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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February 22, 2022

TY:

Legend

Spouse A	=
Spouse B	=
	=
FP	=
FC	=
	=
Country	=
	=
Tax Preparer 1	=
Tax Preparer 2	=
Tax Preparer 3	=
Law Firm	=
	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=

Dear :

This is in response to a letter submitted by your authorized representative that requested the consent of the Commissioner of the Internal Revenue Service ("Commissioner") for Taxpayers 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 Taxpayers' investment in FC.

The ruling contained in this letter is based upon information and representations submitted on behalf of Taxpayers by their authorized representative, 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 this request for ruling, such material is subject to verification on examination. The information submitted in the request is substantially as set forth below.

FACTS

Spouse A and Spouse B (collectively, "Taxpayers") have filed their U.S. federal income tax returns as a married couple filing jointly for all tax years relevant to this letter ruling. In Year 1, Spouse A acquired an interest in FP, a Country limited partnership treated as a partnership for U.S. federal income tax purposes. Since before Year 1, FP has invested in FC, a Country corporation that is a passive foreign investment company ("PFIC") within the meaning of section 1297(a) of the Code.

The Schedules K-1 and the Annual Intermediary Statements pursuant to Treas. Reg. §1.1295-1(g) provided by FP to Spouse A disclose that FP has invested in a PFIC, and state that, as a foreign partnership, FP cannot elect to treat the PFIC as a QEF.

For Year 1 and Year 2, Taxpayers engaged the services of Tax Preparer 1 to prepare their U.S. federal income tax returns and advise them with respect to their investment in FC through FP. For Year 3 through Year 4, Taxpayers engaged the services of Tax Preparer 2 to prepare their U.S. federal income tax returns and advise them with respect to this same investment. Taxpayers provided to Tax Preparer 1 and Tax Preparer 2 the Schedules K-1 and the Annual Intermediary Statements that were issued by FP to Spouse A. Further, Tax Preparer 1 and Tax Preparer 2 were competent to render advice with respect to Taxpayers' investment in FC through FP. However, Tax Preparer 1 and Tax Preparer 2 neither identified FC as a PFIC nor advised Taxpayers of the consequences of making, or failing to make, a QEF election with respect to FC.

For Year 5, Taxpayers engaged the services of Tax Preparer 3 to prepare their U.S. federal income tax returns and advise them with respect to their investment in FC through FP. In the course of preparing Taxpayers' Year 5 return, Tax Preparer 3 determined, upon review of the Schedules K-1 and the Annual Intermediary Statements, that FC is a PFIC owned indirectly by Spouse A since Year 1, but that Taxpayers had not made a QEF election with respect to FC. Tax Preparer 3 advised Taxpayers to contact a tax attorney to correct this matter, and Taxpayers engaged Law Firm to assist in requesting relief to make a retroactive QEF election with respect to FC.

Taxpayers have submitted affidavits, under penalties of perjury, describing the events that led to the failure to make the QEF election by the election due date.

Taxpayers have paid an amount sufficient to eliminate any prejudice to the United States 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 election, if any.

In addition, Taxpayers represent that, as of the date of their request for this ruling, the PFIC status of FC had not been raised by the Internal Revenue Service on audit for any of the taxable years at issue.

RULING REQUESTED

Taxpayers request the consent of the Commissioner to make a QEF election retroactive to Year 1 with respect to their investment in FC under Treas. Reg. §1.1295-3(f).

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

A copy of this letter must be attached to any 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.

In accordance with the Power of Attorney on file with this office, copies of this letter ruling are being sent to your authorized representatives.

Sincerely,

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

cc: