

Internal Revenue Service

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Department of the Treasury

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Third Party Communication: None

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PLR-123148-18

PLR-108459-19

PLR-108460-19

PLR-108461-19

PLR-108462-19

Date:

April 26, 2019

TY:

Legend

Shareholder =

Fund =

State =

Company =

Day =

Date 1 =

Date 2 =

Date 3 =

Year =

Prior Year =

Accounting Firm =

FC 1 =

FC 2 =

FC 3 =

FC 4 =

FC 5 =

Country A =

Country B =

Country C =

Country D =

Country E =

Dear _____ :

This is in response to a letter dated July 25, 2018, and subsequently furnished additional information, submitted by Shareholder's authorized representative, requesting extensions of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make mark-to-market elections under section 1296 of the Internal Revenue Code with respect to Shareholder's investments in FC1 through FC 5 (collectively, FCs).

The ruling contained in this letter is based upon information and representations submitted by the Shareholder and accompanied by penalty of perjury statements executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

FACTS

Shareholder is one of a series of investment portfolios comprising Fund. Shareholder was established pursuant to State law. Company is the managing member of Fund. Shareholder is taxed as a partnership for Federal income tax purposes. The taxable year of Shareholder ends on Day. Since its inception, Shareholder has engaged Accounting Firm to serve as its tax advisor. Shareholder owns stock in FCs, which qualified as passive foreign investment companies (PFICs), as defined in section 1297, with respect to Shareholder for all relevant years.

Shareholder had valid mark-to-market elections under section 1296 in place with respect to its stock in FCs for the Prior Year taxable year. During Year, Shareholder timely filed mark-to-market elections with respect to its stock in FCs after a technical termination of Shareholder occurred on Date 1. Shareholder, however, failed to timely file mark-to-market elections with respect to its stock in FCs after a second technical termination of Shareholder occurred on Date 3.

On Date 3, the majority investor in Shareholder transferred its interest in the capital and profits of the partnership. The transfer of more than 50 percent of the total interest in the capital and profits of Shareholder resulted in a technical termination of Shareholder under section 708(b)(1)(B). Because the transfer on Date 3 was not properly recorded, neither Accounting Firm nor Shareholder knew the majority investor transfer had occurred on Date 3 until after the due date (including extensions) to file the return of Shareholder for the short taxable year ending on Date 3 and failed to timely file mark-to-market elections with respect to the stock owned by Shareholder in: FC 1, organized in Country A; FC 2, organized in Country B; FC 3, organized in Country C; FC 4, organized in Country D; and FC 5, organized in Country E.

Shareholder submitted affidavits, under penalties of perjury, that describe the events that led to the failure to timely make the mark-to-market elections by the election due date, including affidavits from advisors at Accounting Firm.

Shareholder makes the following additional representations:

1. The Internal Revenue Service (IRS) has not raised the failure of Shareholder to timely file mark-to-market elections with respect to its stock in FCs.
2. Shareholder is not attempting to alter a return position taken for which a penalty has been or could be imposed under section 6662 at the time Shareholder requests relief.
3. This is not a situation in which Shareholder was informed of all material respects of the required election and related tax consequences but chose not to file the election.
4. No facts have changed since the due date of the election that would make the election advantageous.
5. Granting relief will not result in Shareholder having a lower tax liability in the aggregate for all years to which the election applies than Shareholder would have had if the election had been timely made.
6. The statute of limitations on assessment under section 6501 has not expired for Shareholder's Year tax year or the tax years of any of the taxpayers affected by the election.

RULING REQUESTED

Shareholder requests the consent of the Commissioner to grant an extension of time under Treas. Reg. § 301.9100-3 to elect section 1296 mark-to-market treatment with respect to its stock in FCs for the taxable year beginning on Date 2 and ending on Date 3.

LAW

Section 1296(a) provides that, in the case of marketable stock in a PFIC that is owned (or treated as owned under section 1296(g)) by a United States person at the close of any taxable year, the United States person may elect to include in gross income the excess of the fair market value of the stock over its adjusted basis.

Treas. Reg. § 1.1296-1(h) provides that an election under section 1296 for a taxable year must be made on or before the due date (including extensions) of the person's U.S. income tax return for that year.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has the discretion to grant a taxpayer a reasonable extension of time, under the rules set forth in Treas. Reg.

§ 301.9100-3, to make a regulatory election under all subtitles of the Code, except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) provides that an election includes an application for relief in respect of tax, and defines a regulatory election as an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-3(a) provides that requests for relief will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Treas. Reg. § 301.9100-3(b)(1) provides that, except as provided in Treas. Reg. § 301.9100-3(b)(3), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer:

- i. Requests relief before the failure to make the regulatory election is discovered by the IRS;
- ii. Failed to make the election because of intervening events beyond the taxpayer's control;
- iii. Failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election;
- iv. Reasonably relied on the written advice of the IRS; or
- v. Reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Treas. Reg. § 301.9100-3(b)(3) provides that a taxpayer is deemed not to have acted reasonably or in good faith if the taxpayer:

- i. Seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief (taking into account any qualified amended return filed within the meaning of Treas. Reg. § 1.6664-2(c)(3)) and the new position requires or permits a regulatory election for which relief is requested;
- ii. Was informed in all material respects of the required election and related tax consequences but chose not to file the election; or
- iii. Uses hindsight in requesting relief.

Treas. Reg. § 301.9100-3(c)(1)(i) provides, in part, that the interests of the Government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in

the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Treas. Reg. § 301.9100-3(c)(1)(ii) provides, in part, that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made is closed, or any taxable years that would have been affected by the election had it been timely made are closed, by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief.

CONCLUSION

Based on the information and representations submitted, we conclude that Shareholder satisfies the requirements for a reasonable extension of time to make mark-to-market elections under section 1296 of the Code with respect to its stock in FCs. Accordingly, Shareholder is granted an extension of time of 60 days from the date of this letter to make the elections under section 1296 with respect to its stock in FCs for the taxable year beginning on Date 2 and ending on Date 3.

The granting of an extension of time is not a determination that Shareholder is otherwise eligible to make the election under section 1296. Treas. Reg. § 301.9100-1(a).

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 who requested 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.

Sincerely,

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