Internal Revenue Service

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Department of the Treasury
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PLR-128646-13
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PLR-128651-13
PLR-128652-13

Date:
August 15, 2014

TY:

Legend

Shareholder	=
EIN	=
Tax Director	=
Partnership	=
FC1	=
FC2	=
FC3	=
FC4	=
FC5	=
Accounting Firm	
State	=
Country 1	=
Country 2	=
Country 3	=
Country 4	=
Country 5	=
Year 1	=
Year 2	=
Year 3	=

Dear . :

This is in response to a letter dated June 14, 2013, submitted by Shareholder's 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 FC1, FC2, FC3, FC4, and FC5.

The rulings contained in this letter are 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 corporation organized in State. FC1 is an entity organized in Country 1. FC2 is an entity organized in Country 2. FC3 and FC4 are both entities organized in Country 3. FC5 is an entity organized in Country 4. FC1, FC2, FC3, FC4, and FC5 are each treated as a corporation for U.S. federal income tax purposes. FC1, FC2, FC3, FC4, and FC5 each qualified as a passive foreign investment company (“PFIC”) as defined in section 1297(a) in Year 1.

During Year 1, Shareholder became a partner in Partnership, a Country 5 entity treated as a partnership for U.S. federal income tax purposes. Partnership held indirect interests in FC1, FC2, FC3, FC4, and FC5.

For Year 1 and Year 2, Shareholder’s internal tax department prepared Shareholder’s U.S. federal income tax returns. The director of the internal tax department was Tax Director. Shareholder’s internal tax department employed experienced tax professionals, including Tax Director, who were competent to render tax advice with respect to the ownership of shares of a foreign corporation. Shareholder’s internal tax department also advised Shareholder on U.S. federal income tax matters regarding Shareholder’s operations and investments, including Shareholder’s investments in FC1, FC2, FC3, FC4, and FC5. Shareholder relied on its internal tax department to provide advice with respect to filing and reporting requirements in general, as well as any elections or statements that would be necessary to elect a specific tax treatment. During all years at issue, Shareholder’s internal tax department had access to all relevant facts and circumstances related to Shareholder’s ownership of FC1, FC2, FC3, FC4, and FC5.

Shareholder did not know or have reason to know that FC1, FC2, FC3, FC4, and FC5 were each a PFIC. Shareholder’s internal tax department failed to identify FC1, FC2, FC3, FC4, and FC5 as each being a PFIC, and thus did not advise Shareholder of the availability of a QEF election with respect to Shareholder’s investment in FC1, FC2, FC3, FC4, and FC5.

In Year 3, Shareholder's internal tax department determined that FC1, FC2, FC3, FC4, and FC5 were each a PFIC. Shareholder's internal tax department, while analyzing a transaction involving a related entity, discovered that Shareholder held an interest in an entity that was a PFIC and, as a result, instituted additional PFIC identification procedures. Through the application of these additional procedures, Shareholder's internal tax department determined that FC1, FC2, FC3, FC4, and FC5 were each a PFIC since Year 1. Based on that determination, Shareholder requested that Accounting Firm prepare a request to make a retroactive QEF election for each of FC1, FC2, FC3, FC4, and FC5.

Shareholder submitted an affidavit signed by Tax Director, under penalties of perjury, that describes the events that led to its failure to make a QEF election with respect to each of FC1, FC2, FC3, FC4, and FC5 by the election due date, the discovery of the failure, the responsibilities of its internal tax department, and the extent to which Shareholder relied on its internal tax department. The affidavit also describes the advice concerning the tax treatment of FC1, FC2, FC3, FC4, and FC5 that Shareholder's internal tax department gave to Shareholder.

Shareholder eliminated any prejudice to the interests of the United States government by filing amended returns for Year 1 and Year 2 in which it redetermined its income tax liability for each year to take into account the assessment of tax on its QEF inclusions derived from FC1, FC2, FC3, FC4, and FC5, and paying the full amount of tax and interest owed by reason of the QEF inclusions. In addition, Shareholder filed a return for Year 3 that included the correct amount of QEF inclusions derived from FC1, FC2, FC3, FC4, and FC5, and paid any amount of tax owed for Year 3.

Shareholder represents that, as of the date of this request for ruling, the PFIC status of FC1, FC2, FC3, FC4, or FC5 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 each of FC1, FC2, FC3, FC4, and FC5 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 each of FC1, FC2, FC3, FC4, and FC5 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,

Barbara E. Rasch
Senior Technical Reviewer, Branch 2
Office of Associate Chief Counsel (International)