Internal Revenue Service

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Person To Contact:
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CC:INTL:B02
PLR-125168-10

Date: March 15, 2011

Legend

Taxpayer	=
FC	=
State X	=
Company A	=
Country Y	=
Subsidiary	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Accounting Firm	=

Dear :

This is in response to the letter received by our office on June 17, 2010, submitted by your authorized representative, requesting the consent of the Commissioner of the Internal Revenue Service 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 rulings contained in this letter are 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

In Year 1, Taxpayer, a State X corporation, acquired 100% of Company A. At that time, Company A owned 100% of Subsidiary, a Country Y corporation. Since the acquisition, Subsidiary has been a controlled foreign corporation as defined by section 957 of the Code. Early in Year 1 and prior to the acquisition, Subsidiary acquired interest in FC.

At the time of the acquisition, the tax departments of Taxpayer and Company A were focused on tax matters related to integrating both companies. Taxpayer was not aware of the existence of FC because it was neither recorded in its legal entity register nor general ledger system. At that time, Taxpayer's Controller and Senior Vice President of Tax were responsible for reviewing and signing Taxpayer's U.S. federal consolidated income tax return. Taxpayer's Controller and Senior Vice President of Tax relied on Taxpayer's Tax Manager to prepare a complete and accurate federal income tax return and to inform them of U.S. federal income tax filing requirements, including the availability of elections. Taxpayer's Controller and Senior Vice President of Tax were never made aware of FC, that FC was a passive foreign investment company ("PFIC") as defined in section 1297, or the availability of making a QEF election with respect to FC. Taxpayer's Controller, Senior Vice President of Tax, and Tax Manager were competent tax professionals to render advice on U.S. tax issues, including elections.

Company A's tax department was aware of FC's existence but was not responsible for preparing County Y's tax filings for FC and was not aware that its ownership in FC had any relevance for U.S. tax purposes. Thus, Company A's tax department did not inform Taxpayer's tax department of the existence of FC.

In Year 2, Taxpayer engaged the services of Accounting Firm to prepare, review, and sign (as the return preparer) Taxpayer's U.S. consolidated federal income tax return and provided tax consulting services to Taxpayer. Pursuant to its performance of these professional services, Accounting Firm did not discover FC's status as a PFIC.

In Year 3, Taxpayer's tax department became aware of FC but concluded that FC was not a PFIC based on the business activities conducted by FC.

In Year 4, in connection with a distribution, FC's financials were made available to Taxpayer's tax department for the first time. This led to a further review of FC's financial statements from prior years and Taxpayer's tax department determined that, under section 1297(a)(2), FC has been a PFIC since year 1.

Taxpayer has submitted affidavits, signed under penalties of perjury, describing the events that led to the failure to make the QEF election by the election due date,

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 of the Internal Revenue Service to make a retroactive election under Treas. Reg. §1.1295-3(f) with respect to FC for Year 1.

LAW

Section 1295(a) provides that a PFIC shall be treated as a QEF with respect to a taxpayer if (1) an election by the taxpayer under section 1295(b) applies to such company for the taxable year and (2) the company 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 taxpayer 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).

CONCLUSION

Based on the information submitted and representations made with Taxpayer's ruling request, we conclude Taxpayer has satisfied Treas. Reg. §1.1295-3(f). Accordingly, consent is granted to Taxpayers to make a retroactive QEF election with respect to FC for Year 1 under Treas. Reg. §1.1295-3(f), provided that Taxpayer comply with the rules under Treas. Reg. §1.1295-3(g) regarding the time and manner for making the retroactive QEF election.

This private letter 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.

A copy of this ruling must be attached to any tax return to which it is relevant.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Taxpayer's authorized representatives.

Sincerely,

Jeffrey G. Mitchell
Branch Chief
(International)