

## Internal Revenue Service

Number: **202350015**

Release Date: 12/15/2023

Index Number: 1295.02-00, 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-124515-21

Date:

September 21, 2023

TY:

### Legend

Taxpayer =

FC =

FC 2 =

FT =

DC =

Individual A =

Country =

Accounting Firm A =

Accounting Firm B =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

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 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 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 is an individual U.S. taxpayer that has filed his federal income tax returns for all tax years relevant to this letter ruling. In Year 1, Individual A, as trustee, formed FT, a trust organized under the laws of Country and in which Taxpayer was named as a beneficiary; FT is treated as a grantor trust for U.S federal income tax purposes. Since Year 1, FT has owned stock in FC, a corporation organized under the laws of Country; title to FT's shares in FC is held by FC 2, a corporation organized under the laws of Country and wholly owned by Individual A, as a nominee. Other than cash, FC's sole asset for all tax years relevant to this letter ruling was shares in DC, a domestic corporation.

In Year 2, Taxpayer engaged Accounting Firm A to provide tax advice on his investment in FC prior to filing his Year 1 tax return. Accounting Firm A was competent to render international tax advice with respect to Taxpayer's investment in FC. During the time Accounting Firm A provided tax advice to Taxpayer, Taxpayer informed Accounting Firm A that FC's primary asset was stock in DC. However, Accounting Firm A informed Taxpayer of neither the fact that FC might be a passive foreign investment company ("PFIC"), as defined in section 1297(a) of the Code, nor of the availability of a QEF election. Taxpayer also engaged Accounting Firm B to prepare his US tax returns for Years 1 through 4. Accounting Firm B was also competent to render international tax advice with respect to Taxpayer's investment in FC. Taxpayer informed Accounting Firm B that he was a beneficiary of FT and Accounting Firm B did not request any additional information from Taxpayer, including with respect to any investment Taxpayer might own, directly or indirectly, in any foreign corporation. Accordingly, Accounting Firm B did not identify FC as a PFIC, nor did it advise Taxpayer of the availability of a QEF election. During Year 5, Accounting Firm A determined that FC was a PFIC and advised Taxpayer of that for the first time.

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 agreed to file an amended return 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 ruling, the PFIC status of FC had not been 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 to Year 1 with respect to his 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 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 1, provided that Taxpayer complies with the rules under Treas. Reg. § 1.1295-3(g) regarding the time for, and manner of, 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter ruling 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: