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:
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Refer Reply To:
CC:INTL:B02
PLR-107499-16

Date:
June 30, 2017

TY:

Legend

TP	=	
		EIN
FC1	=	
		EIN
Year 1	=	
FC2	=	
		EIN
Year 2	=	
Accounting Firm	=	

Dear :

This is in response to your letter received by our office on March 7, 2016, requesting the consent of the Commissioner of the Internal Revenue Service 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 your investments in FC1 and FC2 (collectively referred to as "FCs").

The rulings contained in this letter are based upon information and representations submitted by the 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 partnership comprised of tax-exempt partners with the exception of one non-tax-exempt partner since its formation. Taxpayer invested in FC1 in Year 2 and FC2 in Year 2. FCs were passive foreign investment companies ("PFICs") as defined under section 1297(a) of the Code. During the relevant years, Taxpayer retained Accounting Firm to provide advice on tax matters, including federal income tax treatment of the Taxpayer's investments in FCs, and to prepare Taxpayer's federal income tax returns. Accounting Firm employed qualified tax professionals that were competent to render international tax advice, including the consequences of a U.S. person owning stock of a foreign corporation. Taxpayer made available to Accounting Firm any information requested that was relevant to the provision of tax advice and the preparation of Taxpayer's income tax returns. The qualified tax professionals of Accounting Firm were competent to render U.S. tax advice with respect to stock ownership of a foreign corporation. Taxpayer relied on the advice of Accounting Firm to comply with U.S. tax laws. However, Accounting Firm failed to identify FCs as PFICs within the meaning of section 1297(a). Consequently, Accounting Firm failed to advise Taxpayer of the possibility of making a QEF election under section 1295(b) with respect to FCs and of the consequences of making, or failing to make, such an election. Taxpayer recently became aware of FCs' status as PFICs.

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

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

Taxpayer represents 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

Taxpayer requests the consent of the Commissioner to make a retroactive QEF election with respect to FC1 for Year 1 and FC2 for Year 2 under Treas. Reg. §1.1295-3(f).

LAW

Section 1295(a) of the Code provides that any PFIC shall be treated as a QEF with respect to a taxpayer if (1) an election by the taxpayer under section 1295(b)

applies to such company for the taxable year and (2) the company 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 taxpayer 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 which 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 1 and FC2 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.

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 ruling must be attached to any tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement attaching a statement to their return that provided the date and control number of the letter ruling.

Sincerely,

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

cc: