

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

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Date:
October 14, 2021

TY:

Legend

Taxpayer	=
FC	=
Country	=
Tax Preparer	=
Date X	=
Date Y	=
Year 1	=
Year 2	=
Year 3	=

Dear :

This is in response to a letter dated June 15, 2021, submitted by your authorized representative that requested the consent of the Commissioner of the Internal Revenue Service (“Commissioner”) for Taxpayer to make a retroactive qualified electing fund (“QEF”) election under section 1295(b) of the Internal Revenue Code (“Code”) and Treas. Reg. §1.1295-3(f) with respect to Taxpayer’s investment in FC.

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

In Year 1, Taxpayer invested in FC, a company organized under the laws of Country and treated as a corporation for U.S. income tax purposes. FC was at all relevant times a passive foreign investment company (“PFIC”) as defined in section 1297(a) of the Code. In Year 2, Taxpayer sold his interest in FC.

During the relevant years, Taxpayer engaged the services of Tax Preparer to prepare his Forms 1040 and advise on Taxpayer’s international investments—including Taxpayer’s investment in FC. Tax Preparer was competent to render international tax advice with respect to Taxpayer’s investment in FC.

Taxpayer disclosed his investment to Tax Preparer and Tax Preparer failed to advise Taxpayer on FC’s PFIC status, the significance of FC being a PFIC, the availability of a QEF election, and the consequences of making or failing to make a QEF election with respect to FC. Taxpayer was unaware that FC was a PFIC from Date X, when Taxpayer acquired an interest in FC, through and in each relevant subsequent year until Date Y, when Taxpayer sold his interest in FC. In Year 3, Tax Preparer discovered the missed election when FC notified Taxpayer of FC’s PFIC status.

Taxpayer submitted affidavits, under penalties of perjury, describing the events that led to the failure to make the QEF election by the election due date. In addition, Taxpayer represents that, as of the date of this request for ruling, the PFIC status of FC 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 a QEF election retroactive to Year 1 with respect to its investment in FC 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).

Under Treas. Reg. §1.1295-3(g)(3)(iii), a taxpayer may request the consent of the Commissioner to make a retroactive QEF election after the taxpayer sells the PFIC. A shareholder does not need to own shares of the foreign corporation at the time the shareholder makes a retroactive election with respect to the foreign corporation. Treas. Reg. §1.1295-3(g)(3)(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 a retroactive QEF election with respect to FC for Year 1, provided that Taxpayer 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 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.

In accordance with the Power of Attorney on file with this office, copies of this letter ruling are being sent to your authorized representatives.

Sincerely,

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

cc: