

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:INTL:B02
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Date:
September 06, 2012

TY:

Legend

Shareholder =
EIN =

Manager =
Managing Director =

FC =

Accounting Firm =

Country 1 =
Country 2 =

Year 1 =
Year 2 =
Year 3 =

Dear :

This is in response to a letter dated September 26, 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 I.R.C. § 1295(b) 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 representative, 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 domestic limited partnership managed by Manager. Managing Director is a partner of Shareholder and a managing director of Manager.

During Year 1, Shareholder purchased shares of FC, an entity organized under the laws of County 1 that is treated as a corporation for Federal tax purposes. FC is a development stage company engaged in oil and gas exploration in Country 2. FC's assets consist primarily of cash on hand and certain intangible assets associated with oil and gas exploration, including licenses, permits and seismic surveys.

Shareholder retained Accounting Firm, a nationally recognized accounting firm, to provide tax and accounting services. Accounting Firm's engagement included responsibility for preparing U.S. tax returns, reports, schedules, elections and attachments (Returns). In addition to Return preparation, Accounting Firm provided Shareholder with advice regarding the Returns and related tax issues from time to time. Managing Director generally provided Accounting Firm with all the information and data necessary to prepare the Returns. Accounting Firm prepared Shareholder's Returns for Year 1 through Year 2. Accounting Firm did not notify Shareholder of the PFIC status of FC or of the availability of a QEF election with respect to FC.

Shareholder's general policy was to make QEF elections with respect to each PFIC in which it invested. During Year 3, Managing Director, who was aware that FC was a PFIC, conducted a review of Shareholder's portfolio and discovered that no QEF election had been made with respect to FC. Shareholder promptly contacted an attorney and was informed of the opportunity to seek consent to make a retroactive QEF election. Shareholder did not have knowledge of the PFIC status of FC or the availability of a QEF election prior to Year 3.

Shareholder 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. Shareholder 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.

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

I.R.C. § 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 I.R.C. § 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 I.R.C. § 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 I.R.C. provision.

This private letter ruling is directed only to the taxpayer requesting it. I.R.C. § 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,

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