

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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PLR-108516-14

Date:
August 25, 2014

TY:

LEGEND

Shareholder =
EIN:

FC =

Country =

Year 1 =
Year 2 =
Year 3 =

State =

Vice President =
Controller =
Firm =

Dear :

This is in response to a letter dated February 27, 2014, submitted by Shareholder's authorized representative that requested the consent of the Commissioner of the Internal Revenue Service ("Commissioner") for Shareholder 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 Shareholder's investment in FC.

The ruling contained in this letter is based upon information and representations submitted on behalf of Shareholder by its authorized representative, 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

Shareholder is a limited partnership organized under the laws of State. In Year 1, Shareholder purchased shares of FC, an entity treated as a corporation for federal tax purposes and organized under the laws of Country, through an unrelated broker. Shareholder purchased additional shares of FC in Year 2 and Year 3, and sold shares of FC in Year 2. Vice President, a vice president of Shareholder responsible for investment strategy, identified FC as a domestic corporation based on available information, including the listing of FC on a United States stock exchange, the location of FC's headquarters in the United States, and the location of FC's assets in the United States.

Since Year 1, Firm, a competent U.S. accounting firm, has prepared annual tax returns for Shareholder. Firm is competent to render tax advice with respect to the ownership of shares of a foreign corporation. Controller, an experienced employee of Shareholder responsible for accounting, financial reporting, and compliance of Shareholder, was responsible for coordinating with Firm. Controller provided Firm with all the relevant information related to Shareholder's investment in foreign corporations. However, information on FC was not provided to Firm because FC was incorrectly identified as a domestic corporation. Firm did not identify FC as a passive foreign investment company ("PFIC") within the meaning of section 1297(a), and thus did not advise Shareholder of the consequences of making, or failing to make, a QEF election.

At the end of Year 3, after communications with a representative from FC on matters unrelated to FC's country of organization, Vice President learned that FC was organized in Country. Upon learning this fact, Vice President immediately updated Shareholder's portfolio record and informed Controller. Controller then immediately notified Firm, which began the process of gathering and analyzing relevant information to determine whether FC could have been a PFIC for any of the years in Shareholder's holding period. Firm advised Shareholder that FC should be treated as a PFIC and the consequences of making, or failing to make, a QEF election. Shareholder engaged Firm to assist in requesting relief to make a retroactive QEF election with respect to FC.

Shareholder has submitted affidavits from Vice President, Controller, and Firm, 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 and the discovery thereof.

Shareholder has submitted PFIC annual information statements of FC for Year 1, Year 2, and Year 3, which state that FC had no ordinary earnings or net capital gains for

those years. Thus, the interests of the United States government will not be prejudiced by granting consent to make the requested retroactive election.

Shareholder represents that, as of the date of its request for ruling, the PFIC status of FC had not been raised by the Internal Revenue Service 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).

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 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,

Barbara E. Rasch
Senior Technical Reviewer, Branch 2
Office of the Associate Chief Counsel
(International)

cc: