

Internal Revenue Service

Department of the Treasury
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CC:CORP
PLR-152462-10
Date:
June 28, 2011

Legend

Parent =

Sub 1 =

Sub 2 =

FSub 1 =

FSub 2

FSub 3 =

FSub 4 =

Newco 1 =

Newco 2 =

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- Business A =
- Country X =
- Court =
- Authority =
- Class A Shares =
- Class B Shares =
- b =
- c =
- d =
- e =
- f =
- g =
- h =
- i =

Dear _____ :

This letter responds to your letter dated December 20, 2010, in which you requested rulings regarding certain Federal income tax consequences of a series of proposed transactions (collectively, the "Proposed Transaction"). The information submitted in that letter and later correspondence is summarized below.

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.

Summary of Facts

Parent is a widely-held domestic corporation that is the common parent of a U.S. consolidated group. Parent indirectly owns all the outstanding stock of Sub 1 and directly owns all the outstanding stock of FSub 4, a foreign corporation. Sub 1 owns all the outstanding stock of Sub 2 and FSub 1, a foreign corporation. Sub 2 is the beneficial owner of approximately b% of the outstanding stock of FSub 2, a Country X entity as described in Treas. Reg. § 301.7701-2(b)(8)(i) (i.e., a so-called per se corporation). FSub 4 holds Sub 2's beneficial interest in FSub 2. The remaining c% of the outstanding stock of FSub 2 is publicly held (the "Public Shareholders" and together with Sub 2, the "Shareholders"). FSub 2 is engaged in Business A through its wholly owned subsidiary FSub 3, a foreign corporation.

Proposed Transaction

For what are represented to be valid business reasons, taxpayer intends to complete the Proposed Transaction as follows:

Preliminary Steps

- 1) Sub 1 will contribute approximately \$d to Sub 2 in exchange for equity, debt, or a combination of both.
- 2) Sub 1 will contribute approximately \$e to FSub 1 in exchange for FSub 1 common stock.
- 3) FSub 3 will form Newco 1, a foreign company, and transfer Business A to Newco 1 in exchange for Newco 1 stock. Newco 1 will elect to be treated as a disregarded entity pursuant to Treas. Reg. § 301.7701-3.

Reorganization

Steps (4) through (7) below (the "Reorganization") will require the approval of the Shareholders and the Court, as well as filings with the Authority to meet certain regulatory requirements in Country X.

- 4) Sub 2 will form Newco 2, a Country X entity treated as a corporation under Treas. Reg. § 301.7701-3(b)(2)(i), with nominal share capital.

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- 5) FSub 2 will be re-registered as a Country X entity treated as a corporation under Treas. Reg. § 301.7701-3(b)(2)(i), and FSub 2's existing shares will be cancelled. In consideration, new shares in FSub 2 will be issued to Newco 2.
- 6) Newco 2 will issue g Class A Shares to the Public Shareholders and h Class B Shares to Sub 2 in consideration for the cancellation of the Shareholders' FSub 2 stock.
- 7) FSub 2 will elect to be treated as a disregarded entity ("FSub 2 DRE") under Treas. Reg. § 301.7701-3 (the "FSub 2 Election"). The effective date of the FSub 2 Election will be the day after Newco 2 issues its Class A and Class B Shares, respectively, to the Public Shareholders and Sub 2.

Post-Reorganization Distribution

Following the Reorganization, taxpayer will undergo Steps (8) through (14) (the "Post-Reorganization Distribution"). The Post-Reorganization Distribution will also require the approval of the Shareholders and the Court, as well as filings with the Authority to meet certain regulatory requirements in Country X. Taxpayer will seek a private letter ruling in connection with the Post-Reorganization Distribution.

- 8) Newco 2 will cancel its Class A Shares and Newco 2 will become obligated to pay, in the aggregate \$f to the Public Shareholders.
- 9) FSub 3 will distribute Newco 1 to Newco 2 (through FSub 2 DRE).
- 10) Sub 2 will transfer approximately \$d to Newco 2 in exchange for additional Newco 2 Class B Shares.
- 11) Newco 2 will borrow approximately \$e from FSub 1 (the "FSub 1 Loan").
- 12) Newco 2 will pay \$i (\$d + \$e) to the Public Shareholders in part consideration for the cancellation of their Newco 2 Class A Shares.
- 13) Newco 1 will re-register as a Country X entity described in Treas. Reg. § 301.7701-2(b)(8)(i) (i.e., a so-called per se corporation).
- 14) Newco 1 will issue shares representing c% of its total share capital to the Public Shareholders, in payment of the balance of the consideration due to them for the cancellation of the Class A Shares.

Representations

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In connection with the Reorganization, the taxpayer has made the following representations:

- a) The fair market value of the Newco 2 Class A and Class B Shares received by the Public Shareholders and Sub 2, respectively, in the Reorganization, will be approximately equal to the fair market value of the FSub 2 shares surrendered in the same exchange.
- b) Immediately following the Reorganization, from a US federal income tax perspective, Newco 2 will have the same assets and liabilities as those owned by FSub 2 immediately prior to the Reorganization.
- c) Immediately following the Reorganization, except for a de minimis amount of Newco 2 stock received by Sub 2 at the time of organizing Newco 2 with minimum regulatory capital, the Shareholders will own all the outstanding shares of Newco 2 solely by reason of their ownership of FSub 2 stock.
- d) The Shareholders, Newco 2, and FSub 2 will each pay their respective expenses, if any, incurred in connection with the Reorganization.
- e) At the time of the Reorganization, FSub 2 will not be under the jurisdiction of a court in a Title 11 or similar proceeding within the meaning of section 368(a)(3)(A).
- f) Immediately prior to the Reorganization, no part of FSub 2's earnings and profits will be comprised of effectively connected earnings and profits (as defined in either section 884(d) or 884(b)(2)(B)(ii)).
- g) At all times before the Reorganization, FSub 2 has not and will not be a passive foreign investment company within the meaning of section 1297(a).
- h) Immediately after the Reorganization, Newco 2 will not be a passive foreign investment company within the meaning of section 1297(a).
- i) Sub 2 will comply with the requirements of Treas. Reg. § 1.367(b)-4(d) with respect to subsequent exchanges of Newco 2 stock received in the Reorganization.
- j) FSub 2 will not hold any United States real property interests, as defined in section 897(c)(1), immediately before the Reorganization, and Newco 2 will not hold any such interests immediately after the Reorganization.
- k) With respect to any existing gain recognition agreement entered into by any member of the U.S. group in connection with a prior transfer of stock or securities

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to FSub 2, the U.S. group member 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 Newco 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:

- 1) Steps (4) through (7) will be integrated and treated as the transfer by FSub 2 of all of its assets, subject to liabilities, to Newco 2 in exchange for stock of Newco 2, followed by the distribution by FSub 2 of the Newco 2 stock to its shareholders in liquidation, and will constitute a reorganization within the meaning of section 368(a)(1)(F) of the Internal Revenue Code. Rev. Rul. 67-274, 1967-2 C.B. 141. FSub 2 and Newco 2 will each be “a party to the reorganization” within the meaning of section 368(b). The Post-Reorganization Distribution will not preclude the Reorganization from qualifying as a section 368(a)(1)(F) reorganization. Rev. Rul. 96-29, 1996-1 C.B. 50.
- 2) FSub 2 will recognize no gain or loss upon the transfer of its assets to Newco 2 (sections 361(a) and 357(a)).
- 3) Newco 2 will recognize no gain or loss upon its receipt of FSub 2’s assets in the Reorganization for Newco 2 stock (section 1032).
- 4) The basis of the assets held by Newco 2 will be the same as the basis of such assets in the hands of FSub 2 (section 362(b)).
- 5) The Public Shareholders and Sub 2 will recognize no gain or loss upon the exchange of FSub 2 shares for Newco 1 Class A and B Shares, respectively (section 354(a)).
- 6) The Shareholders’ basis in the Newco 2 Class A and Class B Shares received in the Reorganization will be the same as the Shareholders’ basis in FSub 2 stock surrendered in the Reorganization immediately prior to the Reorganization (section 358(a)).
- 7) Provided the Shareholders hold the FSub 2 shares as a capital asset at the time of the FSub 2 Election, the holding period of the Newco 2 Class A and Class B Shares received in the Reorganization will include the holding period of the FSub 2 shares surrendered in the Reorganization (section 1223(1)).

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- 8) The holding period of each asset of FSub 2 held by Newco 2 will include the holding period of that asset in the hands of FSub 2 (section 1223(2)).
- 9) FSub 2's tax year will not close on the effective date of the FSub 2 Election under section 381(b) and Treas. Reg. §§ 1.381(b)-1(a)(2) and 1.367(b)-2(f)(4).
- 10) Subject to the conditions and limitations of sections 381, 382, 383 and 384, and Treasury Regulations thereunder, Newco 2 will succeed to and take into account the tax attributes of FSub 2 described in section 381(c) under section 381(a) and Treas. Reg. § 1.381-1(a)-1.
- 11) No amount will be included in income under section 367(b) as a result of the steps that are being treated as a reorganization under section 368(a)(1)(F). Treas. Reg. § 1.367(b)-4(b)).

Caveats

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, including under the international provisions of the Code. In addition, no opinion is expressed with respect to the Post-Reorganization Distribution. Further, to the extent not otherwise specifically ruled upon above, no opinion is expressed with respect to the adjustments to earnings and profits or deficits in earnings and profits, if any, with respect to any of the transactions to which § 367 applies, and other consequences under § 367 with respect to any transaction described in this ruling letter.

Procedural Statements

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. 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.

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

Sincerely,

Lewis K Brickates
Branch Chief, Branch 4
Associate Chief Counsel (Corporate)

cc: