

## 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:  
CC:INTL:B02  
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Date:  
March 25, 2015

TY:

Legend  
Shareholder =

FC1 =

FC2 =

Country A =

Country B =

Year 1 =

Year 2 =

Year 3 =

Accounting Firm =

Advisor =

Month =

Dear :

This is in response to a letter dated September 30, 2014, submitted by Shareholder's authorized representatives, 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 FC1.

The ruling contained in this letter is based upon information and representations submitted on behalf of Shareholder by its authorized representatives, 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 U.S. citizen and an executive of FC2, a company organized under the laws of Country A that operates principally in Country B. FC1 is a holding company for shares of FC2 that was organized under the laws of Country A in Year 1 and has been a passive foreign investment company (PFIC) as defined in section 1297 since Year 1. Shareholder acquired shares of FC1 in Year 1.

Shareholder retained Accounting Firm to prepare all of his U.S. federal income tax returns including his return for Year 1. Accounting Firm is competent to render tax advice to U.S. shareholders of foreign corporations. Shareholder provided Accounting Firm all relevant facts and circumstances to prepare his U.S. federal income tax returns. At no point before Month of Year 3 did Shareholder become aware that FC1 might be a PFIC, and thus Shareholder was not aware of the possibility of making a QEF election with respect to FC1. Shareholder became aware that FC1 might be a PFIC in Month of Year 3, when the finance department of FC2 advised Shareholder that FC1 might be a PFIC.

Once Shareholder became aware of the possibility that FC1 was a PFIC, Shareholder sought advice from Advisor about the implications of ownership of shares in a PFIC. Advisor provided Shareholder with advice about the implications of owning shares in a PFIC, the availability of a retroactive QEF election, and the mechanics and benefits of making such an election.

Shareholder has submitted an affidavit, signed under penalties of perjury, which describes the events that led to the failure to make the QEF election with respect to FC1 by the election due date, including the role of Accounting Firm. Shareholder also submitted an affidavit from Advisor, signed under penalties of perjury, corroborating the statements made by Shareholder.

Shareholder represents that, as of the date of this request for ruling, the PFIC status of FC1 has not been raised by the Internal Revenue Service (IRS) 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 FC1 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 IRS 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 FC1 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 representatives.

A copy of this letter ruling must be attached to any federal 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,

Kristine Crabtree  
Assistant to the Branch Chief, Branch 2  
(International)

cc: