

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201122002**

Release Date: 6/3/2011

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

Index Number: 367.00-00, 367.10-00, 368.00-00, 368.06-00

ID No.

Telephone Number:

Refer Reply To:

CC:CORP:02

PLR-104673-11

Date:

March 02, 2011

Legend

Parent =

LLC 1 =

LLC 2 =

FSub 1 =

New FSub 1 =

FSub 2 =

FSub 3 =

State A =

a =

b =

Country A =

Country B =

Date 1 =

Date 2 =

Date 3 =

Dear :

This letter ruling responds to your January 19, 2011 request for rulings on certain federal income tax consequences of a series of completed transactions. The information submitted in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties 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.

STATEMENT OF FACTS

Parent, a publicly traded State A corporation, is the parent of a worldwide group of corporations and other legal entities. Immediately prior to the completed transactions, described below, Parent owned all of the outstanding interests in LLC 1 and LLC 2, each a State A limited liability company that is disregarded as an entity separate from Parent for federal tax purposes. LLC 1 and LLC 2 owned a percent and b percent, respectively, of the outstanding stock of FSub 1, a Country A entity that was treated as a controlled foreign corporation ("CFC") under section 957(a). FSub 1 owned all of the outstanding interests in FSub 2, a Country B entity that was disregarded as an entity separate from FSub 1 for federal tax purposes. FSub 2 owned all of the outstanding interests in FSub 3, a Country B entity that was treated as a disregarded entity for

federal tax purposes. FSub 3 owned, through disregarded entities and CFCs, a number of foreign operating businesses.

COMPLETED TRANSACTIONS

In order to reduce accounting, banking, systems, legal, regulatory, and stewardship costs through the elimination of unnecessary legal entities, Parent caused the following transactions to occur:

- (i) On Date 1, FSub 1 migrated its country of incorporation from Country A to Country B. The resulting entity is referred to herein as “New FSub 1.”
- (ii) Effective on Date 2, FSub 2 elected under Treas. Reg. § 301.7701-3 to be treated as an association taxable as a corporation for federal income tax purposes.
- (iii) On Date 3, New FSub 1 merged into FSub 2, with FSub 2 surviving, under applicable Country B law (together with steps (i) and (ii), the “Reorganization”).

REPRESENTATIONS

Parent makes the following representations with respect to the Reorganization:

- (a) FSub 2 was eligible to elect under Treas. Reg. § 301.7701-3 to be treated as an association taxable as a corporation for federal income tax purposes effective on Date 2.
- (b) Parent received solely FSub 2 stock in the Reorganization.
- (c) The fair market value of the FSub 2 stock received by Parent in the Reorganization was approximately equal to the fair market value of the FSub 1 stock surrendered in exchange therefor.
- (d) Immediately following the Reorganization, Parent owned all of the outstanding stock of FSub 2 and owned such stock solely by reason of its ownership of FSub 1 stock immediately prior to the Reorganization.
- (e) Immediately following consummation of the Reorganization, FSub 2 possessed the same assets and liabilities, except for assets used to pay expenses incurred in connection with the Reorganization, as those possessed by FSub 1 immediately prior to the Reorganization. Assets used to pay expenses constituted less than one percent of the net assets of FSub 1.

- (f) At the time of the Reorganization, FSub 1 did not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in FSub 1.
- (g) The liabilities of FSub 1 assumed (within the meaning of section 357(d)) by FSub 2 were incurred by FSub 1 in the ordinary course of its business and were associated with the assets transferred.
- (h) Parent paid its respective expenses, if any, incurred in connection with the Reorganization.
- (i) At the time of the Reorganization, FSub 1 was not under the jurisdiction of a court in a title 11 or similar case within the meaning of section 368(a)(3)(A).
- (j) At all times prior to the Reorganization, because FSub 2 was disregarded as an entity separate from FSub 1, for federal tax purposes: (i) FSub 2 was not engaged in any business activity, (ii) FSub 2 had no federal income tax attributes (including those specified in section 381(c)), and (iii) FSub 2 held no assets.
- (k) At all times before the Reorganization, FSub 1 was not a passive foreign investment company within the meaning of section 1297(a).
- (l) Immediately after the Reorganization, FSub 2 was not a passive foreign investment company within the meaning of section 1297(a).
- (m) Immediately before the Reorganization, FSub 1 was a controlled foreign corporation within the meaning of section 957(a).
- (n) Immediately after the Reorganization, FSub 2 was a controlled foreign corporation within the meaning of section 957(a).
- (o) Each person that was a section 1248 shareholder (within the meaning of Treas. Reg. § 1.367(b)-2(b)) of FSub 1 immediately before the Reorganization was a section 1248 shareholder of FSub 2 immediately after the Reorganization.
- (p) The Reorganization was not an exchange described in Treas. Reg. § 1.367(b)-4(b)(1)(i), (b)(2)(i), or (b)(3).
- (q) The notice requirements of Treas. Reg. § 1.367(b)-1(c)(1) will be met with respect to the Reorganization.

- (r) Parent will comply with Treas. Reg. § 1.367(b)-4(d) with respect to subsequent exchanges of FSub 2 stock, as applicable.
- (s) FSub 1 did not hold any United States real property interests, as defined in section 897(c)(1), immediately before the Reorganization, and FSub 2 did not hold any such interests immediately after the Reorganization.
- (t) With respect to any existing gain recognition agreement entered into by Parent in connection with a prior transfer by Parent of stock or securities to FSub 1, Parent will, in accordance with Treas. Reg. § 1.367(a)-8(k)(6)(ii), enter into a new gain recognition agreement as described in Treas. Reg. § 1.367(a)-8(c)(5) that designates FSub 2 as the transferee foreign corporation for purposes of Treas. Reg. § 1.367(a)-8, and will comply with the notification requirements thereunder.

RULINGS

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the Reorganization:

- (1) The Reorganization was a reorganization within the meaning of section 368(a)(1)(F). FSub 1 and FSub 2 each was “a party to a reorganization” within the meaning of section 368(b).
- (2) FSub 1 recognized no gain or loss on the transfer of assets to FSub 2 in exchange for FSub 2 stock and FSub 2’s assumption of FSub 1’s liabilities in the Reorganization. Sections 361(a) and 357(a).
- (3) FSub 2 recognized no gain or loss on the receipt of FSub 1’s assets in exchange for FSub 2 stock in the Reorganization. Section 1032.
- (4) FSub 2’s basis in each asset received from FSub 1 in the Reorganization was the same as FSub 1’s basis in such asset immediately before the Reorganization. Section 362(b).
- (5) FSub 2’s holding period for each asset received from FSub 1 in the Reorganization includes the period during which such asset was held by FSub 1. Section 1223(2).
- (6) FSub 1 recognized no gain or loss on the distribution of FSub 2 stock to Parent in the Reorganization. Section 361(c)(1).

- (7) Parent recognized no gain or loss on its exchange of FSub 1 stock for FSub 2 stock in the Reorganization. Section 354(a)(1).
- (8) Parent's basis in the FSub 2 stock received in the Reorganization was the same as its basis in the FSub 1 stock surrendered in exchange therefor. Section 358(a)(1).
- (9) Parent's holding period for the FSub 2 stock received in the Reorganization includes the holding period for the FSub 1 stock exchanged therefor, provided the FSub 1 stock was held as a capital asset on the date of the exchange. Section 1223(1).
- (10) FSub 2 succeeded to and will take into account the tax attributes of FSub 1 described in section 381(c). Section 381(a). These items will be taken into account by FSub 2 subject to the conditions and limitations specified in sections 381 through 384 and the Treasury Regulations thereunder.
- (11) The Reorganization was not a direct or indirect transfer of stock or securities to a foreign corporation (as described in Treas. Reg. § 1.367(a)-3) subject to section 367(a).

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Reorganization 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 Reorganization that are not specifically covered by the above rulings. In particular, we express no opinion regarding:

- (1) The adjustments to earnings and profits or deficits in earnings and profits, if any, in any of the transactions to which section 367(a) or (b) apply, and
- (2) To the extent not otherwise specifically ruled upon above, any consequences under section 367 with respect to any transaction described in this letter ruling.

PROCEDURAL STATEMENTS

This 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.

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

A copy of this letter ruling 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,

Gerald B. Fleming
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel (Corporate)

cc: