Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

[Third Party Communication:
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:INTL:B02
PLR-127313-16

Date:
February 21, 2020

TYs:

Legend

Taxpayer =

Company A =

State X =
FC1 =
FC2 =

FC3 =

FC4 =

FC5 =

FC6 =

Date 1 =
Date 2 =
Date 3 =
Year 1 =
Year 2 =

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 FC1, FC2, FC3, FC4, FC5, and FC6 (collectively referred to as "FCs").

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data submitted may be required as part of the audit process.

FACTS

Company A is organized under the laws of State X and is the common parent of an affiliated group, of which Taxpayer is a member. Taxpayer is organized under the laws of State X and provides retirement services. Taxpayer invested in the following vehicles:

- FC1 and FC2 on Date 1, Year 1,
- FC3 and FC4 on Date 2, Year 2, and
- FC5 and FC6 on Date 3, Year 2.

Each of the FCs was a passive foreign investment company ("PFIC") as defined in section 1297(a) during the relevant tax years.

Taxpayer staffs an internal tax department that is responsible for preparing and filing the consolidated U.S. federal income tax returns of Company A's consolidated group. Taxpayer's tax department consists of tax professionals who are competent to render tax advice on U.S. federal income tax matters, including the tax consequences of a U.S. person owing stock in a foreign corporation. Company A relies on Taxpayer's tax department to prepare and file returns, including the making of any necessary or desired elections. However, for the taxable years at issue, Taxpayer's tax department failed to identify FCs as PFICs and failed to advise Company A or Taxpayer of the consequences of making or failing to make QEF elections with respect to FCs.

Taxpayer submitted affidavits, 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 its interests in FCs.

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 the request for ruling, the PFIC status of FCs had not been raised by the IRS on audit for any of the taxable years at issue.

RULING REQUESTED

Taxpayer requests the consent of the Commissioner to make QEF elections under Treas. Reg. §1.1295-3(f) for FC1 and FC2 for Year 1; and FC3, FC4, FC5, and FC6 for Year 2.

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 for FC1 and FC2 retroactive to Year 1; and FC3, FC4, FC5, and FC6 retroactive to Year 2, 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.

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,

Kristine A. Crabtree
Senior Technical Reviewer, Branch 2
(International)

cc: