audit the PFIC status of FC for any taxable year of Taxpayers.

## RULING REQUESTED

Taxpayers request the consent of the Commissioner of the Internal Revenue Service to make a retroactive QEF election under Treas. Reg. §1.1295-3(f) with respect to their Year 1 taxable year.

## LAW

Section 1295(a) of the Code 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 Treas. Reg. §1.1295-3(f)(4).

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).

## CONCLUSION

Based on the information submitted and representations made with Taxpayers' ruling request, we conclude that Taxpayers have satisfied Treas. Reg. §1.1295-3(f). Accordingly, consent is granted to Taxpayers to make a retroactive QEF election with respect to FC for Year 1, provided that Taxpayers comply with the rules under Treas. Reg. §1.1295-3(g) regarding the time and manner for making the retroactive QEF election.

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 authorized representative.

Sincerely,

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

cc: