

Internal Revenue Service

Number: **201911001**
Release Date: 3/15/2019
Index Number: 1295.02-02

Department of the Treasury
Washington, DC 20224

[Third Party Communication:
Date of Communication: Month DD, YYYY]

Person To Contact:
_____, ID No.

Telephone Number:

Refer Reply To:
CC:INTL:B02
PLR-108239-18

Date:
December 11, 2018

TY:

Legend

Taxpayer	=
FC	=
Country X	=
Year 1	=
Year 2	=
Accounting Firm	=
Accountant Y	=

Dear _____:

This is in response to a letter submitted on behalf of Taxpayer by his 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 on behalf of Taxpayer by his authorized representative, and accompanied by a penalty of perjury statement executed by the appropriate parties. 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, at all relevant times, was a U.S. resident for U.S. federal income tax purposes. In Year 1, Taxpayer was one of the initial investors of FC, a non-publicly

traded Country X corporation. Taxpayer was unaware that FC was a passive foreign investment company ("PFIC") as defined in section 1297(a) of the Code.

During the relevant years, Taxpayer engaged the services of Accounting Firm for tax services relating to the preparation of Taxpayer's federal income tax returns. Accountant Y with Accounting Firm was competent to render international tax advice, including with respect to Taxpayer's investment in FC. However, Accountant Y was unaware that FC was a PFIC and, thus, did not advise Taxpayer of the consequences of making or failing to make a QEF election with respect to FC. In Year 2, Taxpayer became aware of the PFIC status of FC and took steps to take corrective action.

Taxpayer submitted affidavits, signed under penalties of perjury, describing the events that led to the failure to make the QEF election by the election due date. Taxpayer represents that, in all of the relevant years: (i) FC was not identified as PFIC; and (ii) Taxpayer did not receive any advice regarding the availability of a QEF election with respect to his investment in FC.

Taxpayer represents that, as of the date of the request for this 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 for 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 QEF election retroactive to Year 1 for FC, 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 private letter ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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 ruling must be attached to any federal 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,

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

cc: