

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202412002**

Release Date: 3/22/2024

Index Number: 1295.02-00, 1295.02-02

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
_____, ID No.

Telephone Number:

Refer Reply To:
CC:INTL:B02
PLR-101084-21

Date:
December 28, 2023

TY:

Taxpayer =
FC =
Country X =
Year 1 =
Year 3 =
Year 4 =
Tax Advisor A =
Tax Advisor B =

Dear _____:

This is in response to a letter and additional correspondence submitted on behalf of Taxpayer 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 FC.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by penalties of perjury statements executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

FACTS

Taxpayer, a US person, owned an interest of less than 10 percent in FC beginning in Year 1. FC is organized in Country X. In Year 3, FC became a passive foreign investment company ("PFIC") as defined in section 1297(a) of the Code.

From Year 1 through Year 4, Taxpayer relied on Tax Advisor A for tax advice and tax compliance assistance with respect to Taxpayer's investment in FC. Tax Advisor A was competent to render advice with respect to Taxpayer's investment in FC. Late in Year 4, after the extended due date for Taxpayer's Year 3 federal income tax return, Tax Advisor A informed Taxpayer of its belief that FC was a PFIC beginning in Year 3. Prior to this time, Taxpayer did not know or have reason to know that FC was a PFIC. Several months later, Tax Advisor A explained to Taxpayer the possibility of making a retroactive QEF election for Year 3 with the consent of the Commissioner. Therefore, Tax Advisor A failed to advise Taxpayer of FC's PFIC status and the availability of a QEF election before the due date to make a QEF election with respect to FC for Year 3. Taxpayer then engaged Tax Advisor B to seek the consent of the Commissioner to make a retroactive QEF election with respect to FC effective for Year 3.

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.

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

In addition, Taxpayer represents that, as of the date of their request for ruling, the PFIC status of FC had 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 3 under Treas. Reg. § 1.1295-3(f) with respect to their investment in FC.

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 the 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 QEF election for FC, retroactive to Year 3, 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, consequently, approved a closing agreement with Taxpayer with respect to those issues affecting its 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, a copy of this letter is being sent to your authorized representative.

Sincerely,

/s/ Kristine A. Crabtree

Kristine A. Crabtree
Senior Technical Reviewer, Branch 2
Associate Chief Counsel (International)

cc: