Internal Revenue Service

Number: **201210017**
Release Date: 3/9/2012

Index Number: 1295.02-02

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:INTL:B02
PLR-132526-11
Date:
December 09, 2011

TY:

Legend

Taxpayer =
SSN =
Spouse =
SSN =

FC =

Country =

Year 1 =
Year 2 =
Year 3 =
Year 4 =

Accounting Firm 1 =
Accounting Firm 2 =
Accountant =

Dear :

This is in response to a letter dated July 28, 2011 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, the material is subject to verification on examination. The information submitted in the request is substantially as set forth below.

FACTS

Taxpayer is a married individual who files a joint federal income tax return with Spouse. During Year 1, Taxpayer acquired shares of FC, a corporation organized under the laws of Country that is publicly traded on a U.S. stock exchange. Taxpayer acquired additional shares of FC during Year 2. As of the date of this request for ruling, Taxpayer has held the FC shares in two U.S. brokerage accounts since the dates of acquisition.

Taxpayer relied on Accounting Firm 1 to prepare his tax return for many years, including Year 1. Accounting Firm 1 was a reputable accounting firm, and the certified public accountant who prepared Taxpayer's return for Year 1, as well as other partners at Accounting Firm 1, had substantial experience in individual tax matters, including international tax matters affecting individual taxpayers. Taxpayer provided to Accounting Firm 1 all information and documentation necessary to prepare his tax return for Year 1. However, Accounting Firm 1 failed to identify FC as a passive foreign investment company within the meaning of Code section 1297(a) (PFIC), and, consequently, failed to advise Taxpayer of the possibility of making, or the consequences of failing to make, a QEF election with respect to FC.

In addition to directly owning shares in FC, Taxpayer indirectly owned an interest in FC through a hedge fund. During Year 3, the hedge fund discovered that FC was a PFIC. As a result, Taxpayer became aware of FC's PFIC status, and promptly notified his tax advisor, Accounting Firm 2, of FC's PFIC status.

Taxpayer has submitted an affidavit, under penalties of perjury, that describes the events that led to his failure to make a QEF election with respect to FC by the election due date, including the role of Accounting Firm 1. Taxpayer also submitted an affidavit from Accountant, who was a partner in Accounting Firm 1 and became a partner in Accounting Firm 2 after Accounting Firm 1 merged into Accounting Firm 2 during Year 4. Accountant's affidavit describes Accounting Firm 1's engagement and responsibilities, and the advice concerning the tax treatment of FC that it provided to Taxpayer.

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 for Year 1 under Treas. Reg. §1.1295-3(f).

LAW

Code 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 Code 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 Code 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 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 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 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 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 requesting it. Code section 6110(k)(3) 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 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.

Sincerely,

Jeffery G. Mitchell
Branch Chief, Branch 2
(International)

cc: