

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:

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Date:

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Legend

Taxpayer =

FC =

State X =

Country Y =

Company A =

Company B =

Company C =

D =

E =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

Year 3 =

Accounting Firm 1 =
Accounting Firm 2 =

Dear :

This is in response to your letter received by our office on November 9, 2009, 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 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 rulings, it is subject to verification on examination.

FACTS

Taxpayer is a State X corporation. Taxpayer and Company A, a Real Estate Investment Trust (Taxpayer's indirect shareholder), both made an election to treat Taxpayer as a taxable REIT subsidiary effective Date 1. Company B (Taxpayer's majority direct shareholder) is an operating partnership owned primarily by Company A. Taxpayer is a calendar year taxpayer and uses the accrual method of accounting.

Taxpayer is engaged in the business of developing, managing and leasing income producing real estate projects owned by third parties as well as projects in which Company A has an indirect ownership interest with non-affiliated partners.

FC is a Country Y joint stock corporation. Taxpayer holds a D percent direct interest in FC and a E percent indirect interest through its disregarded single member LLC, Company C. Taxpayer and Company C acquired their joint venture interests in FC on Date 2. The formation of the joint venture was to provide services related to the development, general planning, leasing and management of shopping centers and other commercial real estate in Country Y.

Since Year 1, Accounting Firm 1 has been engaged to perform U.S. tax compliance review services for Taxpayer and has signed all of Taxpayer's U.S. income tax returns as the preparer. Since Year 2, Accounting Firm 2 has been engaged to prepare and sign U.S. information returns with respect to Taxpayer's investment in FC. Both accounting firms employed tax professionals competent to render U.S. tax advice

with respect to stock ownership of a foreign corporation. Also, both accounting firms had full access to all the information and facts relating to Taxpayer's ownership of FC stock and Taxpayer relied on the advice of both accounting firms with regards to complying with U.S. tax laws.

Taxpayer intended to make the section 1295 election with respect to FC for Year 2. Accounting Firm 2 calculated Taxpayer's pro-rata share of taxable income with respect to FC for Year 2 and sent such calculations to Taxpayer on Date 3. These taxable income amounts were appropriately identified by Accounting Firm 1 and included in Taxpayer's Year 2 federal income tax return. Further, Accounting Firm 2 prepared IRS Form 5471, "Information Return of U.S. Persons With Respect To Certain Foreign Corporations", and IRS Form 8621, "Return by a Shareholder of a Passive Foreign Investment Company of Qualified Electing Fund" for Taxpayer with respect to FC. However, on IRS Form 8621, Accounting Firm 2 incorrectly stated Company B as the shareholder/taxpayer instead of Taxpayer. Accounting Firm 1 did not identify this error and the forms pertaining to FC were attached to Company B's Year 2 income tax return. This error was discovered during the review of Taxpayer's tax return for Year 3. As a result, Taxpayer did not make a timely QEF election with respect to FC for Year 2.

Taxpayer has submitted affidavits, 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 Accounting Firm 1 and Accounting Firm 2. Taxpayer has also submitted affidavits from Accounting Firm 1 and Accounting Firm 2 corroborating the statements 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 ruling is directed only to the taxpayer requesting 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.

Sincerely,

Jeffery G. Mitchell
Special Counsel
(International)