

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **201220006**  
Release Date: 5/18/2012

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-120120-11  
Date:  
February 22, 2012

Legend

Shareholder =  
EIN =  
Management Company =

FC =

State =  
Country =

y =  
z =

Advisor =

Year 1 =  
Year 2 =  
Year 3 =  
Year 4 =  
Year 5 =  
Year 6 =

Dear :

This is in response to a letter dated April 29, 2011 submitted by your authorized representative that requested the consent of the Commissioner of the Internal Revenue Service (“Commissioner”) for Shareholder 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 Shareholder's investment in FC.

The ruling contained in this letter is based upon information and representations submitted on behalf of Shareholder 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

Shareholder is a limited partnership organized under the laws of State. Shareholder is owned by y partners, one of which is a limited partnership owned by z taxable individuals. During Year 1, Shareholder purchased shares of FC, which is a corporation organized under the laws of Country. Shareholder purchased additional shares of FC during Year 2, Year 3 and Year 4. Shareholder sold all of its shares of FC during Year 5.

FC is a privately owned energy development company formed in Year 1 and based in Country. FC is focused on developing projects throughout the liquefied natural gas delivery chain. Shareholder's understanding is that FC does not engage in investment activities, with the exception of short-term investment of working capital pending its deployment. FC appears to have satisfied the asset test for classification as a passive foreign investment company within the meaning of section 1297(a) (PFIC) during Year 1.

For the Year 1 through Year 5 tax years, Management Company, the management company providing services to Shareholder, engaged Advisor for services, including preparation of Shareholder's U.S. federal partnership returns. Advisor, who employs experienced tax professionals, advised Shareholder with regard to U.S. federal income tax matters regarding Shareholder's operations and investments. Shareholder relied on Advisor to provide advice with respect to filing and reporting requirements in general, as well as any elections or statements that would be necessary to elect a specific tax treatment.

Information received by Management Company with respect to Shareholder's initial investment in FC did not indicate that FC was a PFIC. Management Company intended to invest in an active development company. Shareholder, Management Company and FC considered FC to be engaged in an active business and had no reason to believe that FC could be categorized as a PFIC.

During Year 6, Shareholder engaged Advisor for tax preparation services. Advisor tested FC during the annual process of reviewing and monitoring investments for PFIC

purposes for the previous reporting period. At that time, the testing indicated that FC appeared to have been a PFIC in Year 5. Advisor reviewed previous years and determined that FC may have been a PFIC beginning in Year 1.

Shareholder 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

Shareholder requests the consent of the Commissioner to make a retroactive QEF election with respect to FC for Year 1 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 shareholder if (1) an election by the shareholder under Code section 1295(b) applies to the PFIC for the taxable year; and (2) the PFIC complies with the requirements prescribed by the Secretary for purposes of determining the ordinary earnings and net capital gains of the company.

Under Code section 1295(b)(2), a QEF election may be made for a taxable year at any time on or before the due date (determined with regard to extensions) for filing the return for the taxable year. To the extent provided in regulations, the election may be made after the due date if the shareholder failed to make an election by the due date because the shareholder 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 company 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 the failure;
3. the engagement and responsibilities of the qualified tax professional; and
4. the extent to which the shareholder relied on the professional.

Treas. Reg. §§1.1295-3(f)(4)(ii) and (iii).

## CONCLUSION

Based on the information submitted and representations made with Shareholder's ruling request, we conclude that Shareholder has satisfied Treas. Reg. §1.1295-3(f). Accordingly, consent is granted to Shareholder to make a retroactive QEF election with respect to FC for Year 1, provided that Shareholder 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. federal tax consequences of the facts described above under any other provision of the Code.

This private letter ruling is directed only to the taxpayer requesting it. Code section 6110(k)(3) 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 ruling is being sent to your authorized representative.

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.

Sincerely,

Jeffery G. Mitchell  
Branch Chief, Branch 2  
(International)

cc: