Internal Revenue Service

Number: **201002029**
Release Date: 1/15/2010

Index Number: 1295.02-02

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:B2
PLR-135108-08

Date:
October 05, 2009

TY:

Legend

Taxpayer =

Subsidiary =

FC =

Country B =
City C =
State D =

Date 1 =
Date 2 =

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

m =
n =

Accounting Firm P =
Accounting Firm Q =
Accounting Firm R =
Accounting Firm S =

Partner X =

Dear :

This is in response to a letter dated August 11, 2008 submitted by your authorized representative that requested the consent of the Commissioner of the Internal Revenue Service (“Commissioner”) for Taxpayer to make a retroactive qualified electing fund ("QEF") election under section 1295(b) of the Internal Revenue Code ("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 its authorized representatives, and accompanied by a penalties of perjury statement executed by an appropriate party. 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 is a domestic corporation, which has a fiscal year that ends on Date 1. Taxpayer is a holding company for a number of subsidiaries and wholly-owns Subsidiary, a domestic corporation that is a venture capital company. Taxpayer files consolidated U.S. federal income tax returns that include the income from all of its wholly-owned domestic subsidiaries, including Subsidiary. On Date 2, during Taxpayer’s Year 1 taxable year, Subsidiary acquired m percent of FC, a corporation organized under the laws of Country B. The remaining n percent of FC is owned by unrelated shareholders. No changes have occurred with respect to Subsidiary’s investment in FC since FC’s formation on Date 2. At all times since its formation, FC was a passive foreign investment company ("PFIC") within the meaning of Code section 1297.

Historically, Taxpayer employed internal tax personnel with general tax knowledge, and relied on external tax advisors for advice on more technical issues. Specifically, for any issues relating to foreign investments and operations, Taxpayer relied on public accounting firms.

During the period Year 2-Year 3, Taxpayer outsourced its U.S. federal tax return preparation and tax advisory function to Public Accounting Firm P. All U.S. federal tax

advice was provided under the supervision of Partner X, who was employed by Public Accounting Firm P during the years at issue and was a partner at Public Accounting Firm P from Year 4-Year 5. At the time that Taxpayer engaged Public Accounting Firm P, the firm had a thriving tax practice and had qualified tax professionals who were knowledgeable in the U.S. taxation of U.S. companies' foreign operations. In connection with its financial statement audit and tax return preparation process, Taxpayer provided access to all information necessary so Public Accounting Firm P could advise Taxpayer on tax issues. Public Accounting Firm P did not advise Taxpayer of any PFIC issues with regard to its foreign investments, and, in particular, with regard to its investment in FC in Year 6.

Following the dissolution of Public Accounting Firm P in Year 5, Taxpayer engaged Public Accounting Firm Q to prepare its U.S. federal tax returns. Public Accounting Firm Q has had qualified tax professionals knowledgeable in the U.S. taxation of U.S. companies' foreign operations throughout the period that it has represented Taxpayer. In addition, Public Accounting Firm Q has had access to all relevant information necessary to prepare Taxpayer's consolidated U.S. federal tax return throughout its period of representation of Taxpayer. During the course of Public Accounting Firm Q's engagement with Taxpayer, Public Accounting Firm Q has not identified any potential PFIC issues with regard to Taxpayer's foreign investments, and, in particular, with regard to Taxpayer's investment in FC.

Taxpayer also has engaged Public Accounting Firm R in an ongoing capacity on various tax advisory matters. As a result of the merger of the City C, State D tax practice of Public Accounting Firm P into Public Accounting Firm R, Partner X became a partner with Public Accounting Firm R. Therefore, Taxpayer's relationship with Public Accounting Firm R effectively began when the merger occurred in Year 5.

During Year 7, Taxpayer began exploring options for disposing of FC. In connection therewith, Taxpayer contacted Accounting Firm R in Year 8 and requested that it analyze the potential U.S. federal tax implications of several different divesture options. During its preliminary analysis, Accounting Firm R notified Taxpayer that one of the issues that would need to be analyzed was whether FC was a PFIC. In order to obtain coordinated advice under the laws of both the United States and Country B with respect to the potential divesture of FC, Taxpayer engaged Accounting Firm S in Year 9. As part of its analysis, Accounting Firm S determined that FC had been a PFIC since its formation.

Taxpayer has submitted an affidavit, under penalties of perjury, describing the events that led to the failure to make the QEF elections by the election due dates, including the roles of Accounting Firm P and Accounting Firm Q. Taxpayer represents that it provided information regarding Subsidiary's investment in FC to Accounting Firm P and Accounting Firm Q. Taxpayer represents that, in the year in which it was formed and subsequent years: (1) FC was not identified as a PFIC; and (2) Taxpayer did not receive any advice regarding the availability of a QEF election with respect to

Subsidiary's investment in FC. In addition, Taxpayer submitted an affidavit from Partner X, corroborating these representations made by Taxpayer. Further, Taxpayer submitted an affidavit from Accounting Firm S corroborating the representations made by Taxpayer with respect to the discovery of FC's PFIC status.

Taxpayer represents that, as of the date of this request for ruling, the PFIC status of FC has 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 with respect to FC for Year 1 under Treas. Reg. §1.1295-3(f).

LAW

Code Section 1295(a) provides that a PFIC will 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 PFIC for the taxable year and (2) the PFIC 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 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 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 corporation 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 such failure;
3. the engagement and responsibilities of the qualified tax professional; and
4. the extent to which the shareholder relied on such 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 retroactive QEF election with respect to FC 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 specifically set forth above, no opinion is expressed or implied concerning the U.S. federal tax consequences of the facts described above under any other provision of the Code.

This private letter ruling is directed only to the taxpayer who requested it. Code section 6110(k)(3) provides that it may not be used or cited as precedent.

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.

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,

Ethan A. Atticks
Senior Technical Reviewer, Branch 2
(International)

cc: