Internal Revenue Service

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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-138560-12

Date:
January 07, 2013

TY:

Legend

Shareholder =
SSN =

FC =

Investment Advisor =

Accounting Firm =

Country 1 =
Country 2 =

Year 1 =
Year 2 =
Year 3 =

Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =

Dear :

This is in response to a letter dated September 1, 2012 submitted by your authorized representative that requested the consent of the Commissioner of the Internal Revenue Service ("Commissioner") for Shareholder 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 Shareholder's investment in FC.

The ruling contained in this letter is based upon information and representations submitted on behalf of Shareholder by its 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, such material is subject to verification on examination. The information submitted in the request is substantially as set forth below.

FACTS

Shareholder is an individual and at all relevant times a United States resident for U.S. federal income tax purposes. During Year 1, Shareholder acquired shares of FC, an entity organized under the laws of Country 1 that was treated as a corporation for U.S. federal income tax purposes. At all relevant times, FC was a passive foreign investment company ("PFIC") as defined in section 1297(a) of the Code.

Also at all relevant times, Shareholder's investments, including its investment in FC, were handled by Investment Advisor. Investment Advisor received all statements and tax documents from FC on behalf of Shareholder. During Year 2, Shareholder retained Accounting Firm to prepare its Year 1 tax return. On Date 3, Shareholder filed its Year 1 tax return. As of Date 3, Shareholder did not know or have reason to know that FC was a PFIC or that he, as owner of the shares of FC, was eligible to make an election to treat FC as a QEF. Neither Shareholder nor its advisors had, at the time, actually received any communications from FC identifying FC as a PFIC or informing Shareholder of his eligibility to make a QEF election.

On Date 5, Accounting Firm received an email from Investment Advisor informing it that Investment Advisor had reason to believe that FC was a PFIC. Investment Advisor also suggested that Shareholder consider making a QEF election with respect to FC.

Investment Advisor subsequently provided Accounting Firm with a copy of a "Notice of U.S. Tax Information of U.S. Persons" (the "Notice") issued by FC on Date 6. The Notice had been mailed to Investment Advisor's office in Country 2. It stated that FC was a PFIC for the taxable year beginning on Date 2 and ending on Date 4 and that any shareholder wishing to make a QEF election would be permitted to review FC's books and records. Investment Advisor did not receive a "Notice of U.S. Tax Information for U.S. Persons" from FC for fiscal year ending on Date 1.

Shareholder has submitted affidavits, under penalties of perjury, that describe 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 and Investment Advisor. Shareholder also submitted an affidavit from Accounting Firm, which describes Accounting Firm's engagement and responsibilities, and the advice concerning the tax treatment of FC that it provided to Shareholder.

Shareholder 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

Shareholder 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

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 Shareholder's ruling request, we conclude that Shareholder has satisfied Treas. Reg. §1.1295-3(f). Accordingly, consent is granted to Shareholder to make a retroactive QEF election with respect to FC for Year 1, provided that Shareholder complies with the rules under Treas. Reg. §1.1295-3(g) regarding the time and manner for 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 private letter ruling is directed only to the taxpayer requesting it. 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: