

Internal Revenue Service

Department of the Treasury
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Date:
October 03, 2016

Shareholder =
FC 1 =
FC 2 =
FC 3=
Country 1 =
Country 2 =
Year 1 =
Tax Advisor =

Dear :

This is in response to a letter dated December 30, 2015, submitted by your authorized representative that requested the consent of the Commissioner of the Internal Revenue Service ("Commissioner") for Shareholder to make a retroactive qualified electing fund ("QEF") election under section 1295(b) of the Internal Revenue Code (the "Code") and Treas. Reg. §1.1295-3(f) with respect to Shareholder's investment in FC1, FC2, and FC3 (individually each an "FC," collectively the "FCs").

The ruling contained in this letter is based upon information and representations submitted by Shareholder 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 the request for rulings, it is subject to verification on examination.

FACTS

Shareholder is a U.S. corporation. FC 1 is an entity organized under the laws of Country 1 that is treated as a corporation for U.S. federal income tax purposes. FC 2 is an entity organized under the laws of Country 2 that is treated as a corporation for U.S.

federal income tax purposes. FC 3 is an entity organized under the laws of Country 2 that is treated as a corporation for U.S. federal income tax purposes. All of the FCs qualified as a passive foreign investment company ("PFIC") as defined in section 1297 with respect to Shareholder for all relevant years. The FCs have been PFICs with respect to Shareholder since Year 1.

Shareholder relied on Tax Advisor to prepare its income tax returns for all relevant years, including advising Shareholder on U.S. federal income tax matters regarding Shareholder's investments, including Shareholder's investments in foreign corporations.

Shareholder submitted affidavits, under penalties of perjury, describing the events that led to its failure to make a QEF election with respect to FC by the election due date, the discovery of such failure, the engagement and responsibilities of the qualified tax professionals, and the extent to which Shareholder relied on such professionals including the role of Tax Advisor.

Shareholder represents that, as of the date of its request for ruling, the PFIC status of the FCs had not been raised by the IRS on audit for any of the taxable years at issue.

RULING REQUESTED

Shareholder requests the consent of the Commissioner to make a retroactive QEF election with respect to each FC under Treas. Reg. §1.1295-3(f), retroactive to Year 1.

LAW

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 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 Shareholder's ruling request, we conclude that Shareholder has satisfied Treas. Reg. § 1.1295-3(f). Accordingly, consent is granted to Shareholder to make a retroactive QEF election with respect to each FC for Year 1, provided that Shareholder complies with the rules under Treas. Reg. § 1.1295-3(g) regarding the time and manner for making the retroactive QEF elections.

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.

A copy of this letter must be attached to any 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,

Kristine Crabtree
Senior Technical Reviewer, Branch 2
(International)