

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:BR2 –

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Date:

January 10, 2006

In Re:

Legend

A =

B =

C =

X =

Country Z =

X percent =

Y percent =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Dear :

This is in response to your letter dated July 26, 2004, requesting an extension of time to file a qualified electing fund (“QEF”) election with respect to A’s investment in C.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer, 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 upon examination.

FACTS

In connection with their private letter ruling request, Taxpayers have represented the following facts.

A is a U.S. partnership, formed on Date 1. Since then, the partnership interests of A have been held by the same nine individuals.

From Date 2 until Date 3, A owned an X percent direct interest in B, a corporation established in Country Z. During this time, B was a controlled foreign corporation ("CFC") within the meaning of Code section 957.

On Date 3, B merged into C, a corporation established in Country Z. Taxpayer exchanged its ownership interest in B for Y percent of direct interest in C upon the merger. Prior to Date 3, Taxpayer had no ownership interest in C.

Since Date 3, C has not been considered a CFC because not more than 50% of its stock has been owned by U.S. persons. C was a PFIC under the asset test of Code section 1297(a)(2) in tax years , , , and due to its large balance of cash and marketable securities in each of those years.

Since its formation in Year 1, A has engaged X, a firm competent to render international tax advice, to prepare A's U.S. partnership tax returns and to render tax advice with respect to its overall tax structure, including its interest in foreign entities. X failed to identify C as a PFIC and failed to advise A of the consequences of making, or failing to make, the Code section 1295 QEF election for C.

In January 2004, while rendering advice with respect to a distribution from C, X reviewed the income and balance sheet information of C and realized that C was a PFIC. At this time, X noted for the first time the fact that C was a PFIC and recommended the submission of a ruling request to make a retroactive QEF election under Treas. Reg. § 1.1295-3.

A's share of C's net income for the years at issue to be as follows: Amount 1 in , Amount 2 in , Amount 3 in , and Amount 4 in .

RULING REQUESTED

A requests the consent of the Commissioner of the Internal Revenue Service to make a retroactive QEF election under Treas. Reg. § 1.1295-3(f) with respect to C for A's tax year.

LAW AND ANALYSIS

Section 1295(a) provides that any PFIC shall be treated as a QEF with respect to a taxpayer if (1) an election by the taxpayer under section 1295(b) applies to such company for the taxable year and (2) the company complies with such requirements as the Secretary may prescribe for purposes of determining the ordinary earnings and net capital gains of such company.

Under section 1295(b)(2), a QEF election may be made for any taxable year at any time on or before the due date (determined with regard to extensions) for filing the return for such taxable year. To the extent provided in regulations, such an election may be made after such due date if the taxpayer failed to make an election by the due date because the taxpayer reasonably believed the company was not a PFIC.

Under Treas. Reg. § 1.1295-3(f), a taxpayer may request the consent of the Commissioner to make a retroactive QEF election for a taxable year. However, the Commissioner will grant relief under Treas. Reg. § 1.1295-3(f) only if four conditions are satisfied. The first requirement is that the shareholder reasonably relied on a qualified tax professional, who failed to identify the foreign corporation as a PFIC or failed to advise the shareholder of the consequences of making, or failing to make, a section 1295 election. Treas. Reg. § 1.1295-3(f)(2) provides that a shareholder will not be considered to have reasonably relied on a qualified tax professional if the shareholder knew, or reasonably should have known, that the foreign corporation was a PFIC and knew of the availability of a section 1295 election. In addition, a shareholder cannot claim reliance upon a tax professional if he knew or reasonably should have known that the qualified tax professional was not competent to render tax advice with respect to the ownership of shares of a foreign corporation or did not have access to all relevant facts and circumstances.

During the years at issue, A sought U.S. tax advice from its regular outside tax counsel, X. X was competent to render tax advice with respect to stock ownership of a foreign corporation and had access to all the relevant facts and circumstances. X failed to identify C as a PFIC and therefore failed to advise A of the consequences of making or failing to make a QEF election. Thus, A reasonably relied on a qualified tax professional within the meaning of Treas. Reg. § 1.1295-3(f)(1)(i) and (2) for the taxable years at issue.

The second requirement of Treas. Reg. § 1.1295-3(f) is that granting consent will not prejudice the interests of the U.S. government. Under Treas. Reg. § 1.1295-

3(f)(3)(i), the interests of the U.S. government are prejudiced if granting relief would result in the shareholder having a lower tax liability, taking into account applicable interest charges, in the aggregate for all years affected by the retroactive election (other than by a de minimis amount) than the shareholder would have had if the shareholder had made the section 1295 election by the election due date. The time value of money is taken into account for purposes of this computation. If granting relief would prejudice the interests of the U.S. government, the Commissioner may, in his sole discretion, grant consent to make the election provided the shareholder enters into a closing agreement with the Commissioner that requires the shareholder to pay an amount sufficient to eliminate any prejudice to the U.S. government as a consequence of the shareholder's inability to file amended returns for closed taxable years. Treas. Reg. § 1.1295-3(f)(3)(ii).

This requirement is met in this case because the partners of A have entered into closing agreements with the Commissioner that require the partners to pay an amount sufficient to eliminate any prejudice to the United States government as a consequence of the partners' inability to file amended returns for closed taxable years.

The third requirement of Treas. Reg. § 1.1295-3(f) is that the request must be made before a representative of the Internal Revenue Service raises upon audit the PFIC status of the corporation for any taxable year of the shareholder. Treas. Reg. § 1.1295-3(f)(1)(iii). In this case, the PFIC status of C has not been raised upon audit.

The final requirement of Treas. Reg. § 1.1295-3(f) is that the procedural requirements set forth in Treas. Reg. § 1.1295-3(f)(4) must be met. These 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 by the shareholder and any qualified tax professional upon whose advice the shareholder relied. Treas. Reg. § 1.1295-3(f)(4)(ii), (iii). These affidavits must describe the events that led to the failure to make a QEF election by the election due date, the discovery of such failure, and the engagement and responsibilities of the qualified tax professional and the extent to which the shareholder relied on such professional. Here, affidavits meeting the requirements set forth in Treas. Reg. § 1.1295-3(f)(4)(ii) and (iii) as to the failure of X to inform A of its need to make QEF elections have been submitted and A has otherwise satisfied the procedural requirements of Treas. Reg. § 1.1295-3(f)(4).

Based on the information submitted and representations made:

Consent is granted to A to make a retroactive election with respect to C for C's taxable year, under Treas. Reg. § 1.1295-3(f), provided that A complies with the rules under Treas. Reg. § 1.1295-3(g) regarding the time and manner for making the retroactive QEF election.

This private letter 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 ruling must be attached to any tax return to which it is relevant.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer's first representative.

Sincerely,

Valerie A. Mark Lippe
Senior Technician Reviewer, CC:INTL:Br2
Office of Associate Chief Counsel
(International)

cc: