

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

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

Telephone Number:

Refer Reply To:  
CC:INTL:B02  
PLR-135635-13

Date:  
February 10, 2014

TY:

### Legend

Taxpayer =

FC =

Country X =

Accountant Y =

Accounting Firm Z =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

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

This is in response to a letter dated August 9, 2013, submitted by your authorized representative that requested the consent of the Commissioner of the Internal Revenue Service ("Commissioner") for Taxpayer 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 the Taxpayer's investment in FC.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer 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 the request for rulings, it is subject to verification on examination.

## FACTS

Taxpayer is and has always been a U.S. citizen and resident for U.S. federal income tax purposes. In Year 1, Taxpayer purchased shares of FC, an entity organized under the laws of Country X that is treated as a corporation for U.S. federal income tax purposes. Taxpayer purchased additional shares in Years 2 through 5. Taxpayer sold his shares of FC at the end of Year 6. FC was a passive foreign investment company ("PFIC") as defined under section 1297 of the Code.

Taxpayer's federal income returns for many years, including the years for which Taxpayer owned shares in FC, were prepared by Accountant Y with Accounting Firm Z. Taxpayer provided Accountant Y with all relevant information and documentation necessary to prepare the returns for the years for which Taxpayer owned shares in FC. Taxpayer relied on Accountant Y to prepare and file Taxpayer's U.S. federal income tax returns and to provide advice on U.S. income tax matters. Accountant Y was aware of Taxpayer's ownership of share in FC but failed to identify FC as a PFIC within the meaning of section 1297(a). Consequently, Accountant Y failed to advise Taxpayer of the possibility of making a QEF election under section 1295(b) with respect to FC and of the consequences of making, or failing to make, such an election.

At the end of Year 6, FC issued an Information Circular to its shareholders. The Information Circular stated that FC believes it has been a PFIC for each year of its existence. The Information Circular also included information regarding the consequences of owning and disposing of PFIC shares and the ability to make a retroactive QEF election. Once Taxpayer became aware of FC's PFIC status and the implications, Taxpayer took immediate action to engage a law firm to assist with requesting relief to make a retroactive QEF election.

Taxpayer has submitted affidavits, under penalties of perjury, that describe the events that led to the failure to make a QEF election with respect to FC by the election due date, including the role of Accountant Y.

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 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 Taxpayer's ruling request, we conclude that the Taxpayer has satisfied Treas. Reg. §1.1295-3(f). Accordingly, consent is granted to the Taxpayer to make a retroactive QEF election with

respect to FC for Year 1, 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 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.

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

A copy of this letter must be attached to any 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)