

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201302020**
Release Date: 1/11/2013

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-134973-12
Date:
October 10, 2012

TY:

Legend

Shareholder =
EIN =

FC1 =
FC2 =

General Partner =
Managing Member =
Previous Managing Member =

Date 1 =
Date 2 =
Date 3 =

Country 1 =
Country 2 =

State =

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

Accounting Firm =

Dear

This is in response to a letter dated July 12, 2012, and a supplemental letter dated August 7, 2012, 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 and Treas. Reg. §1.1295-3(f) with respect to Shareholder's investment in FC2.

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 limited partnership organized under the laws of State. Shareholder is a family office investment fund whose objective is to achieve long-term capital growth primarily through investing in publicly-traded equity securities of U.S.-domiciled and listed operating companies, and, less frequently, in operating companies domiciled and listed outside of the United States. Managing Member is the managing member of General Partner, the general partner of Shareholder, and participates in managing the fund's investments. Managing Member became the managing member on Date 1, when Previous Managing Member retired. From Shareholder's inception until Date 1, Previous Managing Member was the managing member of Shareholder.

During Year 1, Shareholder first invested in FC1, an entity organized under the laws of Country 1 that was treated as a corporation for Federal tax purposes. FC1's wholly-owned subsidiary, FC2, an entity organized under the laws of Country 2 that was treated as a corporation for Federal tax purposes, was created on Date 2. Shareholder acquired an additional interest in FC1 in Year 2. Subsequently, Shareholder disposed of its entire interest in FC1 (and, thus, FC2) and no longer owns any interest in FC1 or FC2.

Since Year 3, Shareholder has employed Accounting Firm to provide tax advice and to prepare its tax returns, as well as to perform Shareholder's annual audit. Accounting Firm is a national and renowned public accounting firm that has significant expertise in both U.S. and international tax matters. As part of its audit and its annual tax-related responsibilities, Accounting Firm performs an annual PFIC analysis for each foreign investment Shareholder makes. Accounting Firm's procedures for identifying potential PFICs within Shareholder's portfolio include screening for Shareholder's foreign investments in the list of foreign companies believed to be PFICs according to an

annual survey conducted by a third party, as well as in Accounting Firm's internally generated and maintained database of possible PFICs. For each foreign investment that does not appear on the survey list or in Accounting Firm's database, Accounting Firm investigates the nature of the business to determine whether it may be a PFIC. Accounting Firm has never solicited Shareholder's direct help in identifying PFICs, and thus has never instructed Shareholder on how to identify them. Additionally, Accounting Firm has never discussed with Shareholder the tax consequences of owning a PFIC, or of the availability of making a QEF election prior to Year 4, when the issue with respect to FC2 was discovered.

Shareholder provided Accounting Firm with a significant amount of information on FC2, including FC2's audited financials. Accounting Firm also had direct access to communicate with the chief financial officer ("CFO") of FC2 in connection with its tax and financial accounting audit of Shareholder. Notwithstanding its knowledge of the FC2 investment, its possession of FC2's financial reports and its access to FC2's CFO, Accounting Firm failed to identify FC2 as a PFIC and therefore failed to advise Shareholder of the availability of a QEF election with respect to Shareholder's investment in FC2.

On Date 3, Managing Member received an email from FC's investor relations department concerning FC2's PFIC status. The email included as an attachment an opinion letter from an accounting firm stating the accounting firm's conclusion that FC2 was a PFIC for the Year 2 taxable year. After receiving this email, Managing Member discovered that the accounting firm also had concluded that FC2 was a PFIC for the Year 5 taxable year. Managing Member and Shareholder were not aware of the accounting firm's conclusion as to the PFIC status of FC2 for any year until Date 3.

Shareholder has submitted an affidavit, under penalties of perjury, that describes the events that led to its failure to make a QEF election with respect to FC2 by the election due date, including the role of Accounting Firm. Shareholder also submitted an affidavit from Accounting Firm, which describes Accounting Firm's engagement and responsibilities, and the advice concerning the tax treatment of FC2 that it provided to Shareholder. In addition, Shareholder submitted the PFIC Annual Information Statements (described in Treas. Reg. §1.1295-1(g)(1)) for FC2 for taxable years Year 5 and Year 2, which provide that FC2 did not have any earnings and profits for Year 5 and Year 2.

Shareholder represents that, as of the date of this request for ruling, the PFIC status of FC2 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 FC2 for Year 5 under Treas. Reg. §1.1295-3(f).

LAW

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 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 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 FC2 for Year 5, 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 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 private letter ruling is directed only to the taxpayer requesting it. 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: