

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201120009**
Release Date: 5/20/2011

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

Index Number: 1295.02-02

, ID No.
Telephone Number:

Refer Reply To:
CC:INTL:B02
PLR-138853-10
Date:
February 10, 2011

TY:

LEGEND:

Taxpayer	=
	=
FC	=
Country A	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
x	=
y	=
B	=
C	=
D	=
Advisor	=
Accounting Firm E	
Accounting Firm F	=

Dear :

This is in response to your letter, submitted by your authorized representative, requesting the consent of the Commissioner of the Internal Revenue Service ("IRS") 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. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data submitted may be required as part of the examination process.

FACTS

Taxpayer is a U.S. citizen and resident of Country A. In Year 1, Taxpayer and several other persons formed FC, a Country A corporation. The stock of FC is publicly traded in Country A. Taxpayer has represented that FC was not a passive foreign investment company ("PFIC"), within the meaning of section 1297 of the Code, until FC's fiscal Year 2. At the beginning of FC's fiscal Year 2, Taxpayer owned x shares, which represented y percent of FC's outstanding stock. Taxpayer did not sell or acquire any FC stock during calendar Year 2 or at any time thereafter. Furthermore, FC has not made any distributions to shareholders.

FC is engaged in the development and commercialization of B. FC is in the process of developing a proprietary C technology to treat D. For the years in question, FC's revenue consisted solely of interest income and government grants because none of its products was ready for licensing or sale. FC reported a loss for fiscal Years 2 and 3.

Taxpayer's U.S. federal income tax returns were prepared by Advisor, a Country A citizen, for all the years in question. Advisor is a tax professional who specializes in preparing Country A and U.S. federal income tax returns for U.S. citizens residing in Country A. Advisor regularly advises clients on U.S. federal income tax issues. Advisor was employed by Accounting Firm E before becoming an independent consultant. Taxpayer represents that Advisor had access to all of the facts and circumstances regarding Taxpayer's investment in FC. In addition, because FC is a publicly traded Country A company, its audited financial statements were available to Advisor on an annual basis. However, Advisor 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 further represents that he relied on Advisor for tax advice on all U.S. federal income tax matters and did not seek any additional guidance.

In Year 4, FC employed Accounting Firm F to assess the U.S. tax consequences of a proposed transaction. Upon reviewing the financial statements and other financial and tax data, Accounting Firm F discovered that FC was a PFIC during fiscal Year 2.

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 Advisor. Taxpayer has also submitted an affidavit of Advisor 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 taxable year of Taxpayer.

RULING REQUESTED

Taxpayer requests the consent of the Commissioner to make a retroactive QEF election under section 1295(b) of the Code and Treas. Reg. §1.1295-3(f) to treat FC as a QEF with respect to Taxpayer for all taxable years starting in Year 2.

LAW

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 U.S. government, as provided in Treas. Reg. §1.1295-3(f)(3);
3. the request is made before a representative of the IRS 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 of Treas. Reg. §1.1295-3(f)(4) 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 describing:

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, 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 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 your authorized representative.

Sincerely,

Jeffery G. Mitchell
Chief, Branch 2
Office of the Associate Chief Counsel
(International)

cc: