**Internal Revenue Service**

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Department of the Treasury
Washington, DC 20224

[Third Party Communication:
Date of Communication: Month DD, YYYY]

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:INTL:B02
PLR-135251-13

Date:
November 8, 2013

TY:

Legend

Taxpayer:
Company:
Country:
State:
Firm:
Advisor:
Accountant:
Business A:
Year 1:
Year 2:
Year 3:
Year 4:
Year 5:
Year 6:
Year 7:
Year 8:
Year 13:
Date 1:
Date 2:
Month 1:

Dear :

This is in response to a letter dated August 7, 2013 submitted by your authorized representative that requested the consent of the Commissioner of the Internal Revenue Service ("Commissioner") for Taxpayer to make a retroactive qualified electing fund

("QEF") election under section 1295(b) of the Internal Revenue Code and Treas. Reg. §1.1295-3(f) with respect to Shareholder's investment in Company.

The ruling contained in this letter is based upon information and representations submitted on your behalf by your 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

Taxpayer is a United State citizen and resident who acquired shares of Company in Year 2. Taxpayer acquired additional shares of Company in Year 3, Year 4, Year 5, Year 6, and Year 7. At the end of Year 8, Company entered into a transaction, and all of Taxpayer's shares were sold on Date 1.

Company was formed in Year 1 under the laws of Country and is treated as a corporation for U.S. federal income tax purposes. Taxpayer's investment in Company was handled by Advisor of Firm. Advisor did not receive any statements or tax documents on behalf of Taxpayer with respect to the shares owned in Company and did not provide any tax advice to Taxpayer.

Taxpayer relied on Accountant to prepare his U.S. tax returns for many years, including the years in which Taxpayer owned shares in Company. Accountant is a reputable accountant in the United States who has been preparing tax returns as a certified public accountant in State for 19 years. The Taxpayer provided Accountant all relevant information and documentation necessary to prepare Taxpayer's tax returns and to provide advice on U.S. tax matters. Accountant was aware of Taxpayer's ownership of shares in Company but failed to identify Company as a passive foreign investment company ("PFIC") within the meaning of section 1297(a) of the Code. As a result, Accountant did not advise Taxpayer about the possibility of making, or the consequences of failing to make, a QEF election with respect to Taxpayer's shares in Company.

Taxpayer was not aware that Company was a PFIC until Month 1 when Company was about to enter into a transaction involving the sale of Taxpayer's shares. As part of the transaction, Company issued an Information Circular on Date 2 to all shareholders. The Information Circular stated that Company believed it was a PFIC for Year 8 and all prior years and provided information regarding the availability of a retroactive QEF election. In Year 9, Taxpayer engaged a law firm to assist with filing a private letter ruling request for a retroactive QEF election.

Taxpayer has submitted an affidavit, signed under penalties of perjury, that describes the events that led to his failure to make a QEF election with respect to Company by the election due date, including the role of Accounting Firm.

Taxpayer also submitted an affidavit from Accountant, which describes Accountant's engagement and responsibilities.

Taxpayer represents that, as of the date of this request for ruling, the PFIC status of Company 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 Company for Year 1 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 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 Company 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.

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)

cc: