

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201408015**
Release Date: 2/21/2014

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 9100.22-00, 1296.00-00

Person To Contact:

ID No.

Telephone Number:

Refer Reply To:
CC:INTL:B02
PLR-123914-13

Date:
November 15, 2013

TYs:

Legend

- Fund 1 =
- Trust 1 =
- FC1 =
- State A =
- Advisor A =
- Individual 1 =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =

Dear :

This is in response to a letter received by our office on April 17, 2013, submitted on behalf of Fund 1 by its authorized representative, requesting an extension of time under Treas. Reg. §§ 301.9100-1 and 301.9100-3 to make a mark to market election under Section 1296¹.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement

¹ Unless otherwise indicated, all Section references are to the Internal Revenue Code in effect as of the date of this ruling, or to Treasury regulations promulgated thereunder.

executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

FACTS

Fund 1 is a non-diversified series of Trust 1. Trust 1 is a State A trust registered as an open-end management investment company under the Investment Company Act of 1940, as amended, and its shares are registered under the Securities Act of 1933, as amended. Each series of Trust 1, including Fund 1, is taxed as a regulated investment company ("RIC") under Subchapter M of the Internal Revenue Code.

Fund 1 acquired shares of FC1 during its taxable year ended Date 1 and continuously held such shares (together with additional shares of FC1 purchased by Fund 1 subsequent to Date 1). Fund 1 sold all of its shares of FC1 in tax year ended Date 6.

Advisor A was for all times during the years at issue responsible for, among other things, the preparation of Fund 1's income tax returns, including the preparation and filing of a mark to market election pursuant to Section 1296(a). Advisor A employs tax accountants who are competent to render tax advice with respect to stock ownership of a foreign corporation and, in particular are highly experienced in recommending relevant tax elections to Fund 1 with respect to PFICs. Accordingly, Fund 1 relied upon Advisor A to identify the holdings of Fund 1 that qualify as PFICs.

At the time Fund 1 filed its Form 1120-RIC for its taxable years ending on Date 1, Date 2, Date 3, and Date 4, Advisor A had not identified FC1 as a PFIC. As a result, Fund 1 did not make a Section 1296 election with respect to FC1. On or about Date 5, Advisor A determined that FC1 was a PFIC.

Fund 1 has submitted an affidavit from Individual 1, who serves as Fund 1's Treasurer, in support of this ruling request.

Individual 1, on behalf of Fund 1, has made the following additional representations:

1. Fund 1 is not aware of any knowledge on the part of the Service of Fund 1's failure to make the mark to market elections discussed herein.
2. Granting the relief will not result in Fund 1 having a lower tax liability in the aggregate for all years to which the regulatory election applies than Fund 1 would have had if the election had been made timely (taking into account the time value of money).
3. Fund 1 is not seeking to alter a return position for which an accuracy-related

penalty has been or could have been imposed under Section 6662 of the Code.

4. Being fully informed of the election described in Section 1296(a) and related tax consequences, Fund 1 did not choose to not file the election with respect to its holding of shares of FC1 for its taxable years ended Date 1, Date 2, Date 3, and Date 4. Fund 1 was not aware that the FC1 stock was PFIC stock and Advisor A did not advise it of such.
5. The proposed elections will not affect any closed tax year (except the taxable year ended Date 1).
6. Fund 1 is not using hindsight in requesting relief under Treas. Reg. § 301.9100-3 and no specific facts have changed since the due date for making the elections which would make the elections advantageous to Fund 1.

LAW

Section 1296(a) provides that, in the case of marketable stock in a passive foreign investment company that is owned by a United States person at the close of any taxable year, the person may elect to include in gross income the excess of the fair market value of the stock over its adjusted basis.

Treas. Reg. § 1.1296-1(h) provides that an election under Section 1296 for a taxable year must be made on or before the due date (including extensions) of the person's U.S. income tax return for that year.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has the discretion to grant a taxpayer a reasonable extension of time, under the rules set forth in Treas. Reg. § 301.9100-3, to make a regulatory election under all subtitles of the Code, except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) provides that an election includes an application for relief in respect of tax, and defines a regulatory election as an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-3(a) provides that requests for relief will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Treas. Reg. § 301.9100-3(b)(1) provides that a taxpayer is deemed to have acted responsibly and in good faith if the taxpayer

- (i) requests relief before the failure to make the regulatory election is discovered by the IRS;
- (ii) failed to make the election because of intervening events beyond the taxpayer's control;
- (iii) failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election;
- (iv) reasonably relied on the written advice of the IRS; or
- (v) reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election.

Treas. Reg. § 301.9100-3(b)(3) provides that a taxpayer will not be deemed to have acted reasonably and in good faith if the taxpayer

- (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under Section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested;
- (ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or
- (iii) uses hindsight in requesting relief. If specific facts have changed since the due date for making the election that make the election advantageous to a taxpayer, the IRS will not ordinarily grant relief.

Treas. Reg. § 301.9100-3(c)(1) provides that the granting of relief may prejudice the interests of the Government if

- (i) granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money); or
- (ii) the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under Section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

RULING

Based on the facts and representations submitted, including the representations that the taxpayer requested relief before the failure to make the mark to market election was discovered by the IRS and the taxpayer reasonably relied on qualified tax professionals that failed to advise the taxpayer to make the mark to market election, and the representation that granting relief would not result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the

election (including Year 1), had the election been timely made, we conclude that the requirements are satisfied for granting a reasonable extension of time to make the election under Section 1296 for Fund 1. Accordingly, you are granted an extension of time of 60 days from the date of this letter to make the election under Section 1296 with respect to Fund 1's federal income tax return for taxable years ending Date 1, Date 2, Date 3, and Date 4.

This ruling is limited to the timeliness of filing elections under Section 1296. Except as specifically ruled upon herein, we express no opinion concerning any federal excise or income tax consequences relating to the facts herein under any other section of the Code. For example, we express no opinion as to whether Fund 1 has, in fact, satisfied all of the requirements of Section 1296 and the regulations thereunder. We also express no opinion as to whether Fund 1 qualifies as a RIC under subchapter M, part I, of Chapter 1 of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code 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 is being sent to taxpayer's first and second representatives.

Sincerely,

Jeffery G. Mitchell
Branch Chief, Branch 2
Associate Chief Counsel (International)

cc: