

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Person To Contact:

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July 29, 2025

TY:

### Legend

Taxpayer	=
FC	=
Country X	=
Tax Professional 1	=
Tax Professional 2	=
Year 1	=
Year 2	=
Date 1	=

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 a U.S. person who, prior to Year 1, acquired shares in FC, a Country X entity treated as a corporation for U.S. federal income tax purposes. However, Taxpayer did not become a U.S. person, within the meaning of section 7701(a)(30), until Year 1.

For all tax years relevant to this ruling, Taxpayer engaged Tax Professional 1 to prepare his U.S. federal income tax returns, including with respect to Taxpayer's ownership in FC. Tax Professional 1 is a certified public accountant with over 30 years of experience in tax preparation which includes U.S. international tax compliance and advice for individuals, corporations, and partnerships. Taxpayer believed that Tax Professional 1 was competent to render tax advice with respect to Taxpayer's ownership of FC shares. Further, Taxpayer believed that Tax Professional 1 had access to all relevant facts and circumstances regarding FC and had no reason to believe otherwise.

With respect to Taxpayer's investment in FC, Tax Professional 1 prepared Forms 5471 for Year 1 through Year 2, treating FC as a "non-controlled" foreign corporation and treating Taxpayer as a category 2 and 3 filer. Tax Professional 1 did not test FC to determine whether it was a passive foreign investment company ("PFIC"), as defined under section 1297(a) of the Code. As a result, Tax Professional 1 failed to identify FC as a PFIC.

On Date 1, Taxpayer first became aware that FC was a PFIC when he engaged Tax Professional 2, who identified FC as a PFIC during the course of reviewing Taxpayer's investments for estate planning purposes. Prior to Date 1, Taxpayer had no knowledge of, or reason to have knowledge of, the existence of the PFIC regime. Further, Taxpayer had no reason to question the manner in which Tax Professional 1 had reported his investment in FC for U.S. federal income tax purposes.

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; the discovery of the failure; the engagement and responsibilities of Tax Professional 1; and the extent to which Taxpayer relied on Tax Professional 1. In addition, 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 under Treas. Reg. § 1.1295-3(f) with respect to his 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 1 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 his 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/ Kristine A. Crabtree

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

cc: