Internal Revenue Service

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TY:

LEGEND

Spouse A =
Spouse B =

FC =

Country =

Accountant A =
Accountant B =
Accountant C =

Firm =

Year 1 =
Year 2 =
Year 3 =
Year 4 =
Year 5 =
Year 6 =
Year 7 =
Year 8 =
Year 9 =
Year 10 =

Dear :

This is in response to a letter dated October 31, 2014, submitted by your authorized representative that requested the consent of the Commissioner of the Internal Revenue

Service ("Commissioner") for Spouse A and Spouse B (collectively, Taxpayers) 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 Taxpayers' investment in FC.

The ruling contained in this letter is based upon information and representations submitted on behalf of Taxpayers by their 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

Spouse A and Spouse B have filed their federal tax returns as a married couple filing jointly for all tax years relevant to this letter ruling. Spouse B has been a resident of the United States since Year 1 and became a United States citizen in Year 10. From Year 1 through Year 3, Spouse B received gifts of common shares of FC from family members and, since Year 3, has received no further gifts of shares. Taxpayers have never purchased shares of FC. FC is an entity organized under the laws of Country that is treated as a corporation for federal tax purposes.

For tax years Year 2 through Year 4, Taxpayers relied on Accountant A, a competent U.S. accountant, to prepare Taxpayers' federal income tax returns and provide advice on Taxpayers' U.S. tax matters. Taxpayers provided Accountant A with all relevant and available information regarding FC, including annual financial statements and year end reporting information. Accountant A did not advise Taxpayers that FC was a passive foreign investment company ("PFIC") within the meaning of section 1297(a). Accountant A failed to advise Taxpayers of the possibility of making a QEF election under section 1295(b) with respect to FC and of the consequences of making, or failing to make, such an election.

For tax years Year 5 through Year 6, Taxpayers relied on Accountant B, a competent U.S. accountant, to prepare Taxpayers' federal income tax returns and provide advice on Taxpayers' U.S. tax matters. Taxpayers provided Accountant B with all relevant and available information regarding FC, including information regarding dividend payments. Accountant B was aware that FC is a corporation organized under the laws of Country; however, Accountant B did not advise Taxpayers that FC was a PFIC within the meaning of section 1297(a) and failed to advise Taxpayers of the possibility of making a QEF election under section 1295(b) with respect to FC and of the consequences of making, or failing to make, such an election. Accountant B recommended that Taxpayers report the dividend income received from FC as ordinary income and, in some cases, as qualified dividend income.

For tax years Year 7 to the present, Taxpayers have relied on Accountant C, a competent U.S. accountant, to prepare Taxpayers' federal income tax returns and provide advice on Taxpayers' U.S. tax matters. Accountant C took over the responsibilities of Taxpayers' tax matters after Accountant B left Firm, a certified public accounting practice, where both Accountant B and Accountant C were shareholders. As with Accountant B, Taxpayers provided Accountant C with all relevant and available information regarding FC, including information regarding dividend payments. Accountant C was aware that FC is a corporation organized under the laws of Country; however, for tax years Year 7 through Year 8, Accountant C did not advise Taxpayers that FC was a PFIC within the meaning of section 1297(a) and failed to advise Taxpayers of the possibility of making a QEF election under section 1295(b) with respect to FC and of the consequences of making, or failing to make, such an election.

In Year 9, Accountant C attended a Continuing Professional Education seminar focused on PFIC rules. This presentation alerted Accountant C that it was necessary to determine whether FC met the definition of a PFIC within the meaning of section 1297(a). Accountant C thus reviewed the Taxpayers' files, discussed the concerns with Taxpayers, and ultimately advised Taxpayers that FC was a PFIC since Year 2. Taxpayers decided to seek relief to make a retroactive QEF election.

Taxpayers have submitted affidavits, under penalties of perjury, that describe the events that led to Taxpayers' failure to make a QEF election with respect to FC by the due date of their return for the Year 2 tax year. Affidavits have also been submitted by Accountant A, Accountant B, and Accountant C describing their engagement and responsibilities as well as the advice concerning the tax treatment of FC that each provided to Taxpayers.

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

Taxpayers represent that, as of the date of their 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

Taxpayers request the consent of the Commissioner to make a 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 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 Taxpayers' ruling request, we conclude that Taxpayers have satisfied Treas. Reg. § 1.1295-3(f). Accordingly, consent is granted to Taxpayers to make a retroactive QEF election with respect to FC for Year 2, provided that Taxpayers comply 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 Taxpayers with respect to those issues affecting their 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,

Kristine A. Crabtree
Assistant to the Branch Chief, Branch 2
Office of Associate Chief Counsel (International)

cc: