

Internal Revenue Service

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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-101030-21

Date:

February 13, 2023

TY:

Legend

Taxpayer =

Foreign Company =

Country =

Year 1 =

Year 2 =

Year 3 =

Tax Advisor 1 =

Tax Advisor 2 =

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 Foreign Company.

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

In Year 1, Taxpayer obtained an ownership interest in Foreign Company, a company organized in Country. In the same year, Taxpayer engaged Tax Advisor 1 to advise on tax compliance matters, including the U.S. federal income tax consequences of Taxpayer's investment in Foreign Company, and to provide tax compliance services, including the preparation of Taxpayer's U.S. federal income tax returns. Tax Advisor 1 prepared Taxpayer's tax returns for Year 1 through Year 2 (many years later). However, Tax Advisor 1 failed to identify that Foreign Company was a passive foreign investment company ("PFIC") beginning in Year 1. Tax Advisor 1 neither advised Taxpayer about making a QEF election nor prepared a Form 8621 for Foreign Company. Taxpayer was first informed about Foreign Company's PFIC status in Year 3 when Tax Advisor 2 performed an analysis of Taxpayer's potential sale of Foreign Company stock.

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 amended returns for each of the subsequent taxable years affected by the retroactive election, if any. Taxpayer represents that, as of the date of the request for ruling, the PFIC status of Foreign Company 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 retroactive QEF election under Treas. Reg. § 1.1295-3(f) with respect to Foreign Company for Year 1.

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 the 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 for Foreign Company retroactive to 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.

We have, consequently, approved a closing agreement with Taxpayer with respect to those issues affecting Taxpayer's tax liability 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.

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

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

cc: