

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

Individual A and Individual B (“Taxpayers”) are married and have filed a joint federal income tax return since Year 1 and for all subsequent taxable years. Individual B was a U.S. resident and became a U.S. citizen in Year 3. Individual B inherited one-third of the shares of FC, a Country X corporation, upon the death of Individual B’s father, in Year 2. FC’s principal assets consisted of a family vacation property in Country X and a bank account that was used in connection with the payment of expenses for that property. Accordingly, FC is a passive foreign investment company (“PFIC”) as defined under section 1297 of the Code.

At all times since Individual B became a shareholder in FC, Taxpayers engaged the services of Accountant C, a certified public accountant, to prepare their income tax returns, including forms, statements, election, and other tax compliance related items. Taxpayers made available to Accountant C all information necessary to prepare their income tax return. Consequently, Taxpayer relied on the advice of Accountant C with regards to complying with U.S. tax laws.

Accountant C is competent render tax advice with respect to the ownership of shares of a foreign corporation. While Accountant C identified FC as a PFIC in Year 3, Accountant C failed to advise Taxpayers of the tax consequences of such investment and 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.

Taxpayers have submitted affidavits, under penalties of perjury, that describe the events that led to Taxpayers’ failure to make a QEF election with respect to FC by the election due date, including the role of Accountant C.

Taxpayers represent 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

Taxpayers request the consent of the Commissioner to make a retroactive QEF election with respect to FC for Year 2 under Treas. Reg. §1.1295-3(f).

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 Taxpayers' ruling request, we conclude that the Taxpayers have satisfied Treas. Reg. §1.1295-3(f). Accordingly, consent is granted to the Taxpayers to make a retroactive QEF election with respect to FC for Year 2, provided that Taxpayers comply 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter 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
Branch Chief, Branch 2
(Chief Counsel)