Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.

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Date: July 23, 2014

TY:

Legend:

Taxpayer	=
Firm	=
Stock Exchange	=
Merchant Bank	=
Central Bank	=
Investment Bank	=
Company 1	=
Company 2	=
FC1	=
FC2	=
Accountant	=
Accounting Firm	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
Year 6	=
Country X	=
Country Y	=
x	=
y	=
z	=

Dear :

This is in response to a letter dated May 7, 2014, submitted by Taxpayer's 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 FC1.

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 penalties 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

Taxpayer is a U.S. citizen and a key employee of Firm, an investment banking firm in Country X. Firm is an active financial services business and is not a passive foreign investment company (PFIC).

In Year 1, Merchant Bank in Country Y and Firm's employees took over Firm. In Year 2, Firm was listed on Stock Exchange, and Merchant Bank and Firm's employees sold down their ownership interests. Following a financial crisis in Year 3, Firm was delisted, underwent a recapitalization, and was put up for sale. In Year 4, Company 1 and Company 2 acquired Firm at book value.

In order to retain Firm employees, Company 1 and Company 2 structured a retention program in which key employees were offered the opportunity to co-invest in Firm. For administrative purposes, Company 1 established two Country X companies, FC1 and FC2, as investment vehicles to raise capital from key employees to co-invest in Firm simultaneously and at the same terms as Company 1 and Company 2. In Year 4 and Year 5, Taxpayer invested in FC1. In Year 5, Firm acquired Investment Bank. In Year 6, Company 2 sold its entire holding in Firm to Company 1. As a result of the restructuring, FC1 and FC2 together owned x percent (less than 25 percent) of Firm, Company 1 owned y percent, and the former Investment Bank owners held z percent. The promoters of the transaction did not seek U.S. tax advice because most of the investors in FC1 are foreign taxpayers.

FC1's only asset was its less than 25 percent by value ownership interest in Firm. It was therefore ineligible to look through to Firm's underlying income and assets pursuant to section 1297(c) in determining whether FC1 was a PFIC. Because FC1's only asset was its passive investment in Firm, FC1 held only passive assets from Year 4 to Year 5.

For Year 4, Taxpayer engaged Accountant for preparation of his individual U.S. tax return. Accountant, a certified public accountant for more than 15 years, has significant

experience advising on U.S. federal income tax matters, including advising U.S. persons on U.S. federal income tax matters relating to owning stock in foreign corporations. The Taxpayer made available to Accountant all information requested by Accountant to provide tax advice and to prepare Taxpayer's tax returns.

In Year 6, Firm retained Accounting Firm in Country X as an external advisor. During a review of the tax consequences of the potential restructuring, a senior officer of Accounting Firm raised the question of whether FC1 could be considered a PFIC for U.S. tax purposes. Upon further review, Accounting Firm concluded, and informed Taxpayer, that FC1 is a PFIC.

Taxpayer has submitted an affidavit, under penalties of perjury, describing the events that led to the failure to make a QEF election by the election due date, including the roles of Accountant and Accounting Firm. Accountant has submitted an affidavit corroborating the representations made by Taxpayer with respect to the failure to identify FC1 as a PFIC.

Taxpayer represents that, as of the date of the request for ruling, the PFIC status of FC1 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 FC1 under Treas. Reg. §1.1295-3(f), retroactive to Year 4.

LAW

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 section 1295(b) applies to such PFIC for the taxable year; and (2) the PFIC 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 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 such failure;
3. the engagement and responsibilities of the qualified tax professional; and
4. the extent to which the shareholder relied on such 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 FC1 for Year 4, 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 expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any transaction or item discussed or referenced in this letter.

This private letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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.

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

Sincerely,

Jeffery G. Mitchell
Chief, Branch 2
Office of Associate Chief Counsel
(International)