

Internal Revenue Service

Number: **202528012**

Release Date: 7/11/2025

Index Number: 1295.00-00, 1295.02-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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CC:INTL:B02

PLR-124807-23

Date:

April 10, 2025

TY:

LEGEND

Taxpayers =

FC =

Country X =

Tax Professional 1 =

Tax Professional 2 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Date 1 =

Date 2 =

Dear :

This is in response to a letter submitted on Taxpayers' 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 Taxpayers' investment in FC.

The ruling contained in this letter is based upon information and representations submitted by Taxpayers 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

Taxpayers are U.S. persons who have filed their individual U.S. federal income tax returns as a married couple filing jointly for all relevant tax years. In Year 1, Taxpayers acquired shares in FC, a Country X entity treated as a corporation for U.S. federal income tax purposes.

For all tax years relevant to this ruling, Taxpayers engaged Tax Professional 1 to prepare their U.S. federal income tax returns. Tax Professional 1 is a certified public accountant with more than 40 years of experience. He has regularly prepared U.S. federal income tax returns for high-net-worth individuals and has consulted on both domestic and foreign tax reporting matters.

In connection with the preparation of Taxpayers' Year 1 tax return, Taxpayers provided Tax Professional 1 with documentation evidencing their ownership in FC shares including a stock certificate that indicated that FC was a company registered under the laws of Country X. Tax Professional 1 did not request additional information with respect to Taxpayers' ownership of FC stock.

Tax Professional 1 included a Form 8938, *Statement of Specified Foreign Financial Assets* with Taxpayers' Year 1 tax return that reflected Taxpayers' stock in FC. However, Tax Professional 1 did not prepare a Form 8621 with respect to FC or otherwise identify FC as a passive foreign investment company ("PFIC") as defined under section 1297(a) of the Code. FC did not issue a PFIC Annual Information Statement for Year 1. For Year 2 and Year 3, Tax Professional 1 prepared Taxpayers' tax returns in the same manner with respect to their stock in FC.

On Date 1, in Year 4, Taxpayers disposed of their shares in FC. On Date 2, before the due date of the Year 4 tax return, FC sent Taxpayers a disclosure ("Year 4 Tax Disclosure") explaining that FC was likely a PFIC for Year 2, Year 3, and Year 4.

Taxpayers provided Tax Professional 1 with the Year 4 Tax Disclosure. Tax Professional 1 prepared a draft Year 4 tax return for Taxpayers, once again including a Form 8938 reflecting the FC investment, but not a Form 8621. For Year 1, Year 2, Year 3, and Year 4, Tax Professional 1 failed to identify FC as a PFIC. As a result, Tax Professional 1 failed to advise Taxpayers of the availability of a QEF election and the consequences of making or failing to make a QEF election with respect to their investment in FC.

Before the due date for the Year 4 tax return, Taxpayers asked Tax Professional 2 to review the draft Year 4 tax return that Tax Professional 1 had prepared. After review, Tax Professional 2 alerted Taxpayers that FC was a PFIC and certain adverse tax consequences would apply to the disposition of FC shares absent a QEF election. Tax Professional 2 recommended requesting consent to make a retroactive QEF election. After multiple requests from Taxpayers and Tax Professional 2, FC did not provide either PFIC Annual Information Statements or other detailed documentation from which Taxpayers' QEF income inclusions for Year 1 and Year 2 could be accurately calculated. FC provided PFIC Annual Information Statements for Year 3 and Year 4.

Taxpayers 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 addition, Taxpayers represent 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

Taxpayers request the consent of the Commissioner to make a QEF election retroactive to Year 1 under Treas. Reg. § 1.1295-3(f) with respect to their investment in FC. In the alternative, Taxpayers request the consent of the Commissioner to make a QEF election retroactive to Year 3 with respect to their investment in FC if it is determined that financial information with respect to FC is not sufficient to verify Taxpayers' proposed QEF income inclusions for Years 1 and 2.

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 Taxpayers' ruling request, we conclude that Taxpayers have satisfied Treas. Reg. § 1.1295-3(f). Accordingly, consent is granted to Taxpayers to make a retroactive QEF election with respect to FC for Year 3 provided that Taxpayers comply 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 ruling is directed only to the taxpayers 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/ Kristine A. Crabtree

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

PLR-124807-23

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cc: