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-140889-06

Date:
April 01, 2008

Legend

A =

B =

C =

FC1 =
FC2 =
FC3 =
FC4 =
FC5 =
FC6 =
FC7 =
FC8 =

Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =
Date 8 =
Date 9 =

Year 1 =
Year 2 =

Individual 1 =
Individual 2 =
Individual 3 =
Individual 4 =
Individual 5 =

Dear :

This is in response to your letter dated August 21, 2006, requesting an extension of time for A to file qualified electing fund ("QEF") elections with respect to B's investment in FC1 and C's investment in FC2, FC3, FC4, FC5, FC6, FC7, and FC8.

The ruling contained in this letter is based upon facts and representations submitted by the 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 a ruling, such material is subject to verification upon examination.

FACTS

A has represented the following facts:

A is a U.S. corporation and a calendar year taxpayer. A is the common parent of an affiliated group of corporations (the "Consolidated Group") that include B and C. A, as the common parent of the Consolidated Group, is responsible for preparing and filing its consolidated federal income tax return.

B owned stock in FC1 from Date 1 to Date 9. C owned stock in

- FC2 from Date 2 to Date 9,
- FC3 from Date 3 to Date 9,
- FC4 from Date 4 to Date 9,
- FC5 from Date 5 to Date 9,
- FC6 from Date 6 to Date 9,
- FC7 from Date 7 to Date 9, and
- FC8 from Date 8 to Date 9

(FC1 through FC8 to be collectively referred to as the "FCs").

During the period of B's ownership of stock of FC1, and C's ownership of stock of FC2, FC3, FC4, FC5, FC6, FC7, and FC8, the FCs were passive foreign investment companies ("PFICs") within the meaning of section 1297(a) of the Internal Revenue Code ("Code").

In Year 1, Individual 1, Senior Executive of Fixed Securities of the Consolidated Group, and Individual 2, Investment Operations Manager of the Consolidated Group, were each involved in the acquisition of the FCs. In early Year 2, Individual 1 and Individual 2 learned that the FCs were PFICs and that A, as the common parent of the Consolidated Group, could make a QEF election under section 1295 of the Code. Subsequently, Individual 2 notified the accounting and tax departments of the Consolidated Group in a memorandum that it was in the best interest of the Consolidated Group for A to make a QEF election with respect to each investment in the FCs. Neither Individual 1 nor Individual 2 was responsible for reviewing, or was authorized to sign, the Consolidated Group's consolidated federal income tax return. Individual 3, the Chief Financial Officer and Treasurer of each of the Consolidated Group businesses, reviews and signs the consolidated federal income tax return.

During the period from Date 1 to Date 9, Individual 4 and Individual 5 served as the Consolidated Group's corporate tax managers and they were responsible for the Consolidated Group's compliance with U.S. tax laws. Further, they were responsible for preparing the Consolidated Group's consolidated federal income tax return accurately and for informing Individual 3 and the Consolidated Group's management of the availability of elections and filing requirements. For reasons unknown to Individual 3 and the Consolidated Group's management, Individual 4 and Individual 5 failed to make the QEF elections for the years at issue and failed to inform Individual 3 and the Consolidated Group's management that the FCs were PFICs and that a QEF election could be made.

Individual 3 has submitted an affidavit, under penalties of perjury, describing the events that led to the failure to make the QEF election by the election due date, including the role of Individual 4 and Individual 5. Individual 4 and Individual 5 were competent to render international tax advice and to provide compliance services with respect to the ownership of shares of foreign corporations. Individual 3 represents that he relied on Individual 4 and Individual 5 with regard to the specifics of the tax compliance process, such as the preparing and filing of required elections for the Consolidated Group.

A represents that the PFIC status of the FCs has not been raised by the IRS on audit for any of the taxable years.

RULING REQUESTED

A, as the common parent of B and C, requests on their behalf the consent of the Commissioner of the Internal Revenue Service to make retroactive QEF elections for the FCs under Treas. Reg. §1.1295-3(f) with respect to B's Year 1 and C's Year 2.

LAW AND ANALYSIS

Section 1295(a) provides that any PFIC shall be treated as a QEF with respect to a taxpayer if (1) an election by the taxpayer under section 1295(b) applies to such company for the taxable year and (2) the company complies with such requirements as the Secretary may prescribe for purposes of determining the ordinary earnings and net capital gains of such company.

Under section 1295(b)(2), a QEF election may be made for any taxable year at any time on or before the due date (determined with regard to extensions) for filing the return for such taxable year. To the extent provided in regulations, such an election may be made after such due date if the taxpayer failed to make an election by the due date because the taxpayer reasonably believed the company was not a PFIC.

Under Treas. Reg. §1.1295-3(f), a taxpayer may request the consent of the Commissioner to make a retroactive QEF election for a taxable year. However, the Commissioner will grant relief under Treas. Reg. §1.1295-3(f) only if four conditions are satisfied. The first requirement is that the shareholder reasonably relied on a qualified tax professional, who failed to identify the foreign corporation as a PFIC or failed to advise the shareholder of the consequences of making, or failing to make, a section 1295 election.

Treas. Reg. §1.1295-3(f)(2) provides that a shareholder will not be considered to have reasonably relied on a qualified tax professional if the shareholder knew, or reasonably should have known, that the foreign corporation was a PFIC and knew of the availability of a section 1295 election.

In addition, a shareholder cannot claim reliance upon a tax professional if he knew or reasonably should have known that the tax professional relied upon was not competent to render tax advice with respect to the ownership of shares of a foreign corporation or did not have access to all relevant facts and circumstances.

According to the facts submitted and the representations made, Individual 3 relied on the advice of Individual 4 and Individual 5 who failed to identify the FCs as PFICs and failed to advise the shareholder of the consequences of making, or failing to make, QEF elections. Individual 3 did not know, and should not reasonably be expected to have known, that the FCs were PFICs, or of the availability of a QEF election. Additionally, Individual 3 reasonably believed that they were competent to render international tax advice with respect to the ownership of shares of foreign

corporations and had access to all relevant facts and circumstances. Thus, Individual 3 reasonably relied on a qualified tax professional within the meaning of Treas. Reg. § 1.1295-3(f)(1)(i) and (2).

The second requirement of Treas. Reg. §1.1295-3(f) is that granting consent will not prejudice the interests of the U.S. government. Under Treas. Reg. §1.1295-3(f)(3)(i), the interests of the U.S. government are prejudiced if granting relief would result in the shareholder having a lower tax liability, taking into account applicable interest charges, in the aggregate for all years affected by the retroactive election (other than by a de minimis amount) than the shareholder would have had if the shareholder had made the section 1295 election by the election due date. The time value of money is taken into account for purposes of this computation. If granting relief would prejudice the interests of the U.S. government, the Commissioner may, in his sole discretion, grant consent to make the election provided the shareholder enters into a closing agreement with the Commissioner that requires the shareholder to pay an amount sufficient to eliminate any prejudice to the U.S. government as a consequence of the shareholder's inability to file amended returns for closed taxable years. Treas. Reg. §1.1295-3(f)(3)(ii).

This requirement is met in this case because A, on behalf of B and C, has entered into a closing agreement with the Commissioner that requires A to pay an amount sufficient to eliminate any prejudice to the United States government as a consequence of its inability to file amended returns for the Consolidated Group's Year 1 and Year 2 because they are closed taxable years. In addition, A has agreed to file an amended return for each of its subsequent taxable years affected by the retroactive QEF election.

The third requirement of Treas. Reg. §1.1295-3(f) is that the request must be made before a representative of the Internal Revenue Service raises upon audit the PFIC status of the corporation for any taxable year of the shareholder. Treas. Reg. §1.1295-3(f)(1)(iii). In this case, the PFIC status of the FCs has not been raised upon audit.

The final requirement of Treas. Reg. §1.1295-3(f) is that the procedural requirements set forth in Treas. Reg. §1.1295-3(f)(4) must be met. These 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 which led to the failure to make a QEF election by the election due date;
2. the discovery of such failure;
3. the engagement and responsibilities of the qualified tax professional; and

4. the extent to which the shareholder relied on such professional, must be submitted. Treas. Reg. §1.1295-3(f)(4)(ii) and (iii).

According to the facts submitted and the representations made, A has filed a completed ruling request, including the correct user fee, and submitted complete and appropriate affidavits.

Based on the information submitted and representations made:

Consent is granted to A to make a retroactive election with respect to B's Year 1 and C's Year 2, under Treas. Reg. §1.1295-3(f), provided that A complies with the rules under Treas. Reg. §1.1295-3(g) regarding the time and manner for making the retroactive QEF election.

This private letter 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.

A copy of this ruling must be attached to any tax return to which it is relevant.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to A's first and second representatives.

Sincerely,

Ethan A. Atticks
Senior Technical Reviewer, CC:INTL:B02
Office of Associate Chief Counsel
(International)