

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Date:
April 27, 2023

TY:

Legend

- Taxpayer =
- Trust A =
- FC =
- Country =
- Accounting Firm =
- Company =
- Year 1 =
- Year 2 =
- Year 3 =

Dear :

This is a response to a letter submitted by your authorized representative that requested the consent of the Commissioner of the Internal Revenue Service (“Commissioner”) for Taxpayer 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 Taxpayer’s investment in FC.

The ruling contained in this letter is based upon information and representations submitted on behalf of Taxpayer 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

Taxpayer, a domestic trust formed from the bifurcation of Trust A, has filed its federal income tax return for all tax years relevant to this letter ruling. In Year 1, Trust A invested in FC, an entity organized under the laws of Country. In Year 2, Taxpayer was created as a result of the division of Trust A into two separate trusts and Taxpayer was apportioned its proportionate share of Trust A's assets, including an interest in FC as a result of the bifurcation. FC was a passive foreign investment company (PFIC) within the meaning of section 1297(a) on the date that Taxpayer acquired an interest in FC and in each relevant subsequent year.

During the relevant years, Taxpayer and Trust A engaged the services of Accounting Firm to prepare its federal income tax returns and the services of Company to provide trust administration services. Company, in its capacity as trust administrator, provided Accounting Firm with all of the necessary tax return information for the preparation of Taxpayer's income tax returns. Accounting Firm was competent to render tax advice, including with respect to Taxpayer's investment in FC. Taxpayer was not advised on the availability of a QEF election and the consequences of making or failing to make a QEF election with respect to Trust A's investment in FC.

In Year 3, Accounting Firm discovered the missed election and informed Taxpayer. Taxpayer submitted affidavits, under penalties of perjury, describing the events that led to the failure to make the QEF election by the election due date.

Taxpayer has 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 Taxpayer and the Commissioner. Further, Taxpayer has agreed to file an amended return for each of the subsequent taxable years affected by the retroactive election, if any.

In addition, Taxpayer represents that, as of the date of this request for ruling, the PFIC status of FC has not be raised by the IRS on audit for any of the taxable years at issue.

RULING REQUESTED

Taxpayer requests the consent of the Commissioner to make a QEF election retroactive for Year 2 under Treas. Reg. § 1.1295-3(f) with respect to its investment in FC.

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 Taxpayer's ruling request, we conclude that Taxpayer has satisfied Treas. Reg. § 1.1295-3(f). Accordingly, consent is granted to Taxpayer to make a retroactive QEF election with respect to FC for Year 2 provided that Taxpayer complies 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 Taxpayer with respect to those issues affecting its tax liability for closed years on the basis set forth above. Pursuant to our practice with respect to such agreements, the agreement contains a stipulation to the effect that any change or modification of applicable statutes enacted subsequent to the date of this agreement and made applicable to the taxable period involved will render the agreement ineffective to the extent that it is dependent upon such statutes.

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,

/s/ Melinda E. Harvey

Melinda E. Harvey
Branch Chief, Branch 2
Associate Chief Counsel (International)

cc: