Internal Revenue Service

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Washington, DC 20224

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Date:
April 19, 2017

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Legend

Taxpayers =

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Year 1 =
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Dear :

This is in response to a letter submitted on behalf of Taxpayers by their authorized representative requesting 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 Taxpayers' investments in FC1, FC2, FC3, FC4, FC5, FC6, FC7, FC8, and FC9 (collectively referred to as "FCs").

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 the appropriate parties. 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

Taxpayers, husband and wife, at all relevant times are U.S. residents for U.S. federal income tax purposes and filed joint income tax returns. In Year 1, Taxpayers acquired direct or indirect ownership of shares of the common stock of FC1, FC2, FC3, FC4, FC5, FC6 and FC7. Thereafter, in Year 3 and Year 4, Taxpayers acquired direct or indirect ownership of shares of FC8 and FC9, respectively. Each FC is an entity organized under the laws of Country A that was treated as a corporation for U.S. federal income tax purposes. At all relevant times, each FC was a passive foreign investment company ("PFIC") as defined in section 1297(a) of the Code.

During the relevant years, FCs engaged the services of various accounting firms and law firms for income tax return preparation. The tax advisors with the accounting firms and law firms were all competent to render international tax advice. However, they were unaware that FCs were PFICs and, thus, did not advise FCs and their U.S. shareholders, including Taxpayers, of the consequences of making or failing to make QEF elections with respect to FCs. In Year 5, Taxpayers became aware of the PFIC status of FCs and took steps to take corrective action.

Taxpayers submitted an affidavit, under penalties of perjury, describing the events that led to the failure to make the QEF elections by the election due dates. Taxpayers represent that, in all of the relevant years: (i) FCs were not identified as PFICs; and (ii) Taxpayers did not receive any advice regarding the availability of QEF elections with respect to their investments in FCs.

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

Taxpayers represent that, as of the date of this request for ruling, the PFIC status of FCs has 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 QEF elections: (i) retroactive to Year 2 for FC1, FC2, FC3, FC4, FC5, FC6, and FC7; (ii) retroactive to Year 3 for FC8; and (iii) retroactive to Year 4 for FC9, 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 Taxpayers' ruling request, we conclude that Taxpayers have satisfied Treas. Reg. §1.1295-3(f). Accordingly, consent is granted to Taxpayers to make QEF elections: (i) retroactive to Year 2 for FC1, FC2, FC3, FC4, FC5, FC6, and FC7; (ii) retroactive to Year 3 for FC8; and (iii) retroactive to Year 4 for FC9, provided that Taxpayers comply with the rules under Treas. Reg. §1.1295-3(g) regarding the time and manner for making the retroactive QEF elections. 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 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,

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

Enclosure

cc: