

Dear _____ :

This is in response to a letter dated September 1, 2012 submitted by your authorized representative that requested the consent of the Commissioner of the Internal Revenue Service ("Commissioner") to make a retroactive qualified electing fund ("QEF") election under section 1295(b) of the Internal Revenue Code (the "Code") and Treas. Reg. §1.1295-3(f) with respect to your investment in FC.

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

Taxpayer is an individual. At all times relevant to this ruling, Taxpayer was a United States resident for U.S. federal income tax purposes. Taxpayer is the creator of Trust, a State trust with respect to which Taxpayer is treated as the grantor for U.S. federal income tax purposes. Trust is the sole owner of DE, a Country A entity that is disregarded for U.S. federal income tax purposes. Stock owned by DE is treated as owned by Taxpayer for U.S. federal income tax purposes.

During Years 1, 2, and 3, Taxpayer (through DE) acquired shares of FC, an entity organized under the laws of Country B. During Years 1 and 3, Taxpayer sold some shares of FC and recognized gain on those sales. In addition, Taxpayer reported income from FC for Years 1, 2, and 3. At the time of these transactions, Taxpayer was unaware that FC was a passive foreign investment company ("PFIC") as defined in section 1297(a) of the Code.

At all times relevant to this ruling, Investment Advisor handled Taxpayer's investments, including his investment in FC, and received all statements and tax documents from FC on behalf of Taxpayer. During Year 2, Taxpayer retained Accounting Firm to prepare his Year 1 tax return. On Date 3, Taxpayer filed his Year 1 tax return. As of Date 3, Taxpayer did not know or have reason to know that FC was a PFIC or that he, as owner of the shares of FC, was eligible to make an election to treat FC as a QEF. At that time, neither Taxpayer nor his advisors had received any communications from FC identifying FC as a PFIC or informing Taxpayer of his eligibility to make a QEF election.

On Date 5, Accounting Firm received an email from Investment Advisor informing it that Investment Advisor had reason to believe that FC was a PFIC. Investment Advisor also suggested that Taxpayer consider making a QEF election with respect to FC.

Investment Advisor subsequently provided Accounting Firm with a copy of a “Notice of U.S. Tax Information of U.S. Persons” (the “Notice”) issued by FC on Date 6. The Notice had been mailed to Investment Advisor’s office in Country C. It stated that FC was a PFIC for the taxable year beginning on Date 2 and ending on Date 4 and that any shareholder wishing to make a QEF election would be permitted to review FC’s books and records. Investment Advisor did not receive a “Notice of U.S. Tax Information for U.S. Persons” from FC for the fiscal year ending on Date 1.

Taxpayer submitted an affidavit, under penalties of perjury, that describes the events that led to his failure to make a QEF election with respect to FC by the election due date, including the roles of Accounting Firm and Investment Advisor. Taxpayer also submitted an affidavit from Accounting Firm, which describes Accounting Firm’s engagement and responsibilities, and the advice concerning the tax treatment of FC that it provided to Taxpayer. In addition, Taxpayer submitted an affidavit from Investment Advisor, which describes Investment Advisor’s engagement and correspondence with Accounting Firm upon Investment Advisor’s discovery that FC was a PFIC.

Taxpayer 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

Taxpayer 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

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 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 Year 1, 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 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
Chief, Branch 2
Office of the Associate Chief
Counsel (International)