Internal Revenue Service

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Washington, DC 20224

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February 01, 2010

TY:

Legend

Taxpayer =

Subsidiary =

FC =

Company E =

Country B =
State C =

Date 1 =

Year 1 =
Year 2 =
Year 3 =
Year 4 =
Year 5 =
Year 6 =

Accounting Firm P =
Accounting Firm Q =

CFO X =

Dear :

This is in response to a letter dated August 17, 2009 submitted by Taxpayer's 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 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 its authorized representatives, and accompanied by a penalties 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

Taxpayer is a U.S. subchapter C corporation, organized under the laws of State C. FC, a Country B company, was formed in Year 1 by Taxpayer and an unrelated foreign company, Company E. From Year 1 to Year 4, Taxpayer owned more than 50 percent of the voting stock of FC and Company E owned the remaining percentage. During this period, FC was considered a controlled foreign corporation ("CFC") for Taxpayer within the meaning of section 957. In Year 4, Company E acquired additional shares of FC's voting stock and, as a result, FC ceased to be considered a CFC because not more than 50 percent of its stock was owned within the meaning of section 958 by U.S. shareholders within the meaning of section 951(b).

FC owns intellectual property which is still in the developmental stage. FC does not, and has not since its formation, held any other assets other than cash and the intellectual property. FC has not had any revenues since its formation and it does not have employees of its own. The intellectual property is being developed through FC's wholly-owned U.S. subsidiary, Subsidiary. Subsidiary is strictly a research and development contractor for FC. Once the intellectual property is fully developed and ready to be exploited, FC plans to license its intellectual property to both a related party and to unrelated third parties.

FC ceased to be a CFC within the meaning of section 957 and met the asset test for PFIC classification under section 1297(a)(2) in Year 4 and thus qualified as a PFIC.

For the Year 4 taxable year, Taxpayer engaged Accounting Firm P, a certified public accounting firm that employs experienced tax professionals, to prepare its corporate income tax returns and advise Taxpayer with regard to all U.S. federal income tax matters regarding its operations and investments, including its ownership in FC. Taxpayer relied on Accounting Firm P to provide advice with respect to filing and reporting requirements in general, as well as elections and/or statements that would be necessary to elect a specific tax treatment.

Accounting Firm P did not identify FC as a PFIC, and, therefore, did not inform Taxpayer of FC's PFIC status and the option of making a timely qualified QEF election under section 1295. Had Accounting Firm P identified the potential PFIC status of FC, Taxpayer would have relied on Accounting Firm P to advise it as to the implications of FC's status as a PFIC and recommended course of action related thereto. A QEF election for the Year 4 taxable year for Taxpayer would have been due on Date 1 of Year 5. Taxpayer did not make such an election for the Year 4 taxable year.

In Year 5, the legal advisor of a potential new investor for FC raised the possibility that, based on due diligence regarding FC, FC could be a PFIC. Based on the potential PFIC issue raised by the potential new investor's legal adviser, Taxpayer retained Accounting Firm Q to evaluate the PFIC status of FC in Year 6. Upon review of the financial data of FC and Subsidiary, Accounting Firm Q determined that FC could be a PFIC.

Taxpayer has submitted an affidavit, under penalties of perjury, describing the events that led to the failure to make the QEF elections by the election due dates, including the roles of Accounting Firm P and Accounting Firm Q. Taxpayer represents that it provided information regarding the ownership and financial data of FC to Accounting Firm P and Accounting Firm Q. Taxpayer represents that, in the relevant years: (1) FC was not identified as a PFIC; and (2) Taxpayer did not receive any advice regarding the availability of a QEF election with respect to FC. In addition, Taxpayer submitted an affidavit from CFO X, corroborating these representations made by Taxpayer. Further, Taxpayer submitted an affidavit from Accounting Firm P corroborating the representations made by Taxpayer with respect to the discovery of FC's PFIC status.

Taxpayer represents that, as of the date of this request for ruling, the PFIC status of FC has 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 retroactive QEF election with respect to FC under Treas. Reg. §1.1295-3(f), retroactive to Year 4, and effective for all subsequent years.

LAW

Section 1295(a) provides that a PFIC will be treated as a QEF with respect to a taxpayer if (1) an election by the taxpayer under section 1295(b) applies to such PFIC for the taxable year and (2) the PFIC complies with such requirements as the Secretary may prescribe for purposes of determining the ordinary earnings and net capital gains of such company.

Under section 1295(b)(2), a QEF election may be made for any taxable year at any time on or before the due date (determined with regard to extensions) for filing the return for such taxable year. To the extent provided in regulations, such an election may be made after such due date if the taxpayer failed to make an election by the due date because the taxpayer 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 corporation 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 such failure;
3. the engagement and responsibilities of the qualified tax professional; and
4. the extent to which the shareholder relied on such 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 4, 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 specifically set forth above, no opinion is expressed or implied concerning the U.S. federal tax consequences of the facts described above under any other provision of the Code.

This private letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter ruling must be attached to any federal 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, a copy of this letter is being sent to your authorized representative.

Sincerely,

Jeffery G. Mitchell
Special Counsel
(International)