

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 limited liability partnership organized in State. FC is an entity organized under the laws of Country 1 that is treated as a corporation for U.S. federal income tax purposes. FC qualified as a passive foreign investment company ("PFIC") as defined in section 1297(a) of the Code in Year 1.

During Year 1 and Year 2, Shareholder acquired shares of FC indirectly through its interest in two Country 2 partnerships.

Shareholder retained Accounting Firm A to prepare its Year 1 through Year 6 tax return. Accounting Firm A employs experienced tax professionals and advised Shareholder with regard to the U.S. federal income tax matters regarding Shareholder's operations and investments, including Shareholder's investment in FC. Shareholder relied on Accounting Firm A to provide advice with respect to filing and reporting requirements in general, as well as any elections or statements that would be necessary to elect a specific tax treatment.

Shareholder did not know or have reason to know that FC was a PFIC or that it, as indirect owner of the shares of FC, was eligible to make an election to treat FC as a QEF. Accounting Firm A did not advise Shareholder of the availability of electing to treat FC as a PFIC.

In Year 8, Shareholder learned that there would be an initial public offering of FC. Shareholder analyzed FC for tax purposes as part of the tax due diligence for the sale of a foreign security. As part of that review, Shareholder determined that FC was a PFIC. Based on that determination, Shareholder requested Accounting Firm A to prepare a request to make a retroactive QEF election.

Shareholder has submitted affidavits, 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 A.

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).

Treas. Reg. §1.1295-3(f)(3)(ii) provides that, if granting relief would prejudice the interests of the U.S. government, the Commissioner may grant consent to make a section 1295 election provided the shareholder enters into a closing agreement that requires the shareholder to pay an amount sufficient to eliminate any prejudice to the U.S. government as a consequence of the shareholder's inability to file amended returns for closed taxable years.

Treas. Reg. §1.1295-3(g)(1)(i)(B) provides that, if the Commissioner grants consent to file a retroactive QEF election, the election is due on the due date, as extended, for the shareholder's return for the taxable year in which consent is granted.

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 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: