Internal Revenue Service

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Washington, DC 20224

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Person To Contact:
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Date:
October 22, 2014

Taxpayer =
FC =
Country =
Year 1 =
Year 2 =
Year 3 =
Year 4 =
Year 5 =
Year 6 =
Year 7 =
Date 1 =
Date 2 =
Date 3 =
#A =
$B =
Tax Advisor A =

Tax Advisor B =

Tax Advisor C =
Current Tax Advisor =

Dear :

This is in response to a letter dated December 20, 2012, and subsequent correspondence submitted by Taxpayer's authorized representatives that requested the consent of the Commissioner of the Internal Revenue Service ("Commissioner") 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 Taxpayer's investment in FC.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer 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 the request for rulings, it is subject to verification on examination.

FACTS

Taxpayer is a U.S. citizen who has resided in and paid taxes to Country since Year 4. On or about Date 1, Taxpayer acquired #A Class A common shares of FC for $B per share. Effective Date 2, FC became a passive foreign investment company ("PFIC") with respect to Taxpayer and continues to be a PFIC with respect to Taxpayer.

Taxpayer relied on several tax advisors to prepare his income tax returns and to provide advice with respect to appropriate tax elections and assistance with identifying any special tax filing requirements, such as those related to PFICs. From Year 1 until Year 3, Taxpayer engaged Tax Advisor A. From Year 4 until Year 5, Taxpayer engaged Tax Advisor B. In Year 6, Taxpayer retained Tax Advisor C. Taxpayer represents that he provided these tax advisors with complete access to his records, including financial information of FC for all relevant years, and all of the facts and circumstances regarding Taxpayer's ownership of FC. Taxpayer further represents that, prior to Year 7, no tax advisor informed him that FC was a PFIC or that a QEF election was available.

In late Year 7, Taxpayer retained a new accounting firm, Current Tax Advisor. On or about Date 3, pursuant to its annual process of reviewing and monitoring investments for PFIC purposes, Current Tax Advisor discovered that FC had been a PFIC with respect to Taxpayer since Year 2.

Taxpayer submitted affidavits, under penalties of perjury, describing the events that led to his failure to make a QEF election with respect to FC by the election due date, including the roles of Tax Advisor A, Tax Advisor B, Tax Advisor C, and Current Tax Advisor.

Taxpayer has paid an amount sufficient to eliminate any prejudice to the United States government as a consequence of his inability to file amended returns, in accordance with a signed closing agreement between Taxpayer and the Commissioner. Further, Taxpayer has agreed to file an amended return for each of his subsequent taxable years affected by the retroactive election, if any.

Taxpayer represents that, as of the date of his request for ruling, the PFIC status of FC had 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 under Treas. Reg. §1.1295-3(f), retroactive to Year 2.

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 FC for Year 2, 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. We have, consequently, approved a closing agreement with Taxpayer with respect to those issues affecting his tax liability on the basis set forth above. Pursuant to 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 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 ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any 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, copies of this letter ruling are being sent to your authorized representatives.

Sincerely,

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