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:

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Date:
August 04, 2017

TY:

Legend

TP	=
Country 1	=
FC1	=
FC2	=
FC3	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
Date 1	=
Accounting Firm	=
Law Firm	=

Dear :

This is in response to a letter dated January 25, 2017, submitted by your authorized representative 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 ("Code") and Treas. Reg. §1.1295-3(f) with respect to your investments in FC1, FC2, and FC3 (collectively referred to as “FCs”).

The rulings contained in this letter are based upon information and representations submitted on behalf of TP 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

TP is an individual. Prior to Date 1, TP was a resident of Country 1 and had been treated as a nonresident alien for United States federal income tax purposes for all taxable years prior to Year 3. On Date 1, TP relocated to the United States. TP has resided in the United States since that time. TP made the first year election to be treated as a U.S. tax resident under section 7701(b)(4) of the Code on TP's Year 3 U.S. federal income tax return.

In Year 1 and Year 2, while a nonresident alien, TP was issued shares in FCs. FCs were passive foreign investment companies ("PFICs") as defined under section 1297(a) of the Code in Year 3.

During the relevant years, TP retained Accounting Firm to provide advice with respect to filing and reporting requirements in general, as well as any elections or statements that would be necessary to elect a specific tax treatment, including federal income tax treatment of TP's investments in FCs. Accounting Firm also prepared TP's federal income tax return for Year 3. 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. TP made available to Accounting Firm any information requested that was relevant to the provision of tax advice and the preparation of TP's income tax returns.

Accounting Firm did not discuss with TP the possibility that FCs may be PFICs, the implications of ownership of interests in PFICs, or the possibility of making any QEF election. At no point before Year 5 did TP become aware that FCs might be PFICs, and thus TP was not aware of the possibility of making a QEF election with respect to FCs when TP's federal income tax return for Year 3 was filed. In Year 5, TP became aware that FCs might be PFICs when a relative of TP raised PFIC issues with TP.

Once TP became aware of the possibility that FCs might be PFICs, TP sought advice from Law Firm about the status of FCs and the implications of ownership of shares in a PFIC. Law Firm provided TP with advice about the implications of owning shares in a PFIC, the availability of a retroactive QEF election, and the mechanics and benefits of making such an election. TP also retained a new accountant to prepare his Year 4 U.S. federal tax return.

TP has submitted affidavits from itself, Accounting Firm, and Law Firm under penalties of perjury, that describe the events that led to the failure to make a QEF election with respect to FCs by the election due date and the discovery thereof.

TP has submitted PFIC annual information statements of FCs for Year 3 and Year 4, which state that FC had no ordinary earnings or net capital gains for those years. TP filed an extension for filing a Year 5 tax return and, thus, was not yet required to account for any QEF income. Thus, the interests of the United States government will not be prejudiced by granting consent to make the requested retroactive election.

TP represents that, as of the date of its request for ruling, the PFIC status of FCs had not been raised by the Internal Revenue Service on audit for any taxable year at issue.

RULING REQUESTED

TP requests the consent of the Commissioner to make a retroactive QEF election with respect to FCs for Year 3 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 taxpayer that is a shareholder of the PFIC 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 taxpayer 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 taxpayer; 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 TP's ruling request, we conclude that TP has satisfied Treas. Reg. §1.1295-3(f). Accordingly, consent is granted to TP to make a retroactive QEF election with respect to FCs for Year 3, provided that TP 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 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 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
Office of the Associate Chief Counsel
(International)