Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

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Date:
April 19, 2012

TY:

Legend

Shareholder = .
EIN =

Manager = .
Entity =

FC =
Country =

Year 1 =
Year 2 =
Year 3 =
Year 4 =
Year 5 =

Dear

This is in response to a letter dated October 18, 2011 submitted by your authorized representative that requested the consent of the Commissioner of the Internal Revenue Service ("Commissioner") for Shareholder to make a retroactive qualified electing fund ("QEF") election under I.R.C. § 1295(b) and Treas. Reg. §1.1295-3(f) with respect to Shareholder's investment in FC.

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

Shareholder is a domestic Entity that represents that it qualifies as a regulated investment company under I.R.C. § 851. Shareholder is an open-end management investment company registered under the Investment Company Act of 1940, as amended ("1940 Act"). Shareholder is managed by Manager.

During Year 1, Shareholder purchased shares of FC, which is a corporation organized under the laws of Country. FC's shares are listed for trading on major stock exchanges, including a U.S. exchange. Shareholder purchased additional lots of FC's stock in Year 2, Year 3 and Year 4.

For many years, including Year 1 and subsequent years, Shareholder, pursuant to an agreement, contracted with Manager to perform administrative services to Shareholder, including arranging for and supporting tax return preparation by Shareholder's independently registered accounting firm, identification of passive foreign investment companies ("PFICs") and recommendations for appropriate tax elections, including QEF elections. To provide certain of these services to Shareholder, Manager employed tax accountants who were competent to render tax advice with respect to stock ownership of a foreign corporation, and, in particular were experienced in reviewing tax returns, in identifying PFICs and in recommending relevant tax elections to Shareholder. These tax accountants had complete access to the records of Shareholder, including lists of stocks purchased by Shareholder, as well as access to financial information relevant to FC and access to all other relevant facts and circumstances regarding Shareholder's ownership of FC.

In order to assist in identifying PFICs, Manager's tax department engaged a second accounting firm ("Firm") to review Shareholder's holdings of foreign equity securities on a quarterly basis. Manager's tax department was responsible for providing Firm with an electronic file of Taxpayer's foreign equity securities as of each review date. Firm analyzed those issuer's information, including financial information, in order to determine whether the issuers were PFICs.

From Year 1 through the third quarter of Year 5, the source of Shareholder's foreign equity securities provided to Firm was the file of Shareholder's portfolio investments, maintained in a computer system ("Pricing System") used by Manager's pricing department for computing Shareholder's daily net asset value, as required by the 1940 Act.

Because the FC was and is listed on a U.S. exchange, its shares were identified in the Pricing System as a U.S. security and not a foreign equity security. Manager's tax

department was not aware that equity securities of foreign corporations might be identified as U.S. securities and so did not undertake any procedures to make any necessary corrections to the file. Consequently, before the fourth quarter of Year 5, FC was not included in the Pricing System files of "foreign securities" given to Firm.

Because FC was not in the files of "foreign securities," the accountants at Firm failed to identify FC as a PFIC to the tax professionals at Manager, and the tax professional failed to advise Shareholder of the possibility of making, or the consequences of failing to make, a QEF election with respect to FC.

In the fourth quarter of Year 5, for business reasons entirely unrelated to PFIC identification, Manager's tax department implemented a new tax data system that, inter alia, allowed foreign stock listed on a U.S. exchange to be identified by place of incorporation. Therefore, as of the last day of the fourth quarter of Year 5, the new tax data system's file properly identified FC as a foreign equity holding, and so FC was identified as such to Firm, which in turn ultimately identified FC as a PFIC.

Shareholder represents that, as of the date of the request for ruling, the PFIC status of FC has not been raised by the IRS on audit for any of the taxable years at issue.

RULING REQUESTED

Shareholder requests the consent of the Commissioner to make a retroactive QEF election with respect to FC for Year 1 under Treas. Reg. §1.1295-3(f).

LAW

I.R.C. § 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 I.R.C. § 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 I.R.C. § 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 Shareholder's ruling request, we conclude that Shareholder has satisfied Treas. Reg. §1.1295-3(f). Accordingly, consent is granted to Shareholder to make a retroactive QEF election with respect to FC for Year 1, provided that Shareholder complies with the rules under Treas. Reg. §1.1295-3(g) regarding the time and manner for making the retroactive QEF election.

Except as specifically set forth above, no opinion is expressed or implied concerning the U.S. federal tax consequences of the facts described above under any other I.R.C. provision.

This private letter ruling is directed only to the taxpayer requesting it. I.R.C. § 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)

cc: