Internal Revenue Service

Number: **201630006**
Release Date: 7/22/2016

Index Number: 1295.02-02

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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Refer Reply To:
CC:INTL:B02
PLR-116525-15
PLR-127169-15

Date:
April 21, 2016

TY:

LEGEND:

Shareholder =
Spouse =
FC1 =
FC2 =
Year 1 =
Year 2 =
Year 3 =
Year 4 =
Year 5 =
Year 6 =
Year 7 =
Date 1 =
Accounting Firm =
Attorney =
Law Firm =
Country =

Dear :

This is in response to a letter dated April 24, 2015 and subsequent correspondence submitted by Shareholder's authorized representative that requested the consent of the Commissioner of the IRS ("Commissioner") to make retroactive qualified electing fund ("QEF") elections under section 1295(b) of the Internal Revenue Code (the "Code") and Treas. Reg. § 1.1295-3(f) with respect to Shareholder's investments in FC1 and FC2.

The rulings contained in this letter are based upon information and representations submitted on behalf of Shareholder by Shareholder's authorized representative and

accompanied by penalty of perjury statements executed by an appropriate party. While this office has not verified any of the material submitted in support of the requested rulings, the material is subject to verification on examination. The information submitted in the requests is substantially as set forth below.

FACTS

Shareholder is a married individual who files a joint federal income tax return with Spouse. Shareholder is a citizen of Country and has been a permanent resident of the United States since Year 1. FC1 is an entity organized under the laws of Country that is treated as a corporation for U.S. federal income tax purposes. FC1 qualified as a passive foreign investment company ("PFIC") as defined in Section 1297 in Year 2. FC2 also is an entity organized under the laws of Country that is treated as a corporation for U.S. federal income tax purposes. FC2 also qualified as a PFIC in Year 2. FC1 wholly owned FC2 in Year 2 and all subsequent years.

On Date 1, Shareholder acquired shares of FC1 and, thus, indirectly acquired shares of FC2.

Accounting Firm prepared the joint U.S. federal tax return Shareholder filed with Spouse in Year 2 and all subsequent years. Accounting Firm employs experienced tax professionals and advised Shareholder with respect to the U.S. federal income tax matters regarding Shareholder's investments, including Shareholder's investment in FC1 and FC2. Accounting Firm is competent to render tax advice to U.S. shareholders of foreign corporations. Shareholder provided Accounting Firm all relevant facts and circumstances to prepare the joint U.S. federal tax returns he filed with Spouse. Shareholder relied on 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.

Shareholder provided Accounting Firm with the contact information for the Country-based attorneys and accountants to FC1 and FC2 ("Non-U.S. Advisors"). Accounting Firm had multiple discussions with the Non-U.S. Advisors regarding the status of FC1 and FC2 for U.S. federal income tax purposes. Accounting Firm failed to identify FC1 or FC2 as a PFIC.

During a Year 6 meeting between Accounting Firm and Attorney, an attorney at Law Firm, Shareholder's files were reviewed. The possibility that FC1 and FC2 were PFICs was raised and discussed, but it was determined that further analysis would be required to determine the PFIC status of the entities. After additional analysis, including telephone conferences between Attorney, Accounting Firm, and the Non-U.S. Advisors, it was determined that FC1 and FC2 likely were each a PFIC with respect to Shareholder since Year 2.

Shareholder did not know or have reason to know that either FC1 or FC2 was a PFIC, or that he was eligible to make an election to treat FC1 and FC2 as a QEF. Accounting Firm did not advise Shareholder that FC1 or FC2 was a PFIC or of the availability of electing to treat FC1 or FC2 as a QEF.

Shareholder submitted affidavits, under penalties of perjury, describing the events that led to the failure to make QEF elections with respect to FC1 and FC2 by the election due dates, the discovery of the failure, the engagement responsibilities of Accounting Firm, and the extent to which Shareholder relied on Accounting Firm. Shareholder also submitted affidavits from Accounting Firm, signed under penalties of perjury, setting forth Accounting Firm's engagement and responsibilities as well as the advice concerning the tax treatment of FC1 and FC2 that Accounting Firm provided to Shareholder.

Shareholder has entered into a closing agreement with the Commissioner that covers the years for which Shareholder is unable to file amended returns (Year 2 through Year 3). Pursuant to the closing agreement, Shareholder has paid an amount that eliminates any prejudice to the United States government as a consequence of Shareholder and Spouse's inability to file amended returns for Year 2 through Year 3. Further, Shareholder and Spouse have filed an amended return for each of Year 4 and Year 6, and paid all taxes and interest owed by reason of the PFIC and QEF status of FC1 and FC2 in those years. Shareholder was not required to include any amounts in income attributable to the retroactive QEF elections for FC1 and FC2 for Year 5. For Year 7, Shareholder included in income the amount attributable to his investments in FC1 and FC2 as if he had made a timely QEF election with respect to each of FC1 and FC2.

Shareholder represents that, as of the date of the requests for rulings, the PFIC status of FC1 and FC2 have 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 for with respect to each of FC1 and FC2 for Year 2 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 IRS 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 requests, 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 each of FC1 and FC2 for Year 2, provided that Shareholder complies with the rules under Treas. Reg. § 1.1295-3(g) regarding the time and manner for making the retroactive QEF elections.

We have approved a closing agreement with Shareholder with respect to those issues affecting his tax liability 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 the 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) provides that it may not be used or cited as precedent.

A copy of this letter 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,

Barbara Rasch
Senior Technical Reviewer, Branch 2
(International)

cc: