

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

[Third Party Communication:

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B02

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Date:

October 22, 2021

TY:

Legend

Taxpayer Husband =

Taxpayer Wife =

Partnership A =

Partnership B =

Partnership C =

Partnership D =

Partnership E =

Partnership F =

Partnership G =

Partnership H =

Partnership I =

Partnership J =

Partnership K =

FC1 =

FC2 =

FC3 =

FC4	=
FC5	=
FC6	=
FC7	=
FC8	=
FC9	=
FC10	=
FC11	=
FC12	=
FC13	=
FC14	=
FC15	=
FC16	=
FC17	=
FC18	=
FC19	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
Tax Professional 1	=
Tax Professional 2	=
Tax Professional 3	=
Accounting Firm X	=
Tax Professional 4	=
Accounting Firm Y	=

Dear _____ :

This is in response to a letter submitted on behalf of Taxpayer Husband and Taxpayer Wife (collectively referred to as "Taxpayers") by an authorized representative requesting the consent of the Commissioner of the Internal Revenue Service ("Commissioner") to make retroactive qualified electing fund ("QEF") elections under section 1295(b) of the Internal Revenue Code (the "Code") and Treas. Reg. §1.1295-3(f) with respect to Taxpayer Husband's interests in certain foreign corporations (collectively referred to as "FCs") through certain partnerships.

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

Taxpayers at all relevant times filed joint U.S. federal income tax returns. Taxpayer Husband owns partnership interests in Partnership A, Partnership B, Partnership C, Partnership D, Partnership E, Partnership F, Partnership G, Partnership H, Partnership I, Partnership J, and Partnership K (collectively referred to as "Partnerships"). Partnerships held investments in FCs listed as follows:

- FC1, FC2, FC3, FC4, and FC5 since Year 1;
- FC6, FC7, and FC8 since Year 2;
- FC9, FC10, FC11, FC12, FC13, FC14, FC15, FC16, FC17, and FC18 since Year 3; and
- FC19 since Year 4.

Through Year 1, Taxpayers engaged the services of Tax Professional 1, a certified public accountant, to advise Taxpayers on their U.S. federal income tax matters and the preparation of Taxpayers' income tax returns. For Year 2 and thereafter, Taxpayers engaged the services of Tax Professional 2 and Tax Professional 3, also certified public accountants, with Accounting Firm X to advise Taxpayers on their U.S. federal income tax matters and the preparation of Taxpayers' income tax returns. For Year 5, Taxpayers engaged the services of Tax Professional 4 with Accounting Firm Y to advise Taxpayers on their U.S. federal income tax matters and the preparation of Taxpayers' income tax returns. Tax Professional 4 became aware of the PFIC status of FCs and informed Taxpayers of the consequences of failing to make a QEF election with respect to their interests in FCs.

Taxpayers made available to Tax Professional 1, Tax Professional 2 and Tax Professional 3 (collectively referred to as "Prior Tax Professionals") all information requested and relevant to the provision of tax advice and the preparation of Taxpayers' U.S. income tax returns. None of the Prior Tax Professionals were aware that FCs were PFICs and, thus, did not advise Taxpayers of the consequences of making or failing to make a QEF election with respect to FCs.

Taxpayers submitted affidavits, under penalties of perjury, describing the events that led to the failure to make the QEF elections by the election due date. Taxpayers represent that, in all of the relevant years: (i) Prior Tax Professionals were competent to render tax advice with respect to the ownership of shares of a foreign corporation; (ii) FCs were not identified as PFICs; and (iii) Taxpayers did not receive any advice regarding the availability of a QEF election with respect to their interests in FCs.

Taxpayers have paid an amount sufficient to eliminate any prejudice to the U.S. government as a consequence of their inability to file amended returns, in accordance

with a signed closing agreement between Taxpayers and the Commissioner. Further, Taxpayers have agreed to file an amended return for each of the subsequent taxable years affected by the retroactive elections, if any.

Taxpayers represent that, as of the date of their request for ruling, the PFIC status of FCs had not been raised by the IRS on audit for any of the taxable years at issue.

RULING REQUESTED

Taxpayers request the consent of the Commissioner to make a retroactive QEF election under Treas. Reg. §1.1295-3(f) for

- FC1, FC2, FC3, FC4, and FC5 beginning in Year 1;
- FC6, FC7, and FC8 beginning in Year 2;
- FC9, FC10, FC11, FC12, FC13, FC14, FC15, FC16, FC17, and FC18 beginning in Year 3; and
- FC19 beginning in Year 4.

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 Taxpayers' ruling request, we conclude that Taxpayers have satisfied Treas. Reg. §1.1295-3(f). Accordingly, consent is granted to Taxpayers to make QEF elections for FCs retroactive to Year 1, Year 2, Year 3, and Year 4, respectively, provided that Taxpayers comply with the rules under Treas. Reg. §1.1295-3(g) regarding the time for, and manner of, making the retroactive QEF elections. We have, consequently, approved a closing agreement with Taxpayers with respect to those issues affecting their tax liability on the basis set forth above.

This ruling is directed only to the taxpayer requesting 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,

/s/ Kristine A. Crabtree

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

cc: