

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **201422021**  
Release Date: 5/30/2014  
Index Number: 1295.02-02

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:INTL:B02  
PLR-140225-13  
Date:  
February 21, 2014

TY:

Legend

Taxpayer =  
TIN =

FC =

Country =

Accountant =

Year 1 =  
Year 2 =  
Year 3 =  
Year 4 =

Date 1 =  
Date 2 =

Dear :

This is in response to a letter dated August 21, 2013, 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 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 representative, 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 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 United States citizen. In Year 1, Taxpayer purchased shares of FC, an entity organized under the laws of Country that is treated as a corporation for Federal tax purposes. Taxpayer acquired additional shares of FC in Year 2 and Year 3. The shares were purchased through various investment advisors, none of which provided any tax advice to the Taxpayer. Taxpayer's shares in FC were sold in Year 4.

Accountant has been a certified public accountant preparing U.S. individual tax returns for more than a decade. Taxpayer fully relied on Accountant to prepare and file Taxpayer's U.S. income tax returns and provide tax advice on Taxpayer's U.S. tax matters for the years in which Taxpayer owned shares in FC. Accountant was aware of Taxpayer's ownership of FC; however, Accountant was unaware that FC may qualify as a PFIC. Accountant did not advise Taxpayer that FC was a PFIC within the meaning of section 1297(a). Accountant failed to advise Taxpayer of the possibility of making a QEF election under section 1295(b) with respect to FC and of the consequences of making, or failing to make, such an election.

As part of a transaction, FC issued an Information Circular, dated Date 1, to all shareholders. The Information Circular stated that FC believes it has been a PFIC for each year of its existence. The Information Circular also included information regarding the consequences of owning and disposing of PFIC shares and the ability to make a retroactive QEF election. Taxpayer received the Information Circular, but Taxpayer did not understand the implications of FC's PFIC status or the option to make a QEF election until it was explained to the Taxpayer by a fellow investor on Date 2. Once Taxpayer became aware of FC's PFIC status, Taxpayer took immediate action to engage a law firm to assist with requesting relief to make a retroactive QEF election.

Taxpayer has submitted affidavits, under penalties of perjury, that describe the events that led to its failure to make a QEF election with respect to FC by the election due date, including the role of Accountant. Taxpayer also submitted an affidavit from Accountant, which describes Accountant's engagement and responsibilities, and the advice concerning the tax treatment of FC that Accountant provided to Taxpayer.

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.

## LAW

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

Under section 1295(b)(2), a QEF election may be made for a taxable year at any time on or before the due date (determined with regard to extensions) for filing the return for the taxable year. To the extent provided in regulations, the election may be made after the due date if the shareholder failed to make an election by the due date because the shareholder 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 company 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 the failure;
3. the engagement and responsibilities of the qualified tax professional; and
4. the extent to which the shareholder relied on the 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 the Taxpayer has satisfied Treas. Reg. §1.1295-3(f). Accordingly, consent is granted to the 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 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 private letter ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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 ruling is being sent to your authorized representative.

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.

Sincerely,

Jeffery G. Mitchell  
Chief, Branch 2  
(International)

cc: