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:

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Date:
August 29, 2013

TY:

Legend

Shareholder =
EIN =

FC =

Country =

State =

GP =
EIN =

Sole Owner =
SSN =

LP =
EIN =

x =
y =

Year 1 =
Year 2 =
Year 3 =
Year 4 =
Year 5 =
Year 6 =
Year 7 =

Date =

Tax Advisor 1 =

Tax Advisor 2 =

Tax Advisor 3 =

Dear :

This is in response to a letter dated December 22, 2010, and supplemental submissions dated July 18, 2011 and January 13, 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 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 a domestic partnership, which was organized during Year 1 as a limited partnership under the laws of State. GP, which is wholly owned by Sole Owner (a U.S. citizen) and disregarded as an entity separate from Sole Owner for Federal tax purposes, is the general partner of Shareholder and owns x percent of Shareholder. LP, which is a charitable remainder unitrust as defined in section 664(a)(2), is the limited partner of Shareholder and owns the remaining y percent of Shareholder.

Shareholder was funded with investment property, which was subsequently sold. The proceeds from the sales were re-invested in portfolio assets, including cash, marketable securities, hedge funds and private equity funds.

During Year 2, Shareholder initially acquired shares of FC, an entity treated as a corporation for Federal tax purposes that was organized under the laws of Country. Shareholder acquired additional shares of FC during Year 3 and Year 4. FC qualified as a passive foreign investment company (“PFIC”) within the meaning of section 1297(a) for Year 2 and all subsequent years.

Shareholder obtained tax advice and preparation service from Tax Advisor 1, from Year 1 through Date. Shareholder provided Tax Advisor 1 with all of the relevant information with respect to its investment in FC. Tax Advisor 1 held itself out as a qualified tax professional, and Shareholder reasonably believed that Tax Advisor 1 was competent to render tax advice with respect to the ownership of shares of a foreign corporation. Tax Advisor 1 advised Shareholder on various tax matters and prepared various tax returns, including the Federal partnership return for Shareholder for Year 2 through Year 5. During the course of its engagement, Tax Advisor 1 did not advise Shareholder of the possibility of making a QEF election with respect to FC, and thus did not advise Shareholder of the consequences of making, or failing to make, a QEF election.

Tax Advisor 2 was retained by Shareholder as of Date to prepare Shareholder's Federal partnership returns. Tax Advisor 2 prepared Shareholder's Federal partnership return for Year 6, and for all subsequent years. Shareholder provided Tax Advisor 2 with all of the relevant information with respect to its investment in FC. Tax Advisor 2 held itself out as a qualified tax professional, and Shareholder reasonably believed that Tax Advisor 2 was competent to render tax advice with respect to the ownership of shares of a foreign corporation. During the course of its engagement, Tax Advisor 2 did not advise Shareholder of the possibility of making a QEF election with respect to FC, and thus did not advise Shareholder of the consequences of making, or failing to make, a QEF election.

During Year 7, Shareholder retained Tax Advisor 3 to review its income tax matters. Tax Advisor 3 brought to Shareholder's attention the availability of a QEF election and the impact of failing to make a QEF election with respect to FC, and explained the option for Shareholder to file a ruling request for a retroactive QEF election. Shareholder subsequently requested and received PFIC annual information statements (within the meaning of Treas. Reg. §1.1295-1(g)(1)) for FC for the applicable years at issue.

An amount sufficient to eliminate any prejudice to the U.S. government as a consequence of an inability to file amended returns has been paid. Shareholder and Sole Owner will enter into a closing agreement with the Commissioner that covers the years for which Shareholder and Sole Owner are unable to file amended returns. Further, Sole Owner has filed an amended return for the subsequent taxable year affected by Shareholder's retroactive election.

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 2 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 2, 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.

We will, accordingly, approve a closing agreement with Shareholder with respect to those issues affecting its tax liability on the basis set forth above. The necessary closing agreement for Shareholder has been prepared in triplicate and is enclosed. In pursuance of our practice with respect to such agreements, the agreement contains a stipulation to the effect that any change or modification of applicable statutes enacted subsequent to the date of this agreement and made applicable to the taxable period involved will render the agreement ineffective to the extent that it is dependent upon such statutes.

Except as specifically set forth above, no opinion is expressed or implied concerning the 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. 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)