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-146476-13

Date:
October 31, 2014

TY:

Legend

Shareholder	=
Partnership	=
State X	=
Country Y	=
Country Z	=
FC1	=
FC2	=
A	=
B	=
C	=
D	=
E	=
F	=
Date 1	=
Date 2	=
Date 3	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Tax Advisor 1	=
Tax Advisor 2	=

Dear :

This is in response to a letter dated November 7, 2013, 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 FC1.

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 organized under the laws of State X. In Year 1, Shareholder owned an A% interest in FC1, an entity organized under the laws of Country Y that was treated as a corporation for U.S. federal tax purposes, and FC1 owned a B% interest in FC2, an entity organized under the laws of Country Z that was treated as a corporation for U.S. federal tax purposes.

In Year 2, FC1 executed an initial public offering (IPO) for FC2. As a result of its initial sale of FC2 stock pursuant to the IPO, FC1's ownership interest in FC2 declined to C% as of Date 1. As a result of a second sale of FC2 stock pursuant to the IPO, FC1's ownership interest in FC2 declined to D% as of Date 2. Also in Year 2, Shareholder received an additional E% interest in FC1 through distributions from Partnership, which provided Shareholder with a total ownership interest of F% in FC1 at the end of Year 2.

In Year 3, as a result of a final sale of FC2 stock pursuant to the IPO, FC1 disposed of its remaining interest in FC2 as of Date 3.

FC1's only asset in Year 1 through Year 3 was its interest in FC2. FC2 was an active company that derived income that was not passive income under section 1297(b), and owned assets that gave rise to non-passive income sufficient to prevent it from qualifying as a passive foreign investment company (PFIC) as defined in section 1297. In Year 1, FC1's B% ownership interest in FC2 was sufficient to allow FC1 to be treated under section 1297(c) as if it (1) held its proportionate share of the assets of FC2, and (2) received directly its proportionate share of the income of FC2. Thus, FC1 did not qualify as a PFIC in Year 1. As a result of the IPO initiated in Year 2, however, FC1's C% ownership interest in FC2 as of Date 1 was not sufficient to allow FC1 to "look through" FC2 under section 1297(c), and thus FC1's ownership interest in FC2 was a passive asset. Therefore, FC1 qualified as a PFIC in Year 2.

For Year 1 through Year 3, Shareholder engaged Tax Advisor 1 to prepare its U.S. federal partnership returns and its tax filings relating to FC1 and engaged Tax Advisor 2 to prepare its tax filings relating to FC2. In Year 1 through Year 3, Tax Advisor 1, employing experienced tax professionals, advised Shareholder with respect to U.S. federal income tax matters relating to Shareholder's ownership of FC1. Shareholder made available to Tax Advisor 1 the books and records of FC1 and any other information requested by Tax Advisor 1 to provide tax advice and prepare Shareholder's tax returns, including any information relating to FC2. 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.

With respect to Year 1, Tax Advisor 1 advised that FC1 was not a PFIC, based on FC1's B% ownership interest in FC2 and the section 1297(c) "look through" rule. With respect to Year 2, Tax Advisor 1 did not appropriately take into account the sales of FC2 stock pursuant to the IPO, and, as a result, incorrectly calculated the average value of the assets held by FC1 for purposes of the section 1297(a)(2) asset test. Accordingly, Tax Advisor 1 did not inform Shareholder that FC1 was a PFIC or of the availability of a QEF election.

During the preparation of Shareholder's Year 3 income tax return in Year 4, Tax Advisor 1 reviewed the transactions completed by FC1 during Year 3. Following its conclusion that FC1 did not own a sufficient interest in FC2 during Year 3 to be eligible for section 1297(c) "look through" treatment, Tax Advisor 1 reviewed FC1's Year 2 transactions, including the date of the initial sale of FC2 stock pursuant to the IPO, Date 1. Tax Advisor 1 then realized that a mistake was made with respect to Shareholder's Year 2 tax return and notified Shareholder.

Shareholder has submitted an affidavit, signed under penalties of perjury, describing the events that led to the failure to make the QEF election before the election due date, including the role of Tax Advisor 1. Shareholder represents that Tax Advisor 1 did not identify FC1 as a PFIC for Year 2 or advise Shareholder of the possibility of making a QEF election with respect to FC1 for Year 2, and thus did not advise Shareholder of the consequences of making, or failing to make, a QEF election for Year 2. Shareholder has also submitted an affidavit from Tax Advisor 1, signed under penalties of perjury, corroborating the statements made by Shareholder.

Both Year 2 and Year 3 are open taxable years that would be affected by Shareholder's retroactive QEF election with respect to FC1 for Year 2. Shareholder will not file amended returns for Year 2 and Year 3 to redetermine its income tax liability, despite its ability to do so. Instead, Shareholder will enter into a closing agreement with the Commissioner that confirms that there is no prejudice to the interests of the United States government as a result of Shareholder's failure to make a retroactive QEF election with respect to FC1 for Year 2. The closing agreement also will require

Shareholder to pay an additional amount of tax and interest that would have been owed by Shareholder's direct and indirect partners as a result of Shareholder's failure to treat FC1 as a PFIC for Year 2 and Year 3.

Shareholder represents that, as of the date of this request for ruling, the PFIC status of FC1 has not been raised by the Internal Revenue Service (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 FC1 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 IRS 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 FC1 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, other than the requirement to file amended returns for all open years subsequent to the year in which the retroactive election is made.

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 representatives.

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
(International)

cc: