

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
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TY:

Legend

Taxpayers =

Corporation =

Country X =

Investment Firm 1 =

Investment Firm 2 =

Accountant =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Date 7 =

Date 8 =

Month 9 =

Business A =

Country B =

Dear :

This is in response to a letter dated August 13, 2013, submitted by your authorized representative, that requested the consent of the Commissioner of the Internal Revenue Service ("Commissioner") in order to make a retroactive qualified electing fund ("QEF") election under section 1295(b) of the Internal Revenue Code and Treas. Reg. §1.1295-3(f) with respect to Corporation.

Taxpayers were shareholders of Corporation from Year 1 through Year 6. Taxpayers acquired their shares of Corporation in a series of transactions occurring in Year 1, Year 2, Year 3, Year 4, and Year 5. The shares were acquired through Investment Firm 1 and Investment Firm 2. In Year 6, Corporation entered into a transaction ("Year 6 Transaction"), and all of Taxpayers' shares in Corporation were sold on Date 8.

As part of the Year 6 Transaction, on Date 7 Corporation issued an Information Circular to all shareholders notifying them of the likelihood that Corporation was a PFIC for Year 6 and all prior years. Taxpayers' son who was also a shareholder of Corporation, learned of the Information Circular from another shareholder around the end of Year 6. Until that time, Taxpayers were not aware that Corporation was a passive foreign investment company ("PFIC") and were also unaware of the availability of a qualified electing fund ("QEF") election prior issuance of the Information Circular. In Month 9, Taxpayers engaged Attorney for advice regarding a QEF election.

Taxpayers are not tax professionals and have relied on Accountant as their tax advisor concerning all applicable U.S. tax and filing obligations for many years. Accountant has been preparing U.S. individual income tax returns as a certified public accountant for over twenty years. Taxpayers have submitted affidavits, under penalties of perjury, that describe the events that led to their failure to make a QEF election with respect to Corporation by the election due date, including the role of Accountant. Taxpayers also submitted an affidavit from Accountant, describing Accountant's engagement, responsibilities and failure to advise Taxpayers to make a QEF election for Corporation.

Taxpayers represent that, as of the date of this request for ruling, the PFIC status of Corporation has not been raised by the IRS on audit for any of the taxable years at issue.

RULING REQUESTED

Taxpayers request the consent of the Commissioner of the Internal Revenue Service to make a retroactive QEF election with respect to Corporation for Year 1 and all subsequent years under Treas. Reg. §1.1295-3(f).

LAW AND ANALYSIS

Section 1295(a) of the Code provides that any PFIC shall be treated as a QEF with respect to a taxpayer if (1) an election by the taxpayer under section 1295(b) applies to such company for the taxable year and (2) the company complies with such requirements as the Secretary may prescribe for purposes of determining the ordinary earnings and net capital gains of such company.

Under section 1295(b)(2), a QEF election may be made for any taxable year at any time on or before the due date (determined with regard to extensions) for filing the return for such taxable year. To the extent provided in regulations, such an election may be made after such due date if the taxpayer failed to make an election by the due date because the taxpayer reasonably believed the company was not a PFIC.

Under Treas. Reg. §1.1295-3(f), a taxpayer 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 corporation for any taxable year of the shareholder; and
4. the shareholder satisfies the procedural requirements of §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 which led to the failure to make a QEF election by the election due date;
2. the discovery of such failure;

3. the engagement and responsibilities of the qualified tax professional; and
4. the extent to which the shareholder relied on such professional.

Treas. Reg. §§1.1295-3(f)(4)(ii) and (iii).

CONCLUSION

Based on the information submitted and representations made, we conclude that Taxpayers have satisfied Treas. Reg. §1.1295-3(f). Consent is granted to Taxpayers to make a retroactive QEF election with respect to Corporation for Year 1 and all subsequent years under Treas. Reg. §1.1295-3(f), provided that they comply with the rules under Treas. Reg. §1.1295-3(g) regarding the time and manner for making the retroactive QEF election.

A copy of this ruling must be attached to any tax return to which it is relevant

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

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