

**Internal Revenue Service**

Department of the Treasury  
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Telephone Number:

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Date:

September 28, 2012

**LEGEND:**

Parent =

Target =

Target Sub 1 =

Target Sub 2 =

Target Sub 3 =

Newco 1 =

Newco 2 =

Newco 3 =

Foreign Sub =

AmalCo =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

State A =

Country A =

X =

Y =

Z =

a =

b =

c =

d =

e =

f =

g =  
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i =  
i =  
k =  
l =  
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o =  
p =  
q =  
r =  
s =  
t =

Dear :

This letter responds to a letter from your authorized representative dated July 7, 2011, requesting rulings concerning a consummated transaction described below. The information submitted in that request and in subsequent correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

**FACTS**

Prior to Date 4, Parent was an S corporation, incorporated in State A, with a number of domestic and foreign subsidiaries, disregarded entities and partnerships. Parent had three classes of voting common stock outstanding: Class X, Class Y and Class Z. On Date 4, as described below, Parent became a publicly-traded C corporation and the common parent of a consolidated group (the "Parent Group").

Target was a publicly-traded Country A corporation before Date 4. Target had a shares of common stock and b shares of voting convertible preferred stock outstanding. Target also had two series of warrants (the "Warrants") outstanding that expire on Date 7. Target owned all of the shares of Target Sub 1 and Foreign Sub, and all of the units of Target Sub 2. Target Sub 1 was the common parent of a consolidated group (the "Target Sub 1 Group"). Target Sub 2 was a single member limited liability company treated as a C corporation for Federal income tax purposes. Foreign Sub was an entity disregarded from Target for Federal income tax purposes. Target Sub 1 owned all of the stock of Target Sub 3. The taxpayer has requested rulings on the transaction described below (the "Transaction").

## THE TRANSACTION

- (i) On Date 1, NewCo 1, a new Country A corporation, was incorporated on behalf of and transferred to Parent for \$c (a de minimis amount). Also on Date 1, NewCo 2, also a new Country A corporation, was incorporated on behalf of and transferred to NewCo 1 for \$d (a de minimis amount). On Date 2, NewCo 3, a Country A shelf corporation incorporated on behalf of NewCo 2 on Date 3, was transferred to NewCo 2 for \$d.
- (ii) Prior to step (iii), below, approximately e percent of the preferred shareholders of Target exchanged their preferred shares for common shares of Target.

(The following steps occurred on Date 4.)

- (iii) NewCo 3 and Target amalgamated under Country A law, creating AmalCo (the "Target Amalgamation"). NewCo 2 received one common share of AmalCo, and Target common shareholders received (or were deemed to have received) f redeemable nonvoting preferred shares of AmalCo (the "AmalCo Redeemable Preferred Shares"). The preferred shareholders of Target that remained after step (ii) received preferred shares of AmalCo identical to their Target shares. The former assets of Target constituted in excess of 99 percent of the assets of AmalCo.
- (iv) Parent subscribed for g common shares of NewCo 1 with h Parent Class X shares and cash of \$i, and NewCo 1 subscribed for g common shares of NewCo 2 with h Parent Class X shares and cash of \$i.

- (v) NewCo 2 acquired the f AmalCo Redeemable Preferred Shares from the Target common shareholders with h Parent Class A shares and cash of \$i.
- (vi) Parent and AmalCo's bank debt was refinanced. As part of the debt refinancing, Parent borrowed from a third-party bank and loaned a portion of the funds to each of AmalCo (\$j) and Target Sub 3 (\$k). AmalCo and Target Sub 3 used such funds to repay their third-party bank debt and make the payments in Step (viii).
- (vii) Parent borrowed additional funds from a third-party bank. Parent declared and paid a dividend of \$l. The dividend was paid to persons who held the Class X, Class Y, and Class Z shares immediately prior to the amalgamation.
- (viii) AmalCo and Target Sub 3 used the cash received in step (vi) to redeem the Warrants for \$m, redeem the remaining voting convertible preferred shares of AmalCo for \$n, and make payments of \$o to certain employees in exchange for the disposition of and surrender by the holders of restricted share units and deferred share units issued under Target's restricted share unit plan and Target's deferred share unit plan.
- (ix) AmalCo redeemed the f AmalCo Redeemable Preferred Shares from NewCo 2 in exchange for a note in the amount of \$p. The note was immediately converted by NewCo 2 into f AmalCo common shares.
- (x) AmalCo sold all of the shares of Target Sub 1 and Foreign Sub and all of the units of Target Sub 2 to Parent in exchange for cash of \$q, \$r, and \$s, respectively. AmalCo used the cash to repay its intercompany debt of \$i owed to Parent. The remaining cash of \$t was distributed by AmalCo to NewCo 2, followed by a distribution of such cash by NewCo 2 to NewCo 1, followed by a distribution of such cash by NewCo 1 to Parent.

## REPRESENTATIONS

The following representations have been made regarding the Transaction:

- (a) The fair market value of the stock of AmalCo received by Target shareholders in connection with the Target Amalgamation was approximately equal to the fair market value of the Target stock surrendered in the exchange. All warrants, options, convertible securities, and other rights pursuant to which any person could acquire stock in Target ("Target Options") that were outstanding immediately prior to the Target Amalgamation were converted into the right to acquire stock in AmalCo ("AmalCo Options").

(b) As a result of the Target Amalgamation, former Target shareholders owned greater than 99 percent of the total outstanding stock of AmalCo and AmalCo Options and owned such stock and AmalCo Options solely by reason of their ownership of Target stock and Target Options immediately prior to the Target Amalgamation.

(c) The only consideration issued by AmalCo in the Target Amalgamation was AmalCo stock and AmalCo Options.

(d) Immediately after the Target Amalgamation, AmalCo possessed the same assets and liabilities as those possessed by Target immediately prior to the Target Amalgamation, in addition to the nominal assets possessed by NewCo 3 immediately prior to the Target Amalgamation. The assets possessed by NewCo 3 immediately prior to the Target Amalgamation, in the aggregate, constituted less than one percent of the net assets of AmalCo immediately after the Target Amalgamation.

(e) The liabilities of Target assumed (within the meaning of section 357(d)) by AmalCo plus the liabilities, if any, to which the transferred assets were subject, were incurred by Target in the ordinary course of its business and were associated with the assets transferred.

(f) The Target shareholders paid their own expenses, if any, incurred in connection with the Target Amalgamation.

(g) Target was not, at the time of the Target Amalgamation, under the jurisdiction of a court in a title 11 or similar case within the meaning of section 368(a)(3)(A).

(h) Target was not a controlled foreign corporation within the meaning of section 957(a) before the Target Amalgamation. AmalCo was not a controlled foreign corporation within the meaning of section 957(a) immediately after the Target Amalgamation.

(i) Before the Target Amalgamation, Target was not a passive foreign investment company (a "PFIC") within the meaning of section 1297(a). Immediately after the Target Amalgamation, AmalCo was not a PFIC within the meaning of section 1297(a).

(j) The Target Amalgamation was not an exchange described in Treas. Reg. § 1.367(b)-4(b)(1)(i), section 1.367(b)-4(b)(2)(i), or section 1.367(b)-4(b)(3).

(k) Target did not immediately before the Target Amalgamation, and AmalCo did not immediately after the Target Amalgamation, hold any U.S. real property interests as defined in section 897(c)(1).

(l) As of the beginning of the day on Date 4, the outstanding stock of Target was not owned by persons the ownership of whose stock would, under section 318(a) (other than section 318(a)(4)), be attributed to NewCo 2.

(m) There was, as of Date 4, no plan or intention for NewCo 2 or AmalCo to cease to remain in existence as a separate corporation.

(n) Parent had and continues to have no plan or intention to liquidate or to distribute the stock of NewCo 2 to its shareholders.

(o) As of Date 4, NewCo 2 had no plan or intention to dispose of the stock of AmalCo.

(p) On Date 6, Parent filed an election under section 338(g) with respect to NewCo 2's acquisition of the stock of AmalCo. Section 338(g) elections were also filed with respect to all non-U.S. subsidiaries of Target except for the non-U.S. subsidiaries owned by the U.S. subsidiaries of Target. No elections under section 338 were filed with respect to the U.S. subsidiaries of Target.

(q) Parent was a subchapter S corporation (within the meaning of section 1361(a)) immediately prior to the Transaction.

(r) No party to the Transaction acted or will act with a principal purpose contrary to the purposes of section 1.1502-76(b) to substantially reduce the Federal income tax liability of any person.

(s) No election was made, nor will one be made, to ratably allocate items of income, gain, loss, deduction, or credit under paragraphs (b)(2)(ii) or (b)(2)(iii) of section 1.1502-76.

(t) Parent and its affiliates filed a consolidated return for the taxable year ending Date 5.

(u) The Target Sub 1 Group terminated as a result of step (x) of the Transaction

when the stock of Target Sub 1 was acquired by Parent.

## **RULINGS**

Based solely on the information submitted and the representations set forth above, we rule as follows regarding the Transaction:

- (1) The Target Amalgamation qualified as a reorganization under section 368(a)(1)(F). Target and AmalCo were each “a party to a reorganization” under section 368(b).
  
- (2) No gain or loss was recognized by Target on the transfer of its assets to AmalCo in exchange for AmalCo stock and the assumption of liabilities in the Target Amalgamation (sections 361(a) and 357(a)).
  
- (3) No gain or loss was recognized by AmalCo on the receipt of the Target assets in exchange for AmalCo stock (section 1032(a)).
  
- (4) The basis of each asset received by AmalCo in the Target Amalgamation was equal to the basis of that asset in the hands of Target immediately before the Target Amalgamation (section 362(b)).
  
- (5) The holding period of each asset received by AmalCo in the Target Amalgamation includes the period during which Target held that asset (section 1223(2)).
  
- (6) No gain or loss was recognized by Target on the distribution or deemed distribution of the AmalCo stock to its shareholders (section 361(c)(1)).
  
- (7) No gain or loss was recognized by Target shareholders in the Target Amalgamation (section 354(a)(1)).
  
- (8) The basis of the AmalCo Redeemable Preferred Shares received (or deemed received) by Target shareholders in exchange for the Target stock was equal to the basis of the Target stock exchanged therefor (sections 358(a)(1) and 1.358-2(a)(2)(i)).
  
- (9) The holding period of the AmalCo Redeemable Preferred Shares in the hands of the Target shareholders in the Target Amalgamation includes the holding period of the Target stock exchanged therefor, provided the Target stock

was held by Target Shareholders as a capital asset on the date of the Target Amalgamation (section 1223(1)).

(10) AmalCo succeeded to and took into account the tax attributes of Target described in section 381(c), subject to the conditions and limitations specified in sections 381, 382, 383, and 384 and the regulations thereunder (sections 381(a) and 1.381(a)-1).

(11) NewCo 2's acquisition of the stock of AmalCo was a "qualified stock purchase" within the meaning of section 338(d)(3).

(12) Parent, as common parent of the consolidated group of which NewCo 2 was a member, was eligible to make the election under section 338(g) in respect of NewCo 2's qualified stock purchase of AmalCo.

(13) Provided that a section 338(g) election was made with respect to the qualified stock purchase of AmalCo, a section 338(g) election was permissible for any directly owned subsidiary of AmalCo of which AmalCo owned stock meeting the requirements of section 1504(a)(2) (a "direct AmalCo subsidiary"). If a section 338(g) election was made for a direct AmalCo subsidiary, a section 338(g) election was permissible for any direct subsidiary of such direct AmalCo subsidiary (or subsidiaries) of which the direct AmalCo subsidiary (or subsidiaries) owned stock meeting the requirements of section 1504(a)(2) (a "lower tier AmalCo subsidiary"). If a section 338(g) election was made for a lower tier AmalCo subsidiary, a section 338(g) election was permissible for any direct subsidiary of a lower tier AmalCo subsidiary (or subsidiaries) of which the lower tier AmalCo subsidiary (or subsidiaries) owned stock meeting the requirements of section 1504(a)(2) (also, a "lower tier AmalCo subsidiary").

(14) The first day of the taxable year of the Parent Group was Date 4 (section 1.1502-76(b)(1)(ii)(A)(2)).

(15) The items of income, gain, loss, deduction, and credit of Parent (including the income, gain, loss, deduction, and credit of Parent's qualified subchapter S subsidiaries) are assigned to Parent's last year as an S corporation and to Parent's first taxable year as a member of the Parent Group on the basis of Parent's normal method of accounting as determined under section 446 (section 1.1502-76(b)(2)(v)).

(16) The Parent Group's consolidated return for the taxable year ending Date 5 includes the items of income, gain, loss, deduction, and credit of the Parent Group's subsidiary members for the portion of their respective taxable years (without taking into account any closing of their tax years as a result of their joining the Parent Group) of which they were members of the Parent Group. The income, gain, loss, deduction, and credit of the Parent Group's subsidiary members for the portion of their respective taxable years (without taking into account any closing of their taxable years as a result of their joining the Parent Group) of which they were not a member of the Parent Group are included in a separate return (including the consolidated return of another group) (section 1.1502-76(b)(1)(i)).

### **CAVEATS**

No opinion is expressed concerning the tax treatment of the Transaction under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Transaction that are not specifically covered by the above rulings.

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 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 this ruling letter.

Pursuant to the power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

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Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel (Corporate)

cc: