

Dear _____ :

This is in response to a letter submitted on Shareholder'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 Shareholder's stock ownership 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

Shareholder is a domestic partnership for U.S. federal income tax purposes that was formed in Year 1. Individual A owns an X interest, and Entity B owns the remaining Y interest, in Shareholder. In Year 2, Individual A contributed Z shares of FC's common stock to Shareholder. FC, a Country X corporation, was at all relevant times a passive foreign investment company ("PFIC") as defined in section 1297(a) of the Code.

Shareholder engaged the services of Tax Professional 1 with Accounting Firm 1 to advise it on its U.S. federal income tax matters. Shareholder made available to Tax Professional 1 all information requested and relevant to the provision of tax advice and the preparation of its U.S. income tax returns. In Year 3, upon Tax Professional 1's retirement, Shareholder engaged the services of Tax Professional 2 with Accounting Firm 2 to advise it on its U.S. federal income tax matters and to prepare its U.S. income tax returns. Similarly, Shareholder made available to Tax Professional 2 all information requested and relevant to the provision of tax advice and the preparation of its U.S. income tax returns.

However, neither Tax Professional 1 nor Tax Professional 2 were aware that FC was a PFIC and, thus, did not advise Shareholder of the consequences of making or failing to make a QEF election with respect to FC.

Shareholder submitted affidavits, under penalties of perjury, describing the events that led to the failure to make the QEF election by the election due date. Shareholder represents that, in all of the relevant years: (i) Tax Professionals 1 and 2 were competent to render tax advice with respect to ownership of shares of a foreign corporation; (ii) FC was not identified as a PFIC; and (iii) Shareholder did not receive any advice regarding the availability of a QEF election with respect to its interest in FC.

In accordance with a signed closing agreement between Shareholder and the Commissioner, Shareholder has caused to be paid an amount sufficient to eliminate any

prejudice to the U.S. government as a consequence of its and its partners' inability to file amended returns. Shareholder has agreed to file amended returns for each of the subsequent taxable years affected by the retroactive election, if any.

Shareholder represents that, as of the date of its request for ruling, the PFIC status of FC had not been raised by the 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 under Treas. Reg. §1.1295-3(f) with respect to FC for Year 2.

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 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 QEF election for FC retroactive to Year 2, provided that Shareholder complies with the rules under Treas. Reg. §1.1295-3(g) regarding the time for, and manner of, making the retroactive QEF election. We have, consequently, approved a closing agreement with Shareholder with respect to those issues affecting the tax liability of its partners on the basis set forth above.

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,

/s/ Kristine A. Crabtree

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

cc: