Internal Revenue Service

Number: **201025011**
Release Date: 6/25/2010

Index Number: 1295.02-02

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:INTL:B02
PLR-115130-09

Date:
March 15, 2010

Legend

Taxpayer =

QSub1 =

QSub2 =

QSub3 =

QSub4 =

QSub5 =

QSub6 =

FC1 =
FC2 =
FC3 =
FC4 =
FC5 =
FC6 =
FC7 =
FC8 =
FC9 =
FC10 =
FC11 =
FC12 =

FC13 =
FC14 =
FC15 =

FP =

State V =

Country W =
Country X =
Country Y =
Country Z =

b =
c =
d =
e =

Date1 =
Date2 =

Year1 =
Year2 =
Year3 =
Year4 =

Service Provider1 =
Service Provider2 =
Accounting Firm =

Dear :

This is in response to a letter dated September 15, 2008, submitted by your authorized representative that requested the consent of the Commissioner of the Internal Revenue Service ("Commissioner") for Taxpayer 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 Taxpayer's investment in FC7.

The ruling contained in this letter is based upon information and representations submitted on behalf of Taxpayer by its authorized representatives, and accompanied by a penalties of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of this request for ruling, such

material is subject to verification on examination. The information submitted in the request is substantially as set forth below.

FACTS

Taxpayer is a corporation organized under the laws of State V that is a subchapter S corporation within the meaning of Code section 1361(a). Taxpayer owns, directly and indirectly, six corporations that are each a qualified subchapter S subsidiary within the meaning of Code section 1361(b)(3)(B), and that are disregarded as separate from Taxpayer for U.S. tax purposes. Specifically, Taxpayer wholly owns QSub1, which, in turn, wholly owns QSub2. QSub2 wholly owns each of QSub3 and QSub4. In turn, QSub3 wholly owns QSub5, and QSub4 wholly owns QSub6.

During Year1, through QSub5, Taxpayer acquired a b percent interest in FP, a partnership formed under the laws of Country W. Also during Year1, FP and other investors, including Taxpayer through QSub6, formed FC1, a company formed under the laws of Country X. Taxpayer's total ownership interest in FC1, taking into account its interest through both FP and QSub6, was approximately c percent.

FC1 owned d percent of FC2, a company formed under the laws of Country X. FC2 wholly owned FC3, a company formed under the laws of Country X, which, in turn, wholly owned FC4, a company formed under the laws of Country Y. On Date1, FC3 fully liquidated into FC2. Subsequently, FC2 was the sole owner of FC4.

FC4, directly and indirectly, wholly owned the following subsidiaries: (i) FC5, a company formed under the laws of Country Y; (ii) FC6, a company formed under the laws of Country Y; (iii) FC7, a company formed under the laws of Country Y; (iv) FC8, a company formed under the laws of Country Y; (v) FC9, a company formed under the laws of Country Y; (vi) FC10, a company formed under the laws of Country Y; (vii) FC11, a company formed under the laws of Country Y; (viii) FC12, a company formed under the laws of Country Z; (ix) FC13, a company formed under the laws of Country Y; (x) FC14, a company formed under the laws of Country Y; and (xi) FC15, a company formed under the laws of Country Y (collectively, "Subsidiaries"). Each of the Subsidiaries owned real property, which it leased to unrelated persons and upon which it collected rental income. The majority of leases entered into by the Subsidiaries were so-called "triple-net leases" whereby the lessee generally was responsible for the maintenance and operation of the property. No Subsidiary held any assets other than real property, nor earned any income other than rental income.

In Year1, FC2's ownership of FC4 was diluted by e percent as part of an initial public offering. On Date2, FP and QSub6 sold the remaining portion of their interests in FC4 (and, indirectly, the Subsidiaries) to an unrelated party.

In accordance with its partnership agreement, FP was required to provide sufficient detail to its U.S. investors to enable such investors to prepare their U.S. tax returns, including any information required with respect to a foreign corporation that was a passive foreign investment company within the meaning of Code section 1297 ("PFIC"). To do this, FP retained Service Provider1 to provide tax and administrative services, including the preparation of U.S. tax-related documents. Service Provider1 was known to be a leader in providing such services to the private equity industry. Following the takeover of Service Provider1 by Service Provider2 in Year2, FP retained Service Provider2 as a tax and administrative service provider. FP retained Service Provider2 on the basis that Service Provider2 employed experienced tax specialists who were qualified tax professionals. Such qualified tax professionals were responsible for preparing and distributing information regarding the U.S. tax consequences of an investment in FP, and indirectly, in FC1, FC2, FC3, FC4 and the Subsidiaries (collectively, "FCs").

Service Provider2 prepared K-1 equivalents for FP's investors for the Year1 and Year2 tax years. During the time that Service Provider2 prepared FP's K-1 equivalents, Service Provider2 had access to both income statement and balance sheet information relating to the FCs. However, Service Provider2 failed to identify FC7 as a PFIC, and failed to advise FP (or, consequently, Taxpayer) of the PFIC status of FC7 and the possibility of making a QEF election with respect to FC7.

It was not until Year4, when FP retained Accounting Firm to prepare its K-1 equivalents and provide relevant U.S. tax information to its U.S. investors with respect to its Year3 tax year, that it was discovered that FC7 was a PFIC.

Taxpayer has submitted an affidavit, under penalties of perjury, describing the events that led to the failure to make the QEF election with respect to FC7 by the election due date, including the role of Service Provider2. Taxpayer represents that Service Provider2 prepared and distributed FP's K-1 equivalents, which contained the U.S. tax consequences of an investment in FP, and, indirectly, FC7. Taxpayer also submitted an affidavit from an advisor to FP that was responsible for engaging Service Provider2, corroborating the representations made by Taxpayer.

Taxpayer represents that the PFIC status of FC7 has not been raised by the IRS on audit for any of the taxable years.

RULING REQUESTED

Taxpayer requests the consent of the Commissioner to make a retroactive QEF election with respect to FC7 for Year1 under Treas. Reg. §1.1295-3(f).

LAW

Code Section 1295(a) provides that a PFIC will be treated as a QEF with respect to a taxpayer if (1) an election by the taxpayer under Code section 1295(b) applies to such PFIC for the taxable year; and (2) the PFIC complies with such requirements as the Secretary may prescribe for purposes of determining the ordinary earnings and net capital gains of such company.

Under Code 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 shareholder 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 that 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 FC7 for Year1, 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.

Except as specifically set forth above, no opinion is expressed or implied concerning the U.S. tax consequences of the facts described above under any other provision of the Code.

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

A copy of this letter ruling must be attached to any federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Jeffery G. Mitchell
Special Counsel (International)