

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Refer Reply To:  
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PLR-133055-11  
Date:  
February 01, 2012

Legend

Parent =

DSub =

FSub =

FCo 1 =

FCo 2 =

TopCo =

Trust =

Management =

Business A =

Country X =

Country Y =

Stock Market =

Class B Voting =

Stock

Class B =

Non-Voting Stock

Class C Stock =

Class E Stock =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =  
 m =  
 n =  
 o =  
 p =  
 q =

Dear :

This letter responds to your August 5, 2011 request for rulings, and subsequent correspondence, as to the federal income tax consequences of a proposed transaction. The information submitted in that request and in 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.

#### FACTS

Parent is a widely-held domestic corporation that is the common parent of an affiliated group whose includible corporations join the filing of a U.S. consolidated return. Parent indirectly owns all the outstanding stock of DSub, and DSub is a direct shareholder of FSub, a foreign corporation.

FSub is a Country X entity, treated as an association under Treas. Reg. § 301.7701-3(b)(2)(i)(B). FSub through its wholly owned subsidiaries engages in Business A both within the United States and internationally. FSub has three types of shares outstanding, the Class B Voting, Class B Non-Voting, and Class C Stock. There are a shares of Class B Voting and Non-Voting Stock issued and outstanding, of which DSub owns b. FCo 1 and FCo 2 own in the aggregate, c shares of Class B Voting Stock and d shares of Class B Non-Voting Stock. The remaining Class B Non-Voting Stock is owned by Management, e shares, and Trust, f shares. DSub has g% and FCo 1 and FCo 2, in the aggregate, have g% of the total voting power in FSub. FSub has h

shares of Class C Stock issued and outstanding. The Class C Stock is non-voting, and is owned by Management. FSub also has an employee share option plan in place with approximately i outstanding options.

### Proposed Transaction

For what are presented to be valid business reasons, taxpayer intends to complete the following steps (steps 1-7 comprise the “Proposed Transaction” and steps 8 and 9 comprise the “Post-Reorganizational Steps”):

- 1) DSub, FCo 1, and FCo 2 (the “Incorporators”) form TopCo, a Country Y entity, with a nominal amount of cash, \$j, to facilitate its organization. TopCo elects to be taxed as an association for federal income tax purposes pursuant to Treas. Reg. § 301.7701-3(b)(2)(i)(B).
- 2) The Incorporators contribute all their shares of FSub Class B Voting and Non-Voting Stock to TopCo in exchange for approximately k additional shares of TopCo common stock.
- 3) TopCo recapitalizes with a l for one reverse stock split.
- 4) In accordance with FSub’s articles of association, upon the occurrence of an exit or partial exit event (as defined in the FSub’s articles of association) the Class C Stock will be redesignated as partly Class B Non-Voting Stock and partly Class E Stock. The setting of a listing price for TopCo’s shares on the Stock Market is an exit or partial exit event, as defined in the FSub’s articles of association. As such, immediately after setting a listing price for TopCo’s share on the Stock Market a portion of Management’s shares of Class C Stock will be redesignated as Class B Non-Voting Stock and the remaining portion of Class C Stock will be redesignated as Class E Stock. The Class E Stock will be purchased and cancelled by FSub.
- 5) Management and Trust will transfer all their Class B Non-Voting Stock to TopCo, and will receive m shares of TopCo common stock for each share of Class B Non-Voting Stock transferred in the exchange.
- 6) The outstanding employee share option plan in FSub and its obligations will be assumed by TopCo, with each former FSub stock option being exercisable into shares of TopCo stock. The employee share option plan in TopCo will have the identical terms and vesting periods in TopCo as exist under the FSub option plan.

- 7) FSub will elect to be treated as a disregarded entity for federal income tax purposes under Treas. Reg. §§ 301.7701-2 and 301.7701-3, effective at least two days after TopCo acquires the shares of FSub.
- 8) In a secondary offering, DSub, FCo 1, FCo 2, Management and Trust will each sell a portion of their TopCo common stock to the public that in the aggregate will amount to approximately n% of the outstanding TopCo common stock.
- 9) TopCo will issue a yet to be determined number of TopCo shares to the public in an initial public offering.

### REPRESENTATIONS

Taxpayer has made the following representations in connection with the Proposed Transaction and the Post-Reorganizational Steps:

- a) Shareholders of FSub will receive solely TopCo stock in the Proposed Transaction.
- b) The fair market value of the stock of TopCo received by each FCo 1, FCo 2, DSub, Management, and Trust will be approximately equal to the fair market value of the FSub stock deemed to be surrendered by each in the exchange.
- c) Immediately following consummation of the Proposed Transaction, FCo 1, FCo 2, DSub, Management, and Trust will own all of the outstanding TopCo stock and, except for TopCo stock issued to the Incorporators for a nominal amount, will own such stock solely by reason of their ownership of FSub stock immediately prior to the Proposed Transaction.
- d) Immediately following consummation of the Proposed Transaction, TopCo will possess the same assets and liabilities as those possessed by FSub immediately prior to the Proposed Transaction.
- e) The liabilities of FSub to be assumed (within the meaning of section 357(d)) by the TopCo plus the liabilities, if any, to which the transferred assets are subject, were incurred by FSub in the ordinary course of its business and are associated with assets to be transferred.
- f) FSub will be eligible to elect to be treated as a disregarded entity under Treas. Reg. §§ 301.7701-2 and 301-7701-3 and will make such election effective at least two days after TopCo acquires its shares.

- g) Except for the Employee Options, at the time of the Proposed Transaction, FSub will not have any outstanding warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire shares of FSub. After step 6 of the Proposed Transaction is executed, any such FSub Employee Options will become the equivalent amount of Employee Options in TopCo.
- h) Immediately after the Proposed Transaction, the proportionate interest of each of FCo 1, FCo 2, DSub, Management, and Trust in TopCo will be the same as the proportionate interest each held in FSub immediately before the Proposed Transaction.
- i) The Class E Stock will have a fair market value of \$0, a basis of \$0 and will be repurchased by FSub for \$0 and subsequently cancelled by FSub.
- j) At the time of the Restructuring, FSub will not be under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).
- k) FSub will not be a controlled foreign corporation (within the meaning of section 957(a)) or a passive foreign investment company (within the meaning of section 1297(a)) immediately before the Proposed Transaction.
- l) Immediately before and after the Proposed Transaction, TopCo will not be a passive foreign investment company (within the meaning of section 1297(a)).
- m) FSub will not hold any United States real property interests, as defined in section 897(c)(1), immediately before the Proposed Transaction, and TopCo will not hold any such interests immediately after the Proposed Transaction.
- n) At all times prior to acquiring the assets of FSub in the Proposed Transaction: (i) TopCo will have been engaged in no business activity; (ii) TopCo will have had no Federal income tax attributes (attributes described in section 381(c)); and (iii) TopCo will have held no assets (except for a nominal amount of cash transferred by the Incorporators).
- o) Immediately after the Proposed Transaction, TopCo will hold (directly and through FSub as a disregarded entity) all the assets held by FSub immediately prior to the Proposed Transaction, except for assets used to pay expenses in connection with the Proposed Transaction. The assets used to pay expenses will be less than one percent (1%) of the fair market value of the net assets of FSub immediately prior to the Proposed Transaction. No assets will be distributed, and there will be no dissenting shareholders.

- p) None of the compensation received by any member of Management was separate consideration for, or allocable to, any of his or her shares of FSub stock; except with respect to shares of TopCo common stock received in respect of shares of Class B Non-Voting Stock; none of the shares of FSub stock received by any member of Management was separate consideration for, or allocable to, any employment agreement; and the compensation paid to any member of Management was for services actually rendered and was commensurate with amounts paid to third parties bargaining at arm's length for similar services.
- q) Each party will pay its own expenses, if any, incurred in connection with the Proposed Transaction, except that FSub will pay all legal and registration fees related to the Proposed Transaction. Expenses paid for by FSub on behalf of Management, if any, in aggregate, will constitute less than one percent of the net assets of FSub.
- r)  $\$j$  is less than 1% of the net fair market value of FSub.

#### RULINGS

Based solely on the information and representations set forth herein, we rule as follows:

1. The Proposed Transaction qualifies as a reorganization within the meaning of section 368(a)(1)(F). TopCo and FSub will each be "a party to the reorganization" within the meaning of section 368(b).
2. After completing the Proposed Transaction, the sale of a portion of TopCo common stock to the public by DSub, FCo 1, FCo 2, Management, and Trust, that in the aggregate will amount to approximately  $n\%$  of the outstanding TopCo common stock, will not preclude the Proposed Transaction from qualifying as a section 368(a)(1)(F) reorganization. Rev. Rul. 96-29, 1996-1 C.B. 50.
3. No gain or loss will be recognized by FSub upon the deemed transfer of all of its assets to TopCo in exchange for TopCo stock and the assumption of liabilities (sections 361(a) and 357(a)).
4. No gain or loss will be recognized by TopCo upon its receipt of the FSub assets in exchange for the TopCo stock (section 1032(a)).
5. TopCo's basis in the assets acquired from FSub will be the same as FSub's basis in such assets immediately before the Proposed Transaction (section 362(b)).

6. TopCo's holding period for the assets acquired from FSub will include the period during which such assets were held by FSub (section 1223(2)).
7. No gain or loss will be recognized by FSub on the distribution of TopCo stock to its shareholders (section 361(c)(1)).
8. No gain or loss will be recognized by FSub's shareholders upon the receipt of the TopCo stock in exchange for the FSub stock (section 354(a)(1)).
9. FSub shareholders' basis in each share of TopCo stock received in the exchange for FSub stock will be equal to the basis of each share of FSub stock treated as exchanged therefore (section 358(a)(1) and Treas. Reg. § 1.358-2(a)(2)(i)).
10. The holding period for the TopCo stock in the hands of the FSub shareholders will include the holding period during which the FSub shareholders held the FSub stock exchanged therefore, provided that the FSub stock is held as a capital asset in the hands of the FSub shareholders on the date of the exchange (section 1223(1)).
11. Subject to the conditions and limitations of sections 381, 382, 383 and 384, and Treasury Regulations thereunder, TopCo will succeed to and take into account the tax attributes of FSub described in section 381(c) under section 381(a) and Treas. Reg. § 1.381(a)-1.
12. After the Proposed Transaction, TopCo shareholders will recognize any gain or loss realized from the sale of TopCo shares in an amount equal to the difference between the amount realized and the basis in the TopCo shares sold (section 1001).

#### 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.

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,

Isaac W. Zimbalist

Isaac W. Zimbalist  
Senior Technical Reviewer, Branch 5  
Office of Associate Chief Counsel  
(Corporate)

cc: