

Internal Revenue Service

Number: **201809006**
Release Date: 3/2/2018
Index Number: 1295.02-02

Department of the Treasury
Washington, DC 20224

[Third Party Communication:
Date of Communication: Month DD, YYYY]

Person To Contact:
, ID No.

Telephone Number:

- Refer Reply To:
CC:INTL:B02
PLR-139037-16
PLR-139038-16
PLR-139039-16
PLR-139040-16
PLR-139041-16
PLR-139042-16
PLR-139043-16
PLR-139044-16
PLR-139045-16
PLR-139046-16
PLR-139047-16
PLR-139048-16
PLR-139049-16
PLR-139059-16
PLR-139051-16
PLR-139052-16
PLR-139053-16
PLR-139054-16
PLR-139055-16
PLR-139056-16
PLR-139057-16
PLR-139058-16
PLR-139059-16
PLR-139060-16
PLR-139061-16
PLR-139062-16
PLR-139063-16
PLR-139064-16
PLR-139065-16
PLR-139066-16
PLR-139067-16
PLR-139068-16

Date:
December 04, 2017

TY:

Legend

Taxpayer	=
Company A	=
Company A1	=
Company A2	=
Company A3	=
FC1	=
FC2	=
FC3	=
FC4	=
FC5	=
FC6	=
FC7	=
FC8	=
FC9	=
FC10	=
FC11	=
FC12	=
FC13	=
FC14	=
FC15	=
FC16	=
FC17	=
FC18	=
FC19	=
FC20	=
FC21	=
FC22	=
FC23	=
FC24	=
FC25	=
FC26	=
FC27	=
FC28	=
FC29	=
FC30	=
FC31	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
Year 6	=
Year 7	=
Year 8	=

Country X =
Accounting Firm B =

Law Firm C =

Dear :

This is in response to a letter submitted on Taxpayer's behalf by an authorized representative requesting the consent of the Commissioner of the Internal Revenue Service ("Commissioner") 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 Taxpayer's investments in Company A and each of its directly or indirectly wholly-owned subsidiaries (collectively referred to as "FCs") listed as follows:

- FC1 for Year 1;
- FC2 and FC3 for Year 2;
- FC4 and FC5 for Year 3;
- FC6, FC7, and FC8 for Year 4;
- FC9, FC10, FC11, FC12, FC13, FC14, FC15, FC16, FC17, FC18, FC19, FC20, and FC21 for Year 5;
- FC22 for Year 6;
- FC23, FC24, and FC25 for Year 7; and
- FC26, FC27, FC28, FC29, FC30, and FC31 for Year 8.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer 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

Taxpayer, at all relevant times, is a U.S. citizen for U.S. federal income tax purposes. In Year 1, Taxpayer formed Company A (which was incorporated in Country X and was formerly known as Company A1, Company A2, and Company A3. From Year 1 to Year 8, Company A acquired direct or indirect ownership of shares of the common stock of FCs. Company A and each FC were passive foreign investment companies ("PFICs") as defined in section 1297(a) of the Code at all relevant times.

During the relevant years, Taxpayer engaged the services of Accounting Firm B to advise him on his personal U.S. federal income tax matters and Law Firm C to advise him on general estate, gift and income tax matters. Taxpayer made available to Accounting Firm B any information requested that was relevant to the provision of tax

advice and the preparation of Taxpayer's income tax returns. The tax advisors with Accounting Firm B and Law Firm D were all competent to render international tax advice. However, they were not aware that Company A and FCs were PFICs and, thus, did not advise Taxpayer of the consequences of making or failing to make QEF elections with respect to Company A and FCs. In Year 8, Accounting Firm B became aware of Taxpayer's ownership interest in Company A and FCs and their PFIC status. Accounting Firm B took corrective action in Year 8.

Taxpayer 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. Taxpayer represents that, in all of the relevant years: (i) FCs were not identified as PFICs; and (ii) Taxpayer did not receive any advice regarding the availability of QEF elections with respect to his interest in Company A and each of its directly or indirectly wholly-owned FCs.

Taxpayer has paid an amount sufficient to eliminate any prejudice to the U.S. government as a consequence of his inability to file amended returns, in accordance with a signed closing agreement between Taxpayer and the Commissioner. Taxpayer has agreed to file amended returns for each of the subsequent taxable years affected by the retroactive elections, if any.

Taxpayer represents that, as of the date of this request for ruling, the PFIC status of Company A and FCs 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 QEF elections under Treas. Reg. §1.1295-3(f) for

- FC1 for Year 1;
- FC2 and FC3 for Year 2;
- FC4 and FC5 for Year 3;
- FC6, FC7, and FC8 for Year 4;
- FC9, FC10, FC11, FC12, FC13, FC14, FC15, FC16, FC17, FC18, FC19, FC20, and FC21 for Year 5;
- FC22 for Year 6;
- FC23, FC24, and FC25 for Year 7; and
- FC26, FC27, FC28, FC29, FC30, and FC31 for Year 8.

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 the 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 Taxpayer has satisfied Treas. Reg. §1.1295-3(f). Accordingly, consent is granted to Taxpayer to make QEF elections retroactive to:

- Year 1 for FC1;
- Year 2 for FC2 and FC3;
- Year 3 FC4 and FC5;
- Year 4 for FC6, FC7, and FC8;
- Year 5 for FC9, FC10, FC11, FC12, FC13, FC14, FC15, FC16, FC17, FC18, FC19, FC20, and FC21;

- Year 6 for FC22;
- Year 7 for FC23, FC24, and FC25; and
- Year 8 for FC26, FC27, FC28, FC29, FC30, and FC31,

provided that Taxpayer complies with the rules under Treas. Reg. §1.1295-3(g) regarding the time and manner for making the retroactive QEF elections. We have, consequently, approved a closing agreement with Taxpayer with respect to those issues affecting his tax liability on the basis set forth above. Pursuant to our practice with respect to such agreements, the agreement contains a stipulation to the effect that any change or modification of applicable statutes enacted subsequent to the date of this agreement and made applicable to the taxable period involved will render the agreement ineffective to the extent that it is dependent upon such statutes.

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.

Sincerely,

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

cc: