

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.  
Telephone Number:

Refer Reply To:  
CC:INTL:B02  
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TY:

LEGEND

Shareholder =  
EIN:

FC =

Country =

Year 1 =  
Year 2 =  
Year 3 =

Accounting Firm =  
Law Firm =

Dear :

This is in response to a letter dated June 29, 2017, submitted by Shareholder’s 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 and Treas. Reg. §1.1295-3(f) with respect to Shareholder’s investment in FC.

The ruling contained in this letter is based upon information and representations submitted on behalf of Shareholder 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

Shareholder is a United States Citizen. In Year 1, Shareholder indirectly purchased shares of FC, an entity treated as a corporation for federal tax purposes and organized under the laws of Country. Shareholder continues to indirectly own shares of FC.

Accounting Firm is a competent U.S. accounting firm and has prepared annual tax returns for Shareholder since Year 1. Accounting Firm is competent to render tax advice with respect to the ownership of shares of a foreign corporation. Shareholder provided Accounting Firm with all the relevant information related to Shareholder's investment in foreign corporations. However, Accounting Firm did not identify FC as a passive foreign investment company ("PFIC") within the meaning of section 1297(a), and thus did not advise Shareholder of the consequences of making, or failing to make, a QEF election.

In Year 3, Shareholder was advised by Law Firm that Shareholder had a filing requirement with respect to FC and that FC should be treated as a PFIC. Law Firm further advised Shareholder of the consequences of making, or failing to make, a QEF election. Shareholder engaged Law Firm to assist in requesting relief to make a retroactive QEF election with respect to FC.

Shareholder has submitted affidavits, under penalties of perjury, from Shareholder and Accounting Firm that describe the events that led to the failure to make a QEF election with respect to FC by the election due date and the discovery thereof.

Shareholder has submitted PFIC annual information statements of FC for Year 1 through Year 2, which state that FC had no ordinary earnings or net capital gains for those years. Thus, the interests of the United States government will not be prejudiced by granting consent to make the requested retroactive election.

Shareholder represents that, as of the date of its request for ruling, the PFIC status of FC had not been raised by the Internal Revenue Service 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 FC for Year 1 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 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 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 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 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  
Office of the Associate Chief Counsel  
(International)