

**Internal Revenue Service**

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
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Person To Contact:  
, ID No.

Telephone Number:

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CC:INTL:B02  
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Date:  
February 05, 2013

TY

Legend

Shareholder =  
EIN =

FC1 =  
EIN =

FC2 =  
EIN =

Predecessor Corporation =

Partnership =

Investment Manager =  
Accounting Firm 1 =  
Adminstrator =

Accounting Firm 2 =

State =

Country 1 =  
Country 2 =

Year 1 =  
Year 2 =  
Year 3 =

Year 4 =

x =

y =

z =

Dear \_\_\_\_\_ :

This is in response to a letter dated August 14, 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. During Year 1, Shareholder acquired a x percent interest in Partnership, a newly formed entity formed under the laws of Country 1 that is treated as a partnership for Federal income tax purposes. Later during Year 1, Partnership acquired an interest in Predecessor Corporation, an entity treated as a corporation for Federal income tax purposes that was formed under the laws of Country 1. Predecessor Corporation indirectly owned a z percent interest in FC2, an entity formed under the laws of Country 2 that is treated as a corporation for Federal tax purposes.

During Year 2, Predecessor Corporation was restructured. As a result of the restructuring: (i) Predecessor Corporation went out of existence; (ii) FC1, an entity treated as a corporation for Federal income tax purposes, was formed under the laws of Country 1; and (iii) Partnership acquired a y percent interest in FC1. For Federal income tax purposes, Partnership's holding period in FC1 includes the period during which it held Predecessor Corporation.

At all relevant times, Investment Manager provided investment management services to Shareholder. Investment Manager was responsible for all financial and tax reporting requirements of Shareholder, including engaging tax advisors and tax preparation agents in relation to all U.S. tax matters. For the Year 1 through Year 3 tax years, Investment Manager, on behalf of Shareholder, retained Accounting Firm 1 to provide

advice with respect to U.S. federal income tax matters regarding Shareholder's operations and investments. In addition, at all relevant times Investment Manager, on behalf of Shareholder, engaged Administrator to be Shareholder's administrator, and, in particular, to prepare U.S. federal, state and local information tax returns for Shareholder, prepare U.S. federal and required state Schedule K-1s for all partners, and prepare all PFIC statements advised by Accounting Firm 1. Administrator retained Accounting Firm 1 to review and signoff on the U.S. federal, state and local information tax returns and any elections recommended by Accounting Firm 1 and prepared by Administrator. Accounting Firm 1 was retained on the basis that Accounting Firm 1 employed qualified experienced tax professionals who were competent to render advice with respect to U.S. federal income tax matters, including the consequences relating to U.S. persons owning stock of a foreign corporation.

Shareholder, Investment Manager and Administrator made available to Accounting Firm 1 the books and records of FC2 and any other information that Accounting Firm 1 requested that was relevant to the provision of tax advice and the review of Shareholder's tax returns. With respect to the Year 1 tax year, Accounting Firm 1 failed to identify FC2 as a PFIC and failed to advise Shareholder, Investment Manager or Administrator of the consequences of making, or failing to make, a QEF election with respect to Shareholder's interest in FC2.

During Year 3, Shareholder and Investment Manager engaged Accounting Firm 2 to provide tax advice, tax planning, tax reporting and tax consulting services to Shareholder and Investment Manager. Upon review of Shareholder's structure, Accounting Firm 2 raised the possibility that FC2 was a PFIC under section 1297(a)(2). Based on Accounting Firm 2's determination regarding the PFIC status of FC2, Shareholder requested that Accounting Firm 2 begin the process of preparing a request for relief.

Shareholder has submitted an affidavit, under penalties of perjury, that describe 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 1. Shareholder also submitted an affidavit from Accounting Firm 1, which describes Accounting Firm 1'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 1 through Year 3, which provide that FC2 did not have any earnings and profits for Year 1 through Year 3.

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 1 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 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 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)