Internal Revenue Service

Number: **202252007**
Release Date: 12/30/2022

Index Number: 1295.02-02

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-127484-17

Date:
October 04, 2022

TY:

Legend

Shareholder =

Fund1 =
Fund2 =
Fund3 =
Fund4 =
Fund5 =
Fund6 =
Fund7 =
Fund8 =
Fund9 =
Fund10 =
Fund11 =
Fund12 =
Fund13 =
Year1 =
Year2 =
Year3 =
Member1 =
Member2 =
Member3 =
Affiliate =
UmbrellaFund=
CountryX =
Tax Advisor =

Dear :

This is in response to a letter submitted by Shareholder's authorized representative that requested the consent of the Commissioner of the Internal Revenue Service (Commissioner) for Shareholder to make retroactive qualified electing fund (QEF) elections under section 1295(b) of the Internal Revenue Code and Treas. Reg. §1.1295-3(f) with respect to Shareholder's investments in Fund1, Fund2, Fund3, Fund4, Fund5, Fund6, Fund7, Fund8, Fund9, Fund10, Fund11, Fund12, and Fund13.

The rulings contained in this letter are based upon information and representations submitted on behalf of Shareholder by its 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

Shareholder is a domestic limited liability company classified as a partnership for U.S. federal income tax purposes. In Year1 and Year 2, Shareholder was wholly-owned (both directly and through a wholly-owned affiliated entity) by Member1, a domestic limited liability company classified as a partnership for U.S. federal income tax purposes. In Year 1 and Year 2, Member1 was wholly-owned (both directly and through a wholly-owned affiliated entity) by Affiliate, a domestic limited liability company classified as a partnership for U.S. federal income tax purposes. In Year1, Affiliate was owned by Member2, the majority partner, and Member3, the minority partner. Member2 is a domestic limited liability company classified as a partnership for U.S. federal income tax purposes whose members consist of domestic and foreign individuals and domestic trusts. Member3 is a U.S. corporation. At the end of Year2, Affiliate was wholly owned (both directly and through a wholly-owned affiliated entity) by Member2.

UmbrellaFund is an investment company (affiliated with Shareholder's investment group) that has variable share capital and segregated liability between various sub-funds. UmbrellaFund (together with its sub-funds) is incorporated in CountryX and treated as a corporation for U.S. tax purposes. The share capital of UmbrellaFund is divided into different series of shares, with each series of shares representing a separate investment portfolio of assets.

In Year1, Shareholder made investments into the following sub-funds of UmbrellaFund: Fund1, Fund2, Fund3, Fund4, Fund5, Fund9, and Fund11. In Year2, Shareholder made investments into the following sub-funds of UmbrellaFund: Fund6, Fund7, Fund8, Fund10, Fund12, and Fund13. The funds are collectively referred to as "Investment Funds." The Investment Funds were, at all relevant times, passive foreign investment companies (PFICs) with respect to Shareholder as defined under section 1297(a).

For Year1 through Year2, Shareholder engaged Tax Advisor to prepare its U.S. federal partnership returns and its tax filings related to the Investment Funds. In Year1 through

Year2, Tax Advisor, employing experienced tax professionals, advised Shareholder with respect to U.S. federal income tax matters relating to Shareholder's investments in the Investment Funds. Shareholder made available to Tax Advisor the books and records of the Investment Funds and any other information requested by Tax Advisor to provide tax advice and prepare Shareholder's tax returns. Tax Advisor held itself out as a qualified tax professional, and Shareholder reasonably believed that Tax Advisor was competent to render tax advice with respect to the ownership of shares of a foreign corporation.

Tax Advisor did not identify the Investment Funds as PFICs. In a subsequent year (Year3), the fund administrator for the Investment Funds notified Shareholder that the Investment Funds were PFICs. Shareholder immediately contacted Tax Advisor concerning this matter.

Shareholder has submitted an affidavit, signed under penalties of perjury, describing the events that led to the failure to make the QEF elections before the election due date, including the role of Tax Advisor. Shareholder represents that Tax Advisor did not identify the Investment Funds as PFICs or advise Shareholder of the possibility of making a QEF election with respect to the Investment Funds, and thus did not advise Shareholder of the consequences of making, or failing to make, a QEF election for the first year of investment in each of the Investment Funds. Shareholder has also submitted an affidavit from Tax Advisor, signed under penalties of perjury, corroborating the statements made by Shareholder. Affiliate, on behalf of Shareholder, has paid an amount sufficient to eliminate any prejudice to the United States government as a consequence of Shareholder's inability to file amended returns for closed years, in accordance with a signed closing agreement between Shareholder and the Commissioner.

Shareholder represents that, as of the date of its request for ruling, the PFIC status of any of the Investment Funds had not been raised by the Internal Revenue Service (IRS) on audit for any of the taxable years at issue.

RULING REQUESTED

Shareholder requests the consent of the Commissioner to make retroactive QEF elections with respect to Fund1, Fund2, Fund3, Fund4, Fund5, Fund9, and Fund11 for Year1, and Fund6, Fund7, Fund8, Fund10, Fund12, and Fund13 for Year2 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 IRS 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 retroactive QEF elections with respect to Fund1, Fund2, Fund3, Fund4, Fund5, Fund9, and Fund11 for Year1, and Fund6, Fund7, Fund8, Fund10, Fund12, and Fund13 for Year2, provided that Shareholder complies with the rules under Treas. Reg. §1.1295-3(g) regarding the time and manner for making the retroactive QEF elections. We have, consequently, approved a closing agreement with Shareholder with respect to those issues affecting its 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.

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

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 Crabtree

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

cc: