

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Person To Contact:

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CC:INTL:B02

PLR-104471-18

Date:

June 13, 2018

TY:

Legend

Taxpayer =

FC 1 =

FC 2 =

FC3 =

Year 1 =

Year 2 =

State A =

City X =

Country Y =

B =

C =

Employee D =

Dear :

This is in response to a letter submitted by Taxpayer 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 investments in FC1 for Year 1.

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 financial services firm that was incorporated under the laws of State A in Year 2. In Year 1, Taxpayer acted as arranger of a transaction to finance the redevelopment of an office building in City X, Country Y (City X building). For this transaction, FC1 was established as a special purpose vehicle as part of a combined sale-leaseback and securitization transaction. FC1 was formed in Year 1 in Country Y. FC2, an indirect wholly owned U.S. subsidiary of Taxpayer and a member of TP's U.S. combined federal tax group, acquired a minority interest of B voting shares of FC1.

Employee D of Taxpayer was a qualified tax professional and represented that she was responsible for coordinating with Taxpayer's U.S. compliance personnel to ensure that appropriate elections were included on relevant U.S. tax returns and that Taxpayer's U.S. compliance personnel relied on her for this purpose. Employee D determined that FC1 was a passive foreign investment company ("PFIC") as defined in section 1297(a) of the Code at all relevant times. However, Employee D failed to advise Taxpayer's U.S. compliance personnel of the consequences of making or failing to make a QEF election with respect to Taxpayer's investment in FC1.

Taxpayer submitted affidavits, under penalties of perjury, describing the events that led to the failure to make the QEF election by the election due date. In addition, Taxpayer represents that, as of the date of this request for ruling, the PFIC status of FC1 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 QEF election under Treas. Reg. §1.1295-3(f) with respect to its investment in FC1 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 the 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 a QEF election retroactive to Year 1 for FC 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.

Sincerely,

Kristine A. Crabtree
Senior Technical Reviewer, Branch 2
(International)

cc: