

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact: \_\_\_\_\_, ID No.

Telephone Number:

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CC:INTL:B02  
PLR-134529-12

Date:  
September 09, 2013

TY:

Legend

- Taxpayer =
- FC =
- State =
- Country =
- Year 1 =
- Year 2 =
- Year 3 =
- Year 4 =
- Date 1 =
- Date 2 =
- Date 3 =
- Fund =
- X% =
- Director of Tax =
- Law Firm =
- Accounting Firm A =
- Accounting Firm B =

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

This is in response to a letter dated August 3, 2012, submitted by Taxpayer’s authorized representatives 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 Taxpayer’s investment in FC.

The ruling contained in this letter is based upon information and representations submitted on behalf of Taxpayer by its authorized representatives, 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 a corporation organized under the laws of State. It is classified as an association taxable as a corporation for U.S. federal income tax purposes. Taxpayer is a publicly traded company.

Taxpayer is currently taxed as a corporation and pays federal and applicable state corporate taxes on its taxable income.

In Year 2, Taxpayer formed Fund to hold certain foreign investments. Fund is a Country company that is treated as a corporation for U.S. federal income tax purposes. Fund has been classified as a controlled foreign corporation (within the meaning of section 957(a) of the Code) with respect to Taxpayer during Taxpayer's entire holding period.

Taxpayer maintained greater than X% ownership throughout Fund's existence. Taxpayer holds its investment in FC indirectly through Fund.

Taxpayer invested in FC, indirectly through Fund, on Date 1. FC has been a PFIC with respect to Taxpayer since Date 1.

Taxpayer submitted an affidavit, under penalties of perjury, which describes the events that led to its failure to make a QEF election with respect to FC by the election due date, including the roles of Law Firm, Accounting Firm A, Accounting Firm B, and Taxpayer's Director of Tax at that time.

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 3 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 3, 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, copies of this letter ruling are being sent to your authorized representatives.

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)

cc: