Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:INTL:B02
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Date:
February 15, 2013

TY:

Legend

Shareholder =
EIN =

Predecessor =

FC =
EIN =

Foreign Partnership 1 =
Foreign Partnership 2 =
DE =

Foreign Partnership 3 =

Investment Manager =
Accounting Firm 1 =
Administrator = .

Accounting Firm 2 =

State =

Country 1 =
Country 2 =
Country 3 =

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

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 ("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 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

Predecessor was a limited partnership organized under the laws of State. Prior to Year 1, Predecessor acquired an interest in Foreign Partnership 1, an entity treated as a partnership for Federal income tax purposes that was formed under the laws of Country 1. Foreign Partnership 1 owned an interest in Foreign Partnership 2, an entity treated as a partnership for Federal income tax purposes that was formed under the laws of Country 1. Foreign Partnership 2, in turn, wholly owned DE, an entity formed under the laws of Country 2 that was treated as a disregarded entity for Federal income tax purposes. DE owned an interest in Foreign Partnership 3, an entity treated as a partnership for Federal income tax purposes that was formed under the laws of Country 3, which owned real estate located in Country 3.

During Year 1, DE and another entity organized FC, an entity formed under the laws of Country 3 that was treated as a corporation for Federal income tax purposes. During Year 1, Foreign Partnership 3 sold an interest in real estate located in Country 3 to FC.

During Year 2, Predecessor was split into three separate partnerships. As a result of the split-up: (i) Predecessor underwent a technical termination; and (ii) Predecessor became Shareholder, a new partnership for Federal income tax purposes, effective immediately after the split-up. Shareholder is a limited partnership organized under the laws of State. Subsequently during Year 2, Shareholder changed its name to its current name. Shareholder owned the same interest in Foreign Partnership 1 after the split-up that Predecessor owned in Foreign Partnership 1 before the split-up. For Federal

income tax purposes, Shareholder's holding period in Foreign Partnership 1 includes the period during which Predecessor held Foreign Partnership 1 prior to the Year 2 split-up.

At all relevant times, Investment Manager provided investment management services to Predecessor and Shareholder. Investment Manager was responsible for all financial and tax reporting requirements of Predecessor and 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 Predecessor and Shareholder (as relevant), retained Accounting Firm 1 to provide advice with respect to Federal income tax matters regarding Predecessor's and Shareholder's operations and investments. In addition, at all relevant times Investment Manager, on behalf of Predecessor and Shareholder, engaged Administrator to be Predecessor's and Shareholder's administrator, and, in particular, to prepare U.S. federal, state and local information tax returns for Predecessor and 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.

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

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 FC was a PFIC under section 1297(a)(2). Based on Accounting Firm 2's determination regarding the PFIC status of FC, 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 FC by the election due date, including the role of Accounting Firm. 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 FC that it provided to Shareholder. In addition, Shareholder submitted the PFIC Annual Information Statements (described in §1.1295-1(g)(1)) for FC for taxable years Year 1 through Year 4, which provide that FC did not have any earnings and profits for Year 1 through Year 4.

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

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 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 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. 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: