

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

[Third Party Communication:  
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Person To Contact:  
, ID No.

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Refer Reply To:  
CC:INTL:B02  
PLR-123834-11

Date:  
March 27, 2015

TY:

### Legend

Taxpayer	=
Manager	=
FC	=
State X	=
Country Y	=
Year 1	=
Year 2	=

Dear :

This is in response to your letter received by our office on June 7, 2011, requesting the consent of the Commissioner of the Internal Revenue Service 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 your 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 a privately held State X limited partnership that was formed in Year 1. Taxpayer's activities consist solely of managing financial investments on behalf of its partners. Taxpayer is managed by a member of Manager, a large privately owned group of affiliated entities with substantial real estate holdings, among other investments. In Year 2, Taxpayer purchased shares of FC, a County Y publicly traded trust. FC was a passive foreign investment company ("PFIC") as defined under section 1297(a) of the Code.

Taxpayer is a sophisticated investment and portfolio manager which maintains a well-qualified staff of investment and accounting professionals. Taxpayer has systems designed to capture and report critical financial, accounting, and tax information on a timely basis. Further, Taxpayer has access to the professionals of Manager's tax department. Manager's tax department was competent to render U.S. tax advice with respect to stock ownership of a foreign corporation. Taxpayer relied on the advice of its accounting professionals and Manager's tax department to comply with U.S. tax laws.

Manager's tax department has full access to the accounting information with respect to Taxpayer's investment in FC. However, Manager's tax department failed to identify FC as a PFIC within the meaning of section 1297(a). Consequently, Manager's tax department 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. Taxpayer recently became aware of FC's status as a PFIC.

Taxpayer has submitted an affidavit, signed under penalties of perjury, describing the events that led to the failure to make the QEF election by the election due date, including the role of its accounting professionals and Manager's tax department.

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 2 under Treas. Reg. §1.1295-3(f).

## LAW

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 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 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 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 2, 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.

A copy of this ruling must be attached to any tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement attaching a statement to their return that provided the date and control number of the letter ruling.

Sincerely,

Jeffery G. Mitchell  
Branch Chief  
(International)

cc: