Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Date:
April 22, 2011

TY:

Legend

Taxpayer =
EIN =
FC =
TMP =
Managing Member =
Country =
Year1 =
Year2 =
Month =
Accounting Firm =

Dear :

This is in response to a letter dated November 30, 2010, and a supplemental submission dated March 14, 2011, 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 FC.

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 penalty 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, a domestic partnership, is an investment fund that traditionally invested in U.S. securities. TMP is the tax matters partner of Taxpayer, and Managing Member is the managing member of TMP. During Year1, Taxpayer acquired for the first time shares in non-U.S. entities, including shares in FC, which is a company that is organized under the laws of Country and treated as a corporation for U.S. tax purposes.

During Year1, Taxpayer engaged Accounting Firm to prepare its Federal and state U.S. partnership returns. Accounting Firm is an accredited and reputable public accounting company that has a specialized group for U.S. international inbound and outbound tax matters. Taxpayer provided Accounting Firm with the necessary information (*i.e.*, trial balance, financials and partner information) to prepare the returns, including the information that Taxpayer had purchased FC stock during Year1.

Managing Member managed Taxpayer's investments, engaged Accounting Firm and assembled the information to complete Taxpayer's U.S. returns. Managing Member did not have expertise regarding U.S. international tax matters. Neither Taxpayer, TMP nor Managing Member had any experience or were aware of any U.S. tax implications that could have been triggered as a result of an investment by Taxpayer in a foreign corporation. Managing Member did not obtain the relevant information that pertains to a foreign investment and consequently did not inform Accounting Firm that FC was a foreign corporation.

After Taxpayer's U.S. federal tax return was timely filed, Managing Member read FC's Form 10-K, and noticed the language that stated that FC believed it was a passive foreign investment company within the meaning of Code section 1297(a) ("PFIC") for its Year1 tax year. Managing Member forwarded this information to Accounting Firm in Month of Year2. As soon as Accounting Firm received the information that FC believed it may have been a PFIC with respect to Year1, Accounting Firm informed Taxpayer about the U.S. federal income tax implications of the ownership of PFIC shares and the possibility of making a QEF election.

Taxpayer has submitted an affidavit, under penalties of perjury, describing the events that led to its failure to make a QEF election with respect to FC by the election due date, including the role of Accounting Firm. Taxpayer also submitted an affidavit from Accounting Firm, which described the Accounting Firm's engagement and responsibilities, and the advice concerning the tax treatment of FC that it provided to Taxpayer. In addition, Taxpayer submitted the PFIC Annual Information Statement (described in §1.1295-1(g)(1)) for FC for Year1, which provides that FC did not have any earnings and profits for Year1.

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

RULING REQUESTED

Taxpayer requests the consent of the Commissioner to make a retroactive QEF election with respect to FC 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 FC 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 expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

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

A copy of this letter must be attached to any 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.

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.

Sincerely,

Jeffrey G. Mitchell
Branch Chief
(International)