**Internal Revenue Service**

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.
Telephone Number:

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TY:

Legend

Taxpayer =

Parent =

Subsidiary =

FC =

State B =

Date 1 =

Year 1 =
Year 2 =
Year 3 =

Accounting Firm P =
Accounting Firm Q =

Dear :

This is in response to a letter dated August 20, 2009, submitted by Taxpayer's 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 separate series of Parent, a statutory trust organized under the laws of State B. Taxpayer qualifies as a regulated investment company under Section 851 of the Internal Revenue Code of 1986, as amended. Taxpayer is an open-end management investment company registered under the Investment Company Act of 1940, as amended. Taxpayer is treated as a separate taxpayer under Section 851(g) of the Code. Taxpayer reports its income under the accrual method of accounting and its fiscal year ends on Date 1.

In Year 1, Taxpayer purchased stock of FC. Taxpayer had previously acquired Subsidiary, which in Year 2 merged into FC in a tax-free transaction for U.S. federal income tax purposes. Taxpayer's stock in Subsidiary was exchanged for shares of FC, with such stock's holding period including the holding period of the stock for which it was exchanged.

For taxable years ended in Year 1, Year 2, and Year 3 for Taxpayer, Taxpayer contracted with Accounting Firm P to perform administrative services for Taxpayer, including tax return preparation, identification of PFICs, and recommendations for appropriate tax elections, including qualifying electing fund ("QEF") elections. Accounting Firm P employed tax accountants who were competent to render tax advice with respect to stock ownership of a foreign corporation and, in particular, were experienced in preparing tax returns, in identifying PFICs, and in recommending tax elections relevant to Taxpayer. Accounting Firm P had complete access to the records of Taxpayer, including lists of stocks purchased by Taxpayer, as well as access to financial information relevant to FC and access to all other relevant facts and circumstances regarding Taxpayer's ownership of FC stock.

FC was not a PFIC for Taxpayer's taxable year ended in Year 1. However, FC was a PFIC for Taxpayer's taxable year ended in Year 2.

Accounting Firm P failed to identify FC as a PFIC with respect to Taxpayer's taxable year ended in Year 2, and failed to advise Taxpayer of the possibility of making, or the consequences of failing to make, a QEF election with respect to FC for that tax year. As a result, the tax return prepared by Accounting Firm P on behalf of Taxpayer with respect to Taxpayer's taxable year ended in Year 2 failed to include a QEF election for FC, and Taxpayer failed to make a timely election pursuant to Section 1295 of the Code to treat FC as a QEF for Taxpayer's taxable year ended in Year 2.

In Year 3, Accounting Firm Q performed a review of the stocks owned by Taxpayer in order to identify any PFICs in which Taxpayer had invested. In the course of its review, Accounting Firm Q identified FC as a PFIC owned by Taxpayer for Taxpayer's taxable year ended in Year 2.

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 the ownership and financial data of FC to Accounting Firm P and Accounting Firm Q. Taxpayer represents that, in the relevant 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 FC. In addition, Taxpayer submitted an affidavit from Accounting Firm P 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 under Treas. Reg. §1.1295-3(f), retroactive to Year 2, and effective for all subsequent years.

LAW

Section 1295(a) of the Code provides that a PFIC will be treated as a QEF with respect to a taxpayer if (1) an election by the taxpayer under 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 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 2, 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. 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,

Jeffery G. Mitchell
Special Counsel
(International)