

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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, ID No.

Telephone Number:

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CC:INTL:B02

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Date:

August 08, 2023

TY:

Legend

Taxpayer	=
A	=
B	=
FC1	=
FC2	=
Country X	=
Tax Advisor 1	=
Accounting Firm	=
Tax Advisor 2	=
Year 1	=
Year 2	=
Year 3	=

Dear :

This is in response to a letter submitted on Taxpayer's behalf 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's investments in FC1 and FC2.

The ruling contained in this letter is based upon information and representations submitted by 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 ruling, it is subject to verification on examination.

FACTS

Taxpayer was a U.S. resident for U.S. federal income tax purposes for all tax years relevant to this letter ruling. In Year 1, Taxpayer invested in A percent of the shares of FC1, an entity organized under the laws of Country X and treated as a corporation for U.S. federal income tax purposes. FC1 was a passive foreign investment company ("PFIC") within the meaning of section 1297(a) on the date that Taxpayer acquired an interest in FC1 and each relevant subsequent year. At the beginning of Year 3, Taxpayer owned B percent of FC1.

In Year 2, FC1 formed and became the sole owner of FC2, an entity organized under the laws of Country X and treated as a corporation for U.S. federal income tax purposes. FC2 was a PFIC beginning in Year 2. At the beginning of Year 3, Taxpayer owned B percent of FC2.

During the relevant years, Taxpayer engaged the services of Tax Advisor 1 to prepare his federal income tax returns. Tax Advisor 1 was competent to render tax advice, including with respect to Taxpayer's investments in FC1 and FC2. However, Tax Advisor 1 failed to identify that FC1 and FC2 were PFICs beginning in Year 1 and Year 2, respectively. As a result, Tax Advisor 1 did not advise Taxpayer on the availability of a QEF election and the consequences of making or failing to make a QEF election with respect to his investments in FC1 and FC2. Taxpayer was not otherwise aware that FC1 and FC2 were PFICs. Consequently, for the relevant tax years, Taxpayer did not report FC1 and FC2 as PFICs, did not make QEF elections, and did not report tax items related to FC1 and FC2 under sections 1291 or 1293.

Taxpayer became aware of the PFIC status of FC1 and FC2 in Year 3 when FC1 engaged Accounting Firm to conduct a review in preparation for a potential initial public offering of its shares. Accounting Firm requested Tax Advisor 2 to assist in its review of FC1. During its review of FC1's financial statements, Tax Advisor 2 became aware of the U.S. tax resident status of Taxpayer. Tax Advisor 2 discussed the potential application of the PFIC rules and subsequently determined that both FC1 and FC2 were PFICs. Tax Advisor 2 then recommended that Taxpayer submit a ruling request to make a retroactive QEF election under Treas. Reg. § 1.1295-3(f).

Taxpayer submitted affidavits, under penalties of perjury, describing the events that led to the failure to make QEF elections by the election due date. Further, Taxpayer has agreed to file amended returns for each of the subsequent taxable years affected by the retroactive election, if any. Taxpayer represents that, as of the date of his request for this ruling, the PFIC status of FC1 and FC2 has not been raised by the Internal Revenue Service on audit for any of the taxable years at issue.

RULING REQUESTED

Taxpayer requests the consent of the Commissioner to make QEF elections retroactive to Year 1 and Year 2 under Treas. Reg. § 1.1295-3(f) with respect to his investments in FC1 and FC2.

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 FC1 for Year 1 and FC2 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.

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/ Kristine A. Crabtree

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

cc: