Internal Revenue Service

Number: **202432003**
Release Date: 8/9/2024

Index Number: 1295.00-00, 1295.02-02

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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Refer Reply To:
CC:INTL:B02
PLR-105838-22

Date:
May 16, 2024

TY:

Legend

Taxpayer =
FC =
FC 2 =
FP =
Country =
X% =
Accounting Firm =
Year 1 =
Year 2 =
Year 3 =
Year 4 =
Year 5 =
Year 6 =

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 investment in FC.

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. 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 is a domestic limited liability company treated as a partnership for U.S. federal income tax purposes. In Year 1, Taxpayer acquired an X% interest in FP, a limited partnership organized under the laws of Country; FP is treated as a partnership for U.S. federal income tax purposes. Since Year 1, FP has owned a direct or indirect interest in FC 2, a limited company organized under the laws of Country; FC 2 is treated as a corporation for U.S. federal income tax purposes.

In Year 2, FP formed, and became sole owner of, FC, a limited company organized under the laws of Country; FC is treated as a corporation for U.S. federal income tax purposes. Immediately after forming FC, FP contributed its interest in FC 2 to FC. As a result, Taxpayer has owned an X% interest in FC since this transaction by reason of its X% interest in FP. Since Taxpayer's indirect X% interest in FC constitutes a minority interest, Taxpayer does not manage FC. Rather, FC is managed by FP, its sole owner. FP's management did not notify Taxpayer at any time between Year 2 and Year 6 about its formation of FC and its contribution of FC 2 to FC. Accordingly, since Taxpayer was unaware of FC's existence, Taxpayer was unaware that FC was a passive foreign investment company ("PFIC") as defined in section 1297(a) of the Code.

Taxpayer engaged Accounting Firm to prepare its U.S. partnership tax return for its Year 2 through Year 4 taxable years. Accounting Firm was competent to render international tax advice with respect to Taxpayer's investment in FC and was provided with all information that Taxpayer had regarding its investment in FP. However, since Taxpayer was unaware of the existence of FC, Taxpayer did not inform Accounting Firm of the same. Accordingly, Accounting Firm could not identify FC as a PFIC and Taxpayer did not report FC as a PFIC on its U.S. partnership tax returns for any of its Year 2 through Year 4 taxable years, did not make a timely QEF election with respect to FC, and did not report its share of any of FC's ordinary earnings or net capital gain under section 1293. In Year 6, Taxpayer again engaged Accounting Firm to prepare its U.S. partnership tax return for its Year 5 taxable year, at which point Taxpayer and Accounting Firm received an updated organizational chart for FP, learned of the existence of FC, and determined that FC was a PFIC since its formation in Year 2.

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 their 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

Taxpayers request the consent of the Commissioner to make a QEF election retroactive to Year 2 with respect to their 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).

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 2, provided that Taxpayer complies with the rules under Treas. Reg. § 1.1295-3(g) regarding the time for, and manner of, 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.

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 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.

Sincerely,

/s/ Melinda E. Harvey

Melinda E. Harvey
Branch Chief, Branch 2
(International)

cc: