

Internal Revenue Service

Number: **201422002**
Release Date: 5/30/2014
Index Number: 1295.02-02

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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, ID No.

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Refer Reply To:
CC:INTL:B02
PLR-117354-13
Date:
January 23, 2014

TY:

Legend

Taxpayer =

Holdco =

Corporation =

Country X =

Country Y =

Firm =

Date 1 =

Date 2 =

Year 3 =

Year 4 =

Year 5 =

Dear

This is in response to a letter dated April 9, 2013, 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 and Treas. Reg. §1.1295-3(f) with respect to Taxpayer's investment in Corporation.

Taxpayer is a U.S. limited partnership. Taxpayer owned 1% of Holdco, a limited company organized under the laws of Country X that was treated as a partnership for U.S. tax purposes, until the liquidation of Holdco on Date 2. Since Date 1, Holdco owned shares of Corporation, an entity incorporated under the laws of Country Y. Upon liquidation, Holdco distributed its shares of Corporation pro rata to its partners, including Taxpayer.

Since Year 3, Taxpayer has engaged Firm for its U.S. tax return preparation service. Firm advised Taxpayer on all U.S. federal income tax matters including matters with respect to passive foreign investment companies ("PFICs"). The offering materials Taxpayer received with respect to the initial investment in Corporation in Year 3 provided no indication that Corporation was a PFIC. In Year 5, Taxpayer was considering a sale of its interest in Corporation and directed Firm to analyze the federal tax consequences of a sale. Firm requested additional information from Corporation to facilitate this analysis. Based on the additional information, Firm concluded that Corporation may have been a PFIC under Section 1297 for some of its taxable years beginning with Year 4.

Taxpayer has submitted an affidavit, under penalties of perjury, that describes the events that led to its failure to make a QEF election with respect to Corporation by the election due date, including the role of Firm. Taxpayer also submitted an affidavit from Firm, which describes Firm's engagement and responsibilities. This affidavit also explains Firm's failure to identify Corporation's status as a PFIC until Year 5.

Taxpayer represents that, as of the date of this request for ruling, the PFIC status of Corporation 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 of the Internal Revenue Service to make a retroactive QEF election with respect to Corporation for Year 4 and all subsequent years under Treas. Reg. §1.1295-3(f).

LAW AND ANALYSIS

Section 1295(a) of the Code 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 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 §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 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.

Treas. Reg. §§1.1295-3(f)(4)(ii) and (iii).

CONCLUSION

Based on the information submitted and representations made, we conclude that Taxpayer has satisfied Treas. Reg. §1.1295-3(f). Consent is granted to Taxpayer to make a retroactive QEF election with respect to Corporation for Year 4 and all subsequent years under Treas. Reg. §1.1295-3(f), provided that they comply with the rules under Treas. Reg. §1.1295-3(g) regarding the time and manner for making the retroactive QEF election.

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

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,

Jeffery G. Mitchell
Branch Chief, Branch 2
(International)

cc: