

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact: _____, ID No. _____

Telephone Number:

Refer Reply To:
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Date:
November 21, 2017

TY:

Legend

Taxpayer =

Country X =

FC1 =

FC2 =

FC3 =

FC4 =

FC5 =

FC6 =

FC7 =

Year 1 =

Year 2 =

$$A =$$
$$B =$$

C =

D =

$$E =$$
$$F =$$
$$G =$$

Enrolled Agent =
Accounting Firm =
Law Firm =

Dear :

This is in response to a letter submitted on Taxpayer's behalf by an authorized representative requesting the consent of the Commissioner of the Internal Revenue Service ("Commissioner") to make a retroactive qualified electing fund ("QEF") election under section 1295(b) of the Internal Revenue Code (the "Code") and Treas. Reg. §1.1295-3(f) with respect to Taxpayer's ownership interests (direct or indirect) of FC1, FC2, FC3, FC4, FC5, FC6, and FC7 (collectively referred to as "FCs") for Year 1.

The rulings contained in this letter are based upon information and representations submitted by 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 Country X citizen who is currently working and residing in the United States under an H1-B visa. In Year 1, Taxpayer became a U.S. person (as defined in section 7701(a)(30)) of the Code, for U.S. federal income tax purposes. At such time, Taxpayer held direct or indirect ownership interests in

- FC1 (A% direct ownership)
- FC2 (B% direct ownership)
- FC3 (C% indirect ownership)
- FC4 (D% indirect ownership)
- FC5 (E% indirect ownership)
- FC6 (F% indirect ownership) and
- FC7 (G% direct ownership).

At all relevant times, each FC was a passive foreign investment company ("PFIC") as defined in section 1297(a) of the Code.

Because Taxpayer was not familiar with U.S. income tax matters, Taxpayer engaged the services of Enrolled Agent (as described in U.S. Department of Treasury Circular No. 230) of Accounting Firm to advise him on his personal U.S. federal income tax matters, including preparing his U.S. income tax returns and reporting obligations for the years at issue. Enrolled Agent was an experienced professional in preparing U.S. income tax returns and Accounting Firm is a tax-return preparation company with

considerable experience in tax preparation for individuals. Taxpayer provided Enrolled Agent with all access to his financial records and other relevant facts and circumstances relating to the preparation of Taxpayer's U.S. income tax returns, including his ownership interests in FCs. However, Enrolled Agent and Accounting Firm erroneously advised Taxpayer that there were no U.S. federal income tax consequences with respect to his ownership interests in FCs. Both were not aware that FCs were PFICs and, thus, did not advise Taxpayer of the consequences of making or failing to make QEF elections with respect to FCs. In Year 2, Taxpayer engaged Law Firm in connection with certain U.S. tax matters. Law Firm became aware of Taxpayer's ownership interests in FCs and advised Taxpayer of their PFIC status. Shortly thereafter, Taxpayer took corrective action by requesting this ruling.

Taxpayer submitted an affidavit, under penalties of perjury, describing the events that led to the failure to make the QEF elections by the election due date. Taxpayer represents that, in all of the relevant years: (i) FCs were not identified as PFICs; and (ii) Taxpayer did not receive any advice regarding the availability of QEF elections with respect to his interest in directly or indirectly owned FCs.

Taxpayer represents that, as of the date of this request for ruling, the PFIC status of FCs 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 QEF elections under Treas. Reg. §1.1295-3(f) with respect to FC1, FC2, FC3, FC4, FC5, FC6, and FC7 for Year 1.

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 Taxpayer has satisfied Treas. Reg. §1.1295-3(f). Accordingly, consent is granted to Taxpayer to make QEF elections retroactive to Year 1 for FC1, FC2, FC3, FC4, FC5, FC6, and FC7, provided that Taxpayer complies with the rules under Treas. Reg. §1.1295-3(g) regarding the time and manner for making the retroactive QEF elections.

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 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 A. Crabtree
Senior Technical Reviewer, Branch 2
Office of Associate Chief Counsel (International)