

This is in response to a letter dated December 19, 2008, submitted on behalf of Taxpayer by its authorized representative, requesting the consent of the Commissioner to make a retroactive qualified electing fund ("QEF") election under § 1295(b) of the Internal Revenue Code ("Code") and Treas. Reg. § 1.1295-3(f) with respect to Taxpayer's investment in Corporation A.

The rulings contained in this letter are based upon information 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 rulings, it is subject to verification on examination.

FACTS

On Date 1, Taxpayer became a US resident. At this time, Taxpayer owned 10.74% of the shares of Corporation A and indirectly owned 5.37% of the shares of Corporation B. On Date 2, Taxpayer became the direct owner of Corporation C. All three corporations became passive foreign investment companies ("PFICs") within the meaning of § 1297 of the Code during the Year 1 tax year.

On Date 3, Taxpayer engaged Tax Professional 1 to prepare its Year 1 tax return. Tax Professional 1 gave Taxpayer a questionnaire to complete, but Taxpayer lacked sufficient knowledge to complete the form. Taxpayer then turned to Individual 1, a longtime family friend, for help with the form. Individual 1 informed Tax Professional 1 that Taxpayer did not have any foreign income for Year 1, but Individual 1 failed to state that Taxpayer owned any shares in a foreign corporation and Tax Professional 1 failed to ask such a question. Consequently, Taxpayer neither knew it owned shares in a PFIC nor did it know to make an election under § 1295 of the Code.

On or near Month 1, Taxpayer's family in Country 1 engaged the services of Tax Professional 2 to provide legal advice regarding potential tax consequences of Taxpayer's US residency. Tax Professional 2 alerted Taxpayer's family that some of Taxpayer's investments might be PFICs. On the recommendation of Tax Professional 2, Taxpayer engaged the services of Tax Professional 3 on or near Month 1. Tax Professional 3 assisted Taxpayer in completion and filing of Forms 8261 for Corporation A, Corporation B, and Corporation C for the Year 1 tax year; Taxpayer filed these forms with Form 1040X on Date 5.

Since Taxpayer did not file an extension of time to file its Year 1 tax return and did not file Forms 8261 by April 15 of the following year, the elections made on Forms 8261 are not timely absent consent of the Commissioner.

RULING REQUESTED

Taxpayer requests the consent of the Commissioner of the Internal Revenue Service to make a retroactive QEF election under Treas. Reg. § 1.1295-3(f) with respect to Corporation A.

LAW

Code § 1293(a) provides that every U.S person who owns stock of a QEF at any time during the taxable year of such fund shall include in gross income 1) as ordinary income, such shareholder's pro rata share of the ordinary earnings of such fund for such taxable year, and 2) as long-term capital gain, such shareholder's pro rata share of the net capital gain of such fund for such taxable year.

Code § 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 Code 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 Code § 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)(1), a taxpayer 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 § 1.1295-3(f)(2);
2. Granting consent will not prejudice the interests of the United States government, as provided in § 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 corporation for any taxable year of the shareholder; and
4. The shareholder satisfies the procedural requirements of § 1.1295-3(f)(4).

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 Corporation A 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.

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.

Sincerely,

Ethan Atticks
Senior Technical Reviewer, Branch 2
(International)