

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

[Third Party Communication:

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Person To Contact:

, ID No.

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Refer Reply To:

CC:INTL:B02

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Date:

September 02, 2009

TY:

### Legend

Taxpayer =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

FC =

Country X

Country Y =

Country Z =

Trust =

Trustee O =

Trustee R =

Law Firm P =

Law Firm Q =

Dear :

This is in response to your letter received by our office on May 28, 2008, submitted by your authorized representative, requesting the consent of the Commissioner of the Internal Revenue Service to make a retroactive qualified electing fund ("QEF") election under section 1295(b) of the Internal Revenue Code ("Code") and Treas. Reg. §1.1295-3(f) with respect to your investment in FC.

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

## FACTS

Taxpayer is a U.S. citizen and a named beneficiary of the Trust established under the laws of Country X by Taxpayer's grandmother, a citizen and resident of Country Y. In Year 1, the Trust acquired shares in FC, a corporation organized under the laws of Country Z.

At all times since its formation, the Trust was administered and managed by various foreign nationals who served as the trustees of the Trust. Trustee O, who served as a trustee of the Trust at all times since inception, is an attorney with substantial experience in transnational tax planning and was a partner at Law Firm P during all the years at issue. Trustee O is competent to render international tax advice.

Trustee O (and the other trustees) had full access to all the records of the Trust and Trustee O was aware at all relevant times that Taxpayer resided permanently in the United States. Taxpayer is not a tax professional and has no experience in international tax matters. Taxpayer represents that, as a beneficiary of the Trust, Taxpayer had no control over the assets of the Trust and relied on the trustees to manage the assets of the Trust.

At all times, the trustees, and in particular Trustee O, never informed Taxpayer that the Trust held shares of FC, that FC was a passive foreign investment company ("PFIC") under section 1297 of the Code for U.S. federal income tax purposes (and of the consequences of such investment), and of the possibility of making any elections (QEF or otherwise) with respect to such shareholdings for U.S. federal income tax purposes.

In Year 3, after the death of Taxpayer's father, Taxpayer engaged Law Firm Q and others to determine the extent of the family's assets. In Year 4, during its evaluation of the Trust's assets, Law Firm Q determined that FC had been a PFIC since Year 2 and informed Taxpayer of FC's characterization as a PFIC at that time.

Taxpayer has submitted an affidavit, signed 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 the trustees. Taxpayer has also submitted affidavits of Trustee O and Trustee R corroborating the representations made by Taxpayer.

Taxpayer represents that, as of the date of this request for ruling, the PFIC status of FC has not been raised by the IRS on audit for any of the taxable years at issue.

#### RULING REQUESTED

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

#### 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 Taxpayer's ruling request, we conclude that Taxpayer has satisfied Treas. Reg. §1.1295-3(f). Accordingly, consent is granted to Taxpayer to make a retroactive QEF election with respect to FC for Year 2, provided that Taxpayer complies 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,

/s/

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

cc: