

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.

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PLR-125205-21

Date:

March 31, 2025

TY:

LEGEND

Taxpayer	=
FC1	=
FC2	=
Country X	=
Country Y	=
Tax Professional 1	=
Tax Professional 2	=
Accounting Firm 1	=
Accounting Firm 2	=
Accounting Firm 3	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=

Dear :

This is in response to a letter submitted on Taxpayer's behalf by an 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 Taxpayer's investment in FC1.

The ruling contained in this letter is based upon information and representations submitted by 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 ruling, it is subject to verification on examination.

FACTS

In Year 1, Taxpayer invested in FC1, a Country X entity treated as a corporation for U.S. federal income tax purposes. At all times, Taxpayer was a minority owner of FC1 and no other U.S. persons owned an interest in FC1.

For the years at issue, FC1 owned an interest in FC2, a Country Y entity treated as a corporation for U.S. federal income tax purposes. FC1 had minimal activity outside of managing its investment in FC2.

At all times relevant, Taxpayer has relied on tax professionals to prepare his federal income tax returns and was not aware that an investment in a foreign company might be treated differently than an investment in a U.S. company. In Year 1, when Taxpayer first invested in FC1, Taxpayer employed Accounting Firm 1. Tax Professional 1 was the accountant at Accounting Firm 1 who was primarily responsible for preparing Taxpayer's federal income tax returns. Tax Professional 1 was a certified public accountant with more than 25 years of experience when he began advising Taxpayer. In Year 3, Accounting Firm 1 merged with Accounting Firm 2 and Tax Professional 1 continued to serve Taxpayer in the same capacity as before until Year 4, when Tax Professional 1 transitioned the Taxpayer's account to Tax Professional 2. Tax Professional 2 was a certified public accountant when she began advising Taxpayer.

Throughout the time that Tax Professional 1 had primary responsibility for preparing Taxpayer's federal income tax returns, Tax Professional 1 asked regularly about foreign accounts but did not ask specifically whether Taxpayer had any investments in foreign companies and did not ask Taxpayer to fill out an annual questionnaire about his income or investments. Taxpayer believed Tax Professional 1's question regarding "foreign accounts" referred to bank accounts and other financial accounts. Taxpayer did not otherwise know his ownership of FC1 was relevant for his U.S. federal income tax reporting given that Taxpayer did not receive any income from this investment in Year 1. In Year 2, Taxpayer communicated to Tax Professional 1 that Taxpayer received income from FC1.

For the entire period that Tax Professional 1 had primary responsibility for preparing Taxpayer's federal income tax returns, Tax Professional 1 was not aware of the PFIC rules and, therefore, Tax Professional 1 failed to identify FC1 as a PFIC. As a result, Tax Professional 1 failed to advise Taxpayer of the availability of a QEF election and the consequences of making or failing to make a QEF election with respect to his investment in FC1.

When Tax Professional 2 took over Taxpayer's tax return preparation responsibilities from Tax Professional 1 in Year 4, she also failed to identify FC1 as a PFIC. In addition,

Tax Professional 2 failed to advise Taxpayer of the availability of a QEF election and the consequences of making or failing to make a QEF election with respect to his investment in FC1. Taxpayer answered all questions related to his investments and made information requested available to Tax Professional 2.

Taxpayer first learned about the existence of the PFIC rules in Year 5 when his son consulted Accounting Firm 3 while performing research related to estate planning. Accounting Firm 3 alerted Taxpayer's son to the fact that FC1 was a PFIC and advised that Taxpayer make a QEF election.

Taxpayer submitted affidavits, under penalties of perjury, describing the events that led to the failure to make the QEF election by the election due date.

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

In addition, Taxpayer represents that, as of the date of this request for ruling, the PFIC status of FC1 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 QEF election retroactive to Year 1 under Treas. Reg. § 1.1295-3(f) with respect to his investment in FC1.

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 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 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. We have approved a closing agreement with Taxpayer with respect to those issues affecting his tax liability for closed years 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,

/s/ Melinda E. Harvey

Melinda E. Harvey
Branch Chief, Branch 2
Associate Chief Counsel (International)

cc: