

Accounting Firm 3 =

Dear :

This is in response to a letter received by our office on December 6, 2023, submitted on behalf of Taxpayer by its authorized representative, requesting an extension of time under Treas. Reg. §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make a mark to market election under section 1296 of the Internal Revenue Code (“Code”) with respect to its investment in a passive foreign investment company (“PFIC”).

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

Taxpayer is one of a series of investment portfolios comprising Trust. Taxpayer was established on Date A pursuant to State law. Taxpayer is treated as a corporation for federal income tax purposes. Taxpayer is registered as a diversified, open-end management investment company under the Investment Company Act of 1940, as amended, and has elected to be taxed as a regulated investment company (“RIC”) under part I of subchapter M of the Code. Taxpayer has direct investments in PFICs, including FC.

For many years Advisor has engaged Financial Services Firm for tax compliance services for Taxpayer. On Date B, Financial Services Firm engaged Accounting Firm 1 to assist with the tax preparation work formerly performed by Financial Services Firm, including the preparation of Taxpayer’s Form 1120-RIC for the taxable year ended on Date C, and all relevant forms, statements, and elections.

As part of Taxpayer’s Year H Form 1120-RIC, Taxpayer intended to make elections under section 1296 with respect to its PFICs. In Month D Year I, Accounting Firm 1 was provided a list from Accounting Firm 2 of Taxpayer’s PFICs as of the beginning of the Year H taxable year (“Initial PFIC List”). Based on Initial PFIC List, FC was not a PFIC with respect to Taxpayer. As such, no election was initially contemplated under section 1296 with respect to FC stock Taxpayer owned. In Month F Year I, Senior Manager at Accounting Firm 1 reviewed a complete initial draft of Taxpayer’s Year H return.

In Month G Year I, Accounting Firm 1 received an updated list of Taxpayer’s PFICs from Accounting Firm 2 (“Final PFIC List”). On Final PFIC List, FC was now identified as a PFIC. Taxpayer communicated its intention to make an election under

section 1296 with respect to FC to Financial Services Firm and Accounting Firm 1. Based on this new information, Senior Manager directed the tax preparation team at Accounting Firm 1 to update Taxpayer's Year H tax return draft accordingly. However, due to an inadvertent oversight, Form 8621 with respect to FC was not prepared and not included with Taxpayer's timely filed Year H Form 1120-RIC.

In Month E Year J, as part of Taxpayer's Year I audit, Accounting Firm 3 reviewed Taxpayer's return and identified that Form 8621 with respect to FC had not been included as part of Taxpayer's Year H Form 1120-RIC. Upon a review of its records, Accounting Firm 1 identified this inadvertent oversight and advised Taxpayer of the ability to request an extension of time to make the mark to market election for FC.

Taxpayer has submitted affidavits from Taxpayer, Advisor, Financial Services Firm, and Accounting Firm 1, signed under penalties of perjury in support of its ruling request. Taxpayer has made the following additional representations with respect to the mark to market election:

1. To the best of Taxpayer's knowledge, Taxpayer's failure to timely file the election mentioned above had not been discovered by the Internal Revenue Service (the "IRS") at the time of the request.
2. Taxpayer reasonably relied on qualified tax professionals who failed to prepare the election under section 1296.
3. Taxpayer is not attempting to alter a return position taken for which a penalty has been or could be imposed under section 6662 at the time Taxpayer requests relief.
4. This is not a situation in which Taxpayer was informed of all material respects of the required election and related tax consequences but chose not to file the election.
5. Taxpayer is not using hindsight in requesting relief. No facts had changed since the due date of the election that would make the election advantageous at the time of the request.
6. Granting relief will not result in Taxpayer having a lower tax liability in the aggregate for all years to which the election applies than Taxpayer would have had if the election had been timely made.
7. The statute of limitations on assessment under section 6501 has not expired for Taxpayer's taxable year ended Date C.

LAW

Section 1296(a) provides that, in the case of marketable stock in a PFIC that is owned by a United States person at the close of any taxable year, the person may elect to include in gross income the excess of the fair market value of the stock over its adjusted basis.

Treas. Reg. § 1.1296-1(h) provides that an election under section 1296 for a taxable year must be made on or before the due date (including extensions) of the United States person's income tax return for that year.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has the discretion to grant a taxpayer a reasonable extension of time, under the rules set forth in Treas. Reg. § 301.9100-3, to make a regulatory election under all subtitles of the Code, except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) provides that an election includes an application for relief in respect of tax, and defines a regulatory election as an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-3(a) provides that requests for relief will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Treas. Reg. § 301.9100-3(b)(1) provides that, except as provided in Treas. Reg. § 301.9100-3(b)(3), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer

- (i) requests relief before the failure to make the regulatory election is discovered by the IRS;
- (ii) failed to make the election because of intervening events beyond the taxpayer's control;
- (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election;
- (iv) reasonably relied on the written advice of the IRS; or
- (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Treas. Reg. § 301.9100-3(b)(3) provides that a taxpayer is deemed not to have acted reasonably or in good faith if the taxpayer

- (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief (taking into account any qualified amended return filed within the meaning of Treas. Reg. § 1.6664-2(c)(3)) and the new position requires or permits a regulatory election for which relief is requested;
- (ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or
- (iii) uses hindsight in requesting relief.

Treas. Reg. § 301.9100-3(c)(1)(i) provides, in part, that the interests of the Government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Treas. Reg. § 301.9100-3(c)(1)(ii) provides, in part, that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made is closed, or any taxable years that would have been affected by the election had it been timely made are closed, by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief.

CONCLUSION

Based on the information and representations submitted, we conclude that Taxpayer satisfies the requirements for a reasonable extension of time to make the mark to market election under section 1296 of the Code with respect to its stock in FC. Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this letter to make the election under section 1296 with respect to its stock in FC for Taxpayer's taxable year ended on Date C.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to make the election under section 1296. Treas. Reg. § 301.9100-1(a).

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code 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 is being sent to Taxpayer's representative.

Sincerely,

/s/ Kristine A. Crabtree

Kristine A. Crabtree
Senior Technical Reviewer, Branch 2
Office of the Associate Chief Counsel
(International)

cc: