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Department of the Treasury

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Taxpayer =

Foreign Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Country A =

Business XX =

BBB% =

CCC% =

Year L =

Year M =

Year N =

Year O =

Month Q =

Date S =

Date T =

Date U =

Date V =

Dear :

We respond to Taxpayer's November 8, 2006 request for rulings on certain federal income tax consequences of a consummated transaction (the "Transaction"). Additional information was submitted in a letter dated March 19, 2007. The information provided is summarized below.

Taxpayer is a wholly owned U.S. subsidiary of Foreign Parent, who is engaged in Business XX. Taxpayer is the top-tier holding company for all of Foreign Parent company's U.S. based operations (together the "Taxpayer U.S. Group") that include numerous direct and indirect insurance and non insurance subsidiaries of Taxpayer. Some of those subsidiaries form an affiliated group (the "Taxpayer affiliated group"), some or all of which have also joined in the filing of a consolidated U.S. federal income tax return. Taxpayer is the common parent of that group. Taxpayer accounts for its activities for Federal income tax purposes on a calendar-year basis using the accrual method of accounting.

Immediately prior to the Transaction, Taxpayer owned all of the shares of Sub 1 and Sub 2. Sub 1 owned all of the shares of Sub 3 and BBB% (i.e., less than 80%) of the shares of Sub 4. Sub 3 owned the remaining CCC% of the stock of Sub 4.

The Taxpayer had made an election in Year L pursuant to section 1504(c)(2) to treat certain life insurance companies taxed under section 801 as includible in the Taxpayer affiliated group under section 1504(a). For each tax year since the election was made through Year M (occurring many years after Year L), Taxpayer has filed a consolidated tax return that included at least one includible and eligible life insurance company. In this regard, Taxpayer directly owned all of the stock of Sub 2, an eligible and includible life insurance company, until the Transaction occurring in Month Q of Year M. Prior to the Transaction in Month Q of Year M, Sub 2 was an eligible and includible life insurance subsidiary of Taxpayer that had joined with it in filing a life-nonlife federal consolidated return ("life-nonlife return").

Sub 1 is a non-insurance subsidiary and a member of the Taxpayer affiliated group.

Sub 3, one of Taxpayer's indirectly owned life insurance subsidiaries, was not includible in Taxpayer's consolidated return at least through the Year N taxable year. Sub 3 was acquired in Month Q of Year O by Sub 1 and has remained a wholly owned subsidiary of Sub 1 and taxed as a life insurance company under section 801. Sub 3 has not been includible in the Taxpayer affiliated group nor eligible to join in filing a consolidated return with Taxpayer at least through its Year N taxable year because it had not yet been owned by the Taxpayer affiliated group for the requisite five taxable years. For those years Sub 3 has been filing separate U.S. federal income tax returns.

Sub 4 is a life insurance company taxed under section 801 and is the common parent of an affiliated group of life insurance companies as defined under section 1504(c)(1) ("the Sub 4 affiliated group"). Sub 4 is not a member of the Taxpayer affiliated group. The members of the Sub 4 affiliated group members (at least through the Year N taxable year) have joined in filing a life-life consolidated return.

As a result of the following steps in the Transaction, in Month Q of Year M, the Taxpayer has effected a transfer of all of the outstanding shares of Sub 2 to Sub 4 pursuant to a plan to improve managerial, administrative, operational and business efficiencies associated with the life reinsurance operations of the Taxpayer U.S. Group.

On Date S, as the first step of the Transaction, Taxpayer transferred all of Sub 2's outstanding shares to Sub 1.

On Date T, as the second step of the Transaction, Sub 1 transferred CCC% of the Sub 2 shares to Sub 3 and BBB% of the shares to Sub 4.

On Date U, as the third step of the Transaction, Sub 3 transferred all of its CCC% of Sub 2 shares to Sub 4, and thus Sub 2 became wholly owned by Sub 4.

For tax periods beginning after Date U, Sub 2's income and deductions have not been included with the Taxpayer consolidated group's tax return.

Beginning in its consolidated return's Year N taxable year, Taxpayer will file a consolidated return that does not include any life insurance companies. While Taxpayer continues to directly and indirectly own numerous life insurance companies, none of those life insurance companies are eligible to join Taxpayer's consolidated return as of its Year N taxable year.

## **Law**

Section 1501 provides that an affiliated group of corporations shall have the privilege of making a consolidated return with respect to the income tax imposed by chapter 1 for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to all the consolidated return regulations prescribed under section 1502 prior to the last day prescribed by law for the filing of such return. The making of a consolidated return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year, the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

Section 1502 provides that the Secretary shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the income tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability. In carrying out the preceding sentence, the Secretary may prescribe rules that are different from the provisions of chapter 1 that would apply if such corporations filed separate returns.

Section 1504(a) defines an affiliated group. Section 1504(a)(1) provides that the term "affiliated group" means: (A) 1 or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation, but only if--

(B)(i) the common parent owns directly stock meeting the requirements of paragraph (2) in at least 1 of the other includible corporations, and

(ii) stock meeting the requirements of paragraph (2) in each of the includible corporations (except the common parent) is owned directly by 1 or more of the other includible corporations.

Section 1504(a)(2) provides that the ownership of stock of any corporation meets the requirements of this paragraph if it--

“(A) possesses at least 80 percent of the total voting power of the stock of such corporation, and

(B) has a value equal to at least 80 percent of the total value of the stock of such corporation.”

Section 1504(b) provides which corporations are includible corporations and section 1504(b)(2) provides that an insurance company subject to taxation under section 801 is not an "includible corporation".

Section 1504(c) provides exceptions to that rule under section 1504(b)(2).

Section 1504(c)(1) provides that notwithstanding the provisions of section 1504(b)(2), two or more domestic insurance companies each of which is subject to tax under section 801 shall be treated as includible corporations for purposes of applying subsection (a) to such insurance companies alone.

In addition, section 1504(c)(2) provides that notwithstanding the provisions of section 1504(b)(2), if an affiliated group (determined without regard to subsection (b)(2)) includes one or more domestic insurance companies taxed under section 801, the common parent of such group may elect (pursuant to regulations prescribed by the Secretary) to treat all such companies as includible corporations for purposes of applying subsection (a) except that no such company shall be so treated until it has been a member of the affiliated group for the 5 taxable years immediately preceding the taxable year for which the consolidated return is filed.

Treas. Reg. section 1.1502-47 provides regulations with respect to the rules for life-nonlife affiliated groups.

Treas. Reg. section 1.1502-47(c)(5) provides that the term "member" means a corporation (including the common parent) that is an includible corporation in the group. A life company or mutual company is tentatively treated as a member for any taxable year for purposes of determining if it is an eligible corporation under paragraph (d)(12) of this section and therefore if it is an includible corporation under section 1504(c)(2). If such a company is eligible and includible (under section 1504(c)(2)), it will actually be treated as a member of the group.

Treas. Reg. section 1.1502-47(d)(12) provides as follows the definition of what is an “eligible corporation.”

“Eligible corporations -- (i) In general. A corporation is an eligible corporation for a taxable year of a group only if, throughout every day of the base period the corporation:

(A) Was in existence and a member of the group determined without the exclusions in section 1504(b)(2) (see paragraphs (d)(12)(iii) through (vi) of this section),

(B) Was engaged in the active conduct of a trade or business (“active business”),

(C) Did not experience a change in tax character (see paragraph (d)(12)(vii) of this section), and

(D) Did not undergo disproportionate asset acquisitions (see paragraph (d)(12)(viii) of this section).

(ii) Base period. The base period consists of the common parent's five taxable years immediately preceding the group's taxable year for which the consolidated return and the determination of eligibility are made. Eligibility is determined for each consolidated return year beginning with the first year for which the election under section 1504(c)(2) is effective.”

Treas. Reg. section 1.1502-47(d)(13) provides the definition for an ineligible corporation. Treas. Reg. section 1.1502-47(d)(13) states that:

“A corporation that is not an eligible corporation is ineligible. If a life company or mutual company is ineligible, it is not treated under section 1504(c)(2) as an includible corporation. Losses of a nonlife member arising in years when it is ineligible may not be used under section 1503(c)(2) and paragraph (m) of this section to set off the income of a life member. If a life or mutual company is ineligible and is the common parent of the group (without section 1504(b)(2)), the election under section 1504(c)(2) may not be made.”

Treas. Reg. Sections 1.1502-47(e)(3) states that except as provided in Treas. Reg. section 1.1502-75(c) and paragraph (e)(4) of this section, the election under section 1504(c)(2) is irrevocable.

Under Treas. Reg. section 1.1502-47(f)(4), if a life company is ineligible in the consolidated return year for which the election is effective, it will be treated as an includible corporation for the common parent's first taxable year in which the company becomes eligible.

After the Transaction, Sub 3 is not yet an eligible corporation and therefore it is an ineligible corporation and thus it is not an “includible corporation” of the Taxpayer affiliated group. Since Sub 4 is owned BBB% by Sub 1 (a wholly owned subsidiary of Taxpayer, the common parent) and CCC% by Sub 3 (which is not an includible corporation) the common parent does not meet the stock ownership requirements of section 1504(a)(1) and (2) with regard to its indirect ownership in Sub 4 via its direct ownership in Sub 1. Sub 4 owns all of the stock of Sub 2. Accordingly, the Sub 4-Sub 2 chain of corporations represents two corporations that are not part of the Taxpayer affiliated group.

## **Rulings**

This Office rules as follows:

Taxpayer will not be permitted for tax periods beginning after Date V to file a life-nonlife consolidated tax return with any of the life insurance companies, Sub 2, Sub 3 and Sub 4 unless such life insurance company qualifies as an “eligible corporation” within the meaning of Treas. Reg. section 1.1502-47(d)(12) and Taxpayer files a new election under section 1504(c)(2)(A).

## **Caveats**

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 the request for rulings, it is subject to verification on examination.

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.

We expressly do not rule as to which entity is, or is not, an includable or eligible entity for purposes of determining whether the Taxpayer can qualify as making a new election under section 1504(c)(2) to file a life-nonlife return.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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.

Sincerely,

Steven J. Hankin  
Senior Technician Reviewer, Branch 6  
Office of Associate Chief Counsel (Corporate)