

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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Refer Reply To:
CC:INTL:B02
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Date:
November 1, 2017

TY:

Legend

Shareholder =

Fund =

Accounting Firm =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

State =

Company =

Year =

FC 1 =

FC 2 =

FC 3 =

FC 4 =

Country A =

Country B =

Country C =

Country D =

Dear :

This is in response to a letter received by our office on February 14, 2017, submitted by Shareholder, requesting extensions of time under §§ 301.9100-1 and 301.9100-3 of the

Procedure and Administration Regulations to make mark-to-market elections under section 1296 with respect to certain passive foreign investment companies (PFICs).¹

The rulings contained in this letter are based upon information and representations submitted by Shareholder 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

Shareholder is one of a series of investment portfolios comprising Fund. Shareholder was established on Date 1 pursuant to State law. Company is the managing member of Fund. Shareholder is taxed as a partnership for federal income tax purposes.

During Year, Shareholder held stock in FC 1, FC 2, FC 3, and FC 4, which are organized under the laws of Country A, Country B, Country C, and Country D, respectively. Each of these corporations is a PFIC within the meaning of section 1297.

During Year, Shareholder decided to make mark-to-market elections under section 1296 with respect to its FC 1, FC 2, FC 3, and FC 4 stock. Shareholder relied on qualified tax professionals at Accounting Firm to prepare and file its tax return for Year, including to make the mark-to-market elections. On or before Date 2, which was the due date for Shareholder's tax return for Year, Accounting Firm was to prepare and submit Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, on behalf of Shareholder. Accounting Firm prepared Form 7004 prior to Date 2, but inadvertently failed to timely file Form 7004 due to an administrative oversight.

Shareholder's Form 1065, *U.S. Return of Partnership Income*, for Year was filed on Date 3, which was prior to the date the return would have been due if the Form 7004 had been timely filed. Along with its Form 1065, Shareholder attempted to make the mark-to-market elections under section 1296 with respect to its FC 1, FC 2, FC 3, and FC 4 stock on Form 8621, *Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund*. However, as a result of Shareholder's failure to timely file Form 7004, the mark-to-market elections were not timely.

Shareholder received a notice from the IRS dated Date 4, asserting a late-filing penalty because of Shareholder's failure to timely file its Form 1065.

Shareholder has submitted affidavits, under penalties of perjury, that describe the events that led to the failure to timely make the mark-to-market elections by the election due date, including affidavits from advisors at Accounting Firm.

¹ Unless otherwise indicated, all section references are to the Internal Revenue Code in effect as of the date of this ruling, or to Treasury regulations promulgated thereunder.

Shareholder represents that, as of the date of the request for ruling, the PFIC status of FC 1, FC 2, FC 3, and FC 4 have not been raised by the IRS on audit of Shareholder for any of the taxable years at issue.

Shareholder makes the following additional representations for each election:

1. Shareholder reasonably relied on a qualified tax professional who failed to timely file Shareholder's Form 7004.
2. Shareholder is not attempting to alter a return position taken for which a penalty has been or could be imposed under section 6662 at the time Shareholder requests relief.
3. This is not a situation in which Shareholder was informed of all material respects of the required election and related tax consequences but chose not to file the election.
4. No facts have changed since the due date of the election that would make the election advantageous.
5. Granting relief will not result in Shareholder having a lower tax liability in the aggregate for all years to which the election applies than Shareholder would have had if the election had been timely made.
6. The statute of limitations on assessment under section 6501 has not expired for Year or any of the affected taxpayers for any periods affected by the election.

RULING REQUESTED

Shareholder requests the consent of the Commissioner to grant an extension of time under Treas. Reg. §301.9100-3 to elect section 1296 mark-to-market treatment with respect to FC 1, FC 2, FC 3, and FC 4.

LAW

Section 1296(a) provides that, in the case of marketable stock in a PFIC that is owned (or treated as owned under section 1296(g)) by a United States person at the close of any taxable year, the United States person may elect to include in gross income the excess of the fair market value of the stock over its adjusted basis.

Treas. Reg. § 1.1296-1(h) provides that an election under section 1296 for a taxable year must be made on or before the due date (including extensions) of the person's U.S. income tax return for that year.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has the discretion to grant a taxpayer a reasonable extension of time, under the rules set forth in Treas. Reg. § 301.9100-3, to make a regulatory election under all subtitles of the Code, except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) provides that an election includes an application for relief in respect of tax, and defines a regulatory election as an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-3(a) provides that requests for relief will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Treas. Reg. § 301.9100-3(b)(1) provides that, except as provided in Treas. Reg. § 301.9100-3(b)(3), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer:

- i. Requests relief before the failure to make the regulatory election is discovered by the IRS;
- ii. Failed to make the election because of intervening events beyond the taxpayer's control;
- iii. Failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election;
- iv. Reasonably relied on the written advice of the IRS; or
- v. Reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Treas. Reg. § 301.9100-3(b)(3) provides that a taxpayer is deemed not to have acted reasonably or in good faith if the taxpayer:

- i. Seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief (taking into account any qualified amended return filed within the meaning of Treas. Reg. § 1.6664-2(c)(3)) and the new position requires or permits a regulatory election for which relief is requested;
- ii. Was informed in all material respects of the required election and related tax consequences but chose not to file the election; or
- iii. Uses hindsight in requesting relief.

Treas. Reg. § 301.9100-3(c)(1)(i) provides, in part, that the interests of the Government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of

money). Treas. Reg. § 301.9100-3(c)(1)(ii) provides, in part, that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made is closed, or any taxable years that would have been affected by the election had it been timely made are closed, by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief.

CONCLUSION

Based on the information and representations submitted and as described in the Facts section above, we conclude that Shareholder satisfies the requirements for a reasonable extension of time to make mark-to-market elections under section 1296 of the Code with respect to FC 1, FC 2, FC 3, and FC 4. Accordingly, Shareholder is granted an extension of time of 60 days from the date of this letter to make the elections under section 1296 with respect to the stock of these PFICs for Year.

The granting of an extension of time is not a determination that Shareholder is otherwise eligible to make the elections under section 1296. Treas. Reg. § 301.9100-1(a).

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 who requested 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 representative.

Sincerely,

Jeffery G. Mitchell
Chief, Branch 2
Office of the Associate Chief Counsel
(International)