

## Internal Revenue Service

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## Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

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CC:INTL

PLR-143920-07

Date:

March 16, 2009

### Legend

Parent =

Transferor =

Transferee =

Disregarded Entity =

Financial =

Insurer =

Operating =

PLR-143920-07

2

Entity X =

Financial Group =

Country A =

Governmental Subdivision R =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Date 11 =

Dear :

This is in response to a letter dated Date 6, requesting rulings regarding the federal income tax consequences of a transaction and an extension of time under Treas. Reg. § 301.9100-3 to file certain statements related to such transaction. We received additional information in letters dated Date 7, Date 10, and Date 11.

The rulings contained in this letter are predicated upon facts and representations submitted by the taxpayers and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the factual information, representations, and other data may be required as part of the audit process. The information submitted for consideration is substantially as set forth below.

## **I. PRE-TRANSACTION STRUCTURE**

Prior to the transaction described below in section III of this ruling letter, Parent, a foreign corporation organized under the laws of Country A, owned all the outstanding stock of Transferor and Insurer, each of which is a foreign corporation organized under the laws of Country A.

Transferor owned all of the outstanding interests in Disregarded Entity, an entity organized under the laws of Governmental Subdivision R that is disregarded as an entity separate from Transferor.

Disregarded Entity owned all the outstanding stock of Financial, a domestic corporation. Financial is a calendar-year taxpayer and was the common parent of the Financial Group.

Financial owned all the outstanding stock of Operating, a domestic life insurance company. Operating is a calendar-year taxpayer and a member of the Financial Group.

## **II. PREVIOUS RESTRUCTURING**

### **A. Incorporation of U.S. Assets**

Prior to the formation of Financial, described below in section II.B of this ruling letter, Parent owned all the outstanding stock of Insurer, and Insurer owned all the outstanding stock of Operating. Prior to Year 1, Insurer carried on an insurance business in the United States that, pursuant to section 842(a), was subject to tax under section 801(a) on the income effectively connected with its conduct of a trade or business within the United States (U.S. trade or business), and under section 881 on other income from sources within the United States. Insurer was also subject to the branch profits tax under section 884.

In Year 1, and on subsequent occasions, Insurer transferred U.S. assets used in its U.S. trade or business to Operating in exchange for stock. These transfers qualified for nonrecognition under section 351. Insurer and Operating received a private letter ruling from the Internal Revenue Service (IRS) on Date 1 (Date 1 Ruling), stating that one of these transfers qualified for nonrecognition under section 351. With respect to these transfers, Operating elected under Treas. Reg. §1.884-2T(d)(4) to increase its earnings and profits (E&P) by an allocable portion of Insurer's effectively connected E & P (ECE&P) and non-previously taxed accumulated ECE&P. In addition, Insurer reduced its ECE&P and non-previously taxed accumulated ECE&P in accordance with Treas. Reg. §1.884-2T(d)(4)(iii). Pursuant to Treas. Reg. §1.884-2T(d)(5)(i), Insurer agreed that, upon the disposition of part or all of the stock or securities it owned in Operating (or a successor in interest), it would treat as a dividend equivalent amount for the taxable year in which the disposition occurred an amount equal to the lesser of (A) the amount realized upon such disposition, or (B) the total amount of ECE&P and non-previously taxed accumulated ECE&P that was allocated to Operating pursuant to Treas. Reg. §1.884-2T(d)(4)(ii).

#### B. Formation of Financial

In Year 2, Insurer formed Financial and transferred to it all of the stock of Operating in exchange for Financial stock. This transfer qualified for nonrecognition under section 351. As part of the same transaction, Insurer transferred all of the stock of Financial to Disregarded Entity in exchange for an ownership interest in Disregarded Entity. In connection with the transfer, Parent and Operating received a private letter ruling from the IRS on Date 2 (Date 2 Ruling) stating, in part, the following:

1. Provided that the Actual Transaction qualifies as an exchange under section 351, and provided: (1) \_\_\_\_\_ makes a valid election to increase its earnings and profits by an amount equal to the earnings and profits previously allocated to \_\_\_\_\_ pursuant to the prior elections by \_\_\_\_\_ under section 1.884-2T(d)(4); (2) \_\_\_\_\_ attaches a statement to its timely filed (including extensions) federal income tax return treating such earnings and profits as if they had been allocated from \_\_\_\_\_ to \_\_\_\_\_ pursuant to an election under section 1.884-2T(d)(4); and (3) \_\_\_\_\_ attaches a statement to its timely filed (including extensions) federal income tax return agreeing that, upon the disposition of part or all of the stock or securities of either \_\_\_\_\_ (or a successor-in-interest) or Disregarded \_\_\_\_\_ (or a successor-in-interest), or upon a direct or indirect disposition of part or all of the stock or securities of \_\_\_\_\_ (or a successor-in-interest), shall treat such disposition as a "disposition" for purposes of section 1.884-2T(d)(5)(i):
  - a. \_\_\_\_\_ transfer of \_\_\_\_\_ stock to \_\_\_\_\_ will not constitute a "disposition" of part or all of \_\_\_\_\_ stock within the meaning of section 1.884-2T(d)(5)(i); and

- b. earnings and profits will be reduced by an amount equal to the earnings and profits allocated to pursuant to a valid election under section 1.884-2T(d)(4).
2. If disposes of part or all of the stock or securities of either (or a successor-in-interest) or Disregarded (or a successor-in-interest), or if disposes of part or all of the stock or securities of (or a successor-in-interest), shall treat such disposition as a "disposition" for purposes of section 1.884-2T(d)(5)(i).

### C. Spin-Off of Transferor

In Year 3, pursuant to a reorganization described in section 368(a)(1)(D), Insurer transferred all of its interests in Disregarded Entity (which owned all the stock of Financial) and cash to Transferor, a newly-formed corporation, in exchange solely for stock of Transferor. Insurer then distributed all the stock of Transferor to Parent in a transaction to which section 355 applied. In connection with this transaction, Parent and Operating received a private letter ruling from the IRS on Date 3 (Date 3 Ruling) stating, in part, the following:

10. Provided that attaches a statement to its timely filed (including extensions) federal income tax return agreeing that will treat a disposition of part or all of the stock or securities of either (or a successor-in-interest) or (or a successor-in-interest), as a "disposition" for purposes of section 1.884-2T(d)(5)(i), then transfer of the stock to will not be treated as a "disposition" of stock under section 1.884-2T(d)(5)(i). If in the future is liquidated into in a liquidation under section 332, such liquidation of will be treated as a "disposition" for purposes of section 1.884-2T(d)(5)(i), notwithstanding section 1.884-2T(d)(5)(ii).

\* \* \*

12. sale of stock is a "disposition" for purposes of section 1.884-2T(d)(5)(i), and must treat an appropriate amount as a dividend equivalent amount in accordance with section 1.884-2T(d)(5)(i).

The IRS supplemented the Date 3 Ruling on Date 4, which, in part, added a sentence to the end of ruling 10, stating:

This ruling is in lieu of and replaces ruling 2 of the for transfers occurring after transfer of the stock to

### III. TRANSACTION

On Date 5, Disregarded Entity acquired all the assets of Entity X, an unrelated domestic corporation. In Year 4, and pursuant to a restructuring involving the assets acquired from Entity X, Disregarded Entity formed Transferee, a domestic corporation that is a calendar-year taxpayer, and transferred to Transferee the assets acquired from Entity X and all the stock of Financial, in exchange solely for stock of Transferee (Transaction). As a result of the Transaction, Transferee became the new common parent of the Financial Group.

#### **IV. UNTIMELY FILINGS UNDER SECTION 884**

In order for the Transaction to qualify for the exception under Treas. Reg. §1.884-2T(d)(5)(ii), Transferor and Transferee must have timely filed certain statements by the due date (with extensions) of their respective Year 4 tax returns. Specifically, Transferee was required to make an election under Treas. Reg. §1.884-2T(d)(4)(i) by filing a statement with its timely filed Year 4 tax return, due no later than Date 9, and Transferor was required to file a timely return for Year 4 no later than Date 9, in order to attach to it a statement under Treas. Reg. §§1.884-2T(d)(5)(i) and -2T(d)(5)(iv).

The requested rulings related to the Transaction were not issued by Date 9. As a result, neither Transferee nor Transferor was able to comply with these requirements. Specifically, Transferor, a foreign corporation not subject to U.S. taxation, did not file a Year 4 tax return to which it could have attached a statement in accordance with Treas. Reg. §§1.884-2T(d)(5)(i) and -2T(d)(5)(iv). While Transferee filed a Year 4 tax return on Date 8, it did not attach to such return a statement in accordance with Treas. Reg. §1.884-2T(d)(4).

#### **V. REPRESENTATIONS**

Taxpayers have made the following representations in connection with the Transaction:

- 1) The Transaction was described in section 351 and did not result in the recognition of gain or loss to Transferor.
- 2) Transferor was a qualified resident of Country A within the meaning of Treas. Reg. §1.884-5.
- 3) Transferor will file a Year 4 tax return within 30 days of the date of this ruling letter and attach a statement to that return agreeing that it will treat a disposition of part or all of the stock or securities of Transferee (or a successor-in-interest), or part or all of the interests in Disregarded Entity (or a successor-in-interest), as a “disposition” for purposes of Treas. Reg. §1.884-2T(d)(5)(i).

- 4) Transferor will attach to its Year 4 tax return filed in accordance with representation 3 of this ruling letter a statement agreeing that it will treat the earnings and profits previously allocated to Financial pursuant to prior elections made with respect to Financial under Treas. Reg. §1.884-2T(d)(4) as if they had been allocated from Transferor to Transferee pursuant to an election under Treas. Reg. §1.884-2T(d)(4).
- 5) Transferee will file an amended Year 4 tax return within 30 days of the date of this ruling letter and attach to that return a statement described in Treas. Reg. §1.884-2T(d)(4)(i) agreeing to increase its earnings and profits by an amount equal to the earnings and profits previously allocated to Financial pursuant to prior elections made with respect to Financial under Treas. Reg. §1.884-2T(d)(4) as if they had been allocated from Transferor to Transferee pursuant to an election under Treas. Reg. §1.884-2T(d)(4).

## VI. RULINGS

Based solely on the information submitted and on the representations made by the taxpayers, we rule as follows:

1. Pursuant to Treas. Reg. §301.9100-3, Transferor is granted an extension of time until 30 days from the date of this ruling letter to make the filings and elections described in representations 3 and 4 of this ruling letter with respect to the Transaction such that they will be considered timely filed for purposes of Treas. Reg. §1.884-2T(d).
2. Pursuant to Treas. Reg. §301.9100-3, Transferee is granted an extension of time until 30 days from the date of this ruling letter to make the filings and elections described in representation 5 of this ruling letter with respect to the Transaction such that they will be considered timely filed for purposes of Treas. Reg. §1.884-2T(d).
3. Pursuant to Treas. Reg. §1.884-2T(d)(5)(ii), the transfer by Disregarded Entity of the stock of Financial to Transferee pursuant to the Transaction will not be treated as a “disposition” of the Financial stock under Treas. Reg. §1.884-2T(d)(5)(i).
4. Financial’s earnings and profits will be reduced by an amount equal to the earnings and profits allocated to Transferee in accordance with representation 5 of this ruling letter.
5. The statement filed pursuant to representation 3 of this ruling letter is in lieu of and replaces the statement filed pursuant to ruling 10 of the Date 3 Ruling for dispositions occurring after the date of the Transaction.

No opinion is expressed about the tax treatment of any of the transactions described herein under other provisions of the Code and regulations, or about the tax treatment of any conditions existing at the time of, or effects resulting from, the Transaction not specifically covered by the above rulings. In particular, no opinion is expressed with respect to the application of section 351 and related provisions to the Transaction.

This letter is directed only to the taxpayer who requested it. Section 6110(j)(3) provides that this letter may not be used or cited as precedent.

Each affected taxpayer must attach a copy of this letter to the taxpayer's federal income tax return for the year in which the transaction covered by this ruling letter is consummated.

In accordance with the power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative. A copy of this ruling should be attached to any federal income tax return to which it is relevant.

Sincerely,

John J. Merrick  
Special Counsel  
(International)

Enclosure:  
Copy for 6110 purposes

cc: