

**Internal Revenue Service**

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:INTL:B02  
PLR-124831-21

Date:  
June 6, 2022

TY:

Legend

Shareholder =  
Foreign Company =  
Master Fund =  
Affiliate =  
Fund Administrator =  
Officer =  
Accounting Firm =  
State A =  
State B =  
Foreign Country =  
Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =  
Date 5 =  
Date 6 =  
Taxable Year 1 =  
Taxable Year 2 =  
Taxable Year 3 =

Dear :

This is in response to a letter received by our office dated December 8, 2021 submitted by Shareholder requesting consent to revoke a mark-to-market (MTM) election under section 1296 pursuant to Treasury Regulation § 1.1296-1(h)(3) with respect to its investment in Foreign Company, a passive foreign investment company within the meaning of section 1297(a) (PFIC).

The ruling contained in this letter is 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 a ruling, it is subject to verification on examination.

## FACTS

Shareholder is a limited partnership formed on Date 1 under the laws of State A. Shareholder invests in Master Fund and also holds other investments, including Foreign Company which it acquired in Taxable Year 1. Shareholder is affiliated with Affiliate, a State B-based investment management firm.

Between Date 2 and Date 3, Affiliate engaged Fund Administrator to provide administrative services with respect to Affiliate's investment funds. At the same time, Affiliate engaged Accounting Firm to provide tax consulting and compliance services, including return preparation. Accounting Firm used information it received from Fund Administrator to determine whether Affiliate's foreign company investments were PFICs. Accounting Firm also evaluated if any PFIC elections were available when a foreign company investment was a PFIC.

On Date 4, Fund Administrator provided Accounting Firm a file containing information regarding Affiliate's funds' foreign company investments for Taxable Year 1. The file reflected Shareholder's investment in Foreign Company but did not contain any of the information that Accounting Firm would normally use to determine whether a foreign company was a PFIC.

Subsequently, on Date 5, Fund Administrator provided Accounting Firm a file containing information regarding Affiliate's funds' foreign company investments for Taxable Year 2. The file for Taxable Year 2 identified Foreign Company as one of Shareholder's foreign company investments. Based on this information, Accounting Firm confirmed Foreign Company was a PFIC and evaluated if Shareholder could make either a qualified electing fund (QEF) election under section 1295 or a MTM election under section 1296. Accounting Firm recommended that Shareholder make a MTM election due to the absence of a PFIC Annual Information Statement ("PFIC Statement") described in Treas. Reg. § 1.1295-1(g)(1), which would have permitted Shareholder to make a QEF election for Foreign Company. Shareholder made a MTM election for Foreign Company on a Form 8621, *Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund*, included with its timely filed Form 1065, *U.S. Return of Partnership Income*, for Taxable Year 2.

On Date 6, Officer learned that PFIC Statements were available for Foreign Company for Taxable Year 2 and Taxable Year 3. If Officer and Accounting Firm had known that these PFIC Statements were available, Shareholder would have made a QEF election.

Shareholder filed its Form 1065 for Taxable Year 3 consistent with the MTM election having been revoked and with a QEF election for Foreign Company.

#### RULING REQUESTED

Shareholder requests the consent of the Commissioner to revoke its MTM election with respect to Foreign Company at the end of Taxable Year 2 based on a finding of substantial change in circumstances.

#### LAW

Section 1297(a) provides that the term PFIC means any foreign corporation if (i) 75 percent or more of the gross income of the corporation for the taxable year is passive income; or (ii) the average percentage of assets (as determined in accordance with section 1297(e)) held by the corporation during the taxable year which produce passive income or which are held for the production of passive income is at least 50 percent.

Section 1296(a) provides that, in the case of marketable stock in a PFIC that is owned (or treated as owned under section 1296(g)) by a United States person at the close of any taxable year, the United States person may elect to include in gross income the excess of the fair market value of the stock over its adjusted basis or, if the adjusted basis exceeds the fair market value of the stock, deduct the lesser of the excess or the unreversed inclusions.

Section 1296(k) provides that the MTM election will apply to the taxable year for which it is made and all subsequent taxable years unless the stock ceases to be marketable stock or the Secretary consents to the revocation of the election, and Treas. Reg. § 1.1296-1(h)(2)(i) provides that a MTM election will apply to the taxable year for which the election is made and remain in effect for each succeeding taxable year unless the election is revoked or terminated pursuant to Treas. Reg. § 1.1296-1(h)(3).

Treas. Reg. § 1.1296-1(h)(3)(i) provides that a United States person's section MTM election will be terminated if (i) the PFIC stock ceases to be marketable; (ii) the United States person elects, or is required, to mark to market the PFIC stock under another provision of chapter 1 of the Code; or (iii) the Commissioner, in the Commissioner's discretion, consents to the United States person's request to revoke its MTM election upon a finding of a substantial change in circumstances, which may include a foreign corporation ceasing to be a PFIC.

Treas. Reg. § 1.1296-1(h)(3)(ii) provides that where a MTM election is revoked with the consent of the Commissioner, section 1296 will cease to apply beginning with the first taxable year of the United States person after the revocation is granted, unless otherwise provided by the Commissioner.

## ANALYSIS

Revocation of MTM Election.

Section 1296(k) provides that a shareholder's MTM election for a PFIC remains in effect until the PFIC stock is no longer marketable stock or the Secretary consents to the revocation of the election. Treas. Reg. § 1.1296-1(h)(3)(i) allows the Commissioner, in the Commissioner's discretion, to consent to a shareholder's request to revoke an election upon a "substantial change in circumstances," which may include a foreign corporation ceasing to be a PFIC. There are no other examples or guidelines regarding what constitutes a substantial change in circumstances.

Shareholder made a MTM election for Foreign Company in Taxable Year 2 because it was unable to obtain the Foreign Company PFIC Statement necessary to make a QEF election for Foreign Company in such year. In Taxable Year 3, Shareholder learned that Foreign Company PFIC Statements were available. Because the Shareholder's Foreign Company MTM election would remain in effect until Foreign Company's stock is no longer marketable stock or the Secretary consents to revoke the MTM election due to a substantial change in circumstances, Shareholder requested consent to revoke its Foreign Company MTM election. Shareholder states that the newly discovered availability of Foreign Company PFIC Statements constitutes a substantial change in circumstances. We agree and consent to Shareholder's request to revoke its MTM election for Foreign Company.

Year of Revocation.

Treas. Reg. § 1.1296-1(h)(3)(ii) generally provides that, when a MTM election is revoked by request, section 1296 ceases to apply beginning with the first taxable year of the United States person after the revocation is granted unless otherwise provided by the Commissioner.

Shareholder requested that its Foreign Company MTM election be revoked effective for Taxable Year 3. Shareholder also filed its Form 1065 for Taxable Year 3 consistent with the MTM election having been revoked and instead a QEF election having been made. Under Treas. Reg. § 1.1296-1(h)(3)(ii), Shareholder's Foreign Company MTM election would cease to apply beginning with Shareholder's first taxable year after the revocation is granted unless otherwise provided by the Commissioner. Based on the facts described, section 1296 and Shareholder's Foreign Company MTM election will cease to apply beginning with Taxable Year 3.

**CONCLUSION**

Based on the information and representations submitted, Shareholder's request for consent to revoke its Foreign Company MTM election, effective for its Taxable Year 3, is granted.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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.

Sincerely,

/s/ Kristine A. Crabtree

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

cc: