

Internal Revenue Service

Department of the Treasury
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TY:

Legend

Acquirer =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Target
Parent =

Target =

Business A =

Business B =

Country A =

Country A
Securities
Exchange =

Date 1 =

Date 2 =

x =

y =

z =

Dear :

This letter responds to your October 7, 2011 request for rulings regarding certain federal income tax consequences of the Completed Transaction (defined below). The information submitted in that request and in later communications 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. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required on examination.

Summary of Facts

Acquirer is a Country A corporation the stock of which is publicly traded on the Country A Securities Exchange. Before the Completed Transaction, Acquirer was the parent of a multinational group of corporations that, together with its subsidiaries, operated Business A and Business B.

Acquirer directly owned all of the outstanding stock of Sub 1. Sub 1 directly owned all of the outstanding stock of Sub 2. Sub 2 directly owned all of the outstanding stock of Sub 3. Sub 3 directly owned all of the outstanding stock of Sub 4. Sub 4 directly owned all of the outstanding stock of Sub 5. Sub 5 directly owned all of the outstanding stock of Sub 6. Sub 6 directly owned all of the outstanding stock of Sub 7. Sub 7 directly owned all of the outstanding stock of Sub 8. Each of Subs 1 through 8 was and is a Country A entity treated as a corporation for US federal income tax purposes under Treas. Reg. §§ 301.7701-1 through -3. Sub 8 directly owned all of the outstanding stock of Target Parent, a U.S. corporation. Target Parent was and is the parent corporation of an affiliated group of corporations that file a consolidated US federal income tax return (the "Target Parent Group"). At the time of the Completed Transaction, Target Parent directly owned all of the outstanding stock of Target, a U.S. Corporation, and Target was a member of the Target Parent Group.

Acquirer, Sub 1, Sub 2, Sub 3, and Target operate Business A. Sub 4, Sub 5, Sub 6, Sub 7, Sub 8, and Target Parent operate Business B. Acquirer determined that it was in its best interest to pursue a structural separation of Business B from Business A so as to create separate exchange listings for Business A and Business B.

Completed Transaction

The Completed Transaction was executed through the steps described below:

- (i) On Date 1, Acquirer acquired all of the stock of Target from Target Parent in exchange for \underline{x} (the "Target Sale").

- (ii) Effective on Date 2, Sub 3 transferred all of the Sub 4 shares to Acquirer, and Acquirer then distributed all of the shares of Sub 4 stock to the Acquirer shareholders (the "Share Distribution"). As of Date 2, Acquirer had y shareholders that owned 5 percent or more of Acquirer's stock by value (the "5% Shareholders"). In aggregate, the 5% Shareholders owned less than z percent of the outstanding stock of Acquirer by value. Immediately after the Share Distribution, Acquirer and Sub 4 had approximately the same public shareholding group, including the 5% Shareholders.

Representations

The following representations were made with respect to the Completed Transaction:

- (a) Pursuant to the Target Sale, in a single transfer, Acquirer acquired all of the outstanding Target Stock.
- (b) The amount of consideration paid for the Target stock in the Target Sale was approximately equal to the fair market value of the Target stock acquired.
- (c) Target was a member of the selling consolidated group (as defined in § 338(h)(10)(B)) of which Target Parent was the common parent, and was a member for the taxable period that included the Target Sale.
- (d) At the time of the Target Sale, Target did not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Target.
- (e) Immediately after the Target Sale and at all times during the Completed Transaction, Target Parent did not, through actual or constructive ownership, control Acquirer within the meaning of § 304(c).
- (f) Immediately after the Share Distribution, Acquirer was not attributed any stock held by Target Parent pursuant to the rules of § 318(a) (without regard to § 318(a)(4)).
- (g) As of the date of the Target Sale and at all times during the Completed Transaction, there was no plan or intention on the part of Acquirer to sell or otherwise dispose of any of the shares of Target stock acquired in the Target Sale.
- (h) As of the date of the Target Sale and at all times during the Completed Transaction, there was no plan or intention to liquidate Target or Acquirer (other than the deemed liquidation of Target pursuant to Treas. Reg.

- § 1.338(h)(10)-1(d)(4)), or to merge Target or Acquirer into any other corporation following the Target Sale.
- (i) On the date of the Target Sale, Target Parent owned 100 percent of the single outstanding class of Target stock.
 - (j) No shares of Target stock were redeemed during the three years preceding the Target Sale, and no shares of Target stock have been the subject of a prior intercompany recognition transaction under Treas. Reg. § 1.1502-13 (or its predecessor) or basis reduction under sections 108(b) and 1017 and Treas. Reg. § 1.1502-28.
 - (k) All transfers from Target to Target Parent pursuant to a plan of liquidation of Target were deemed made pursuant to Treas. Reg. § 1.338(h)(10)-1(d)(4)(i) and occurred within a single taxable year of Target.
 - (l) Target did not acquire assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years prior to the Target Sale.
 - (m) Prior to the Target Sale, no assets of Target were distributed in kind, transferred, or sold to Target Parent, except for transactions occurring in the ordinary course of business.
 - (n) No assets of Target were disposed of by either Target or Target Parent except for dispositions in the ordinary course of business, dispositions occurring more than 3 years prior to the Target Sale, and dispositions deemed to occur as a result of a section 338(h)(10) election with respect to the Target Sale.
 - (o) The Target Sale (and the deemed asset sale and liquidation pursuant to Treas. Reg. §§ 1.338(h)(10)-1(d)(3) and -1(d)(4)) will not be preceded or followed by the transfer of all or a part of the business assets of Target to another corporation which is the alter ego of Target and which, directly or indirectly, is owned more than 20 percent in value by persons holding, directly or indirectly, more than 20 percent in the value of the stock in Target. For purposes of this representation, ownership was determined by applying the constructive ownership rules of § 318(a), as modified by § 304(c)(3).
 - (p) Target will report all earned income represented by assets that will be distributed to Target Parent such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
 - (q) The fair market value of the assets of Target exceeded its liabilities as of the date of the Target Sale.

- (r) There is no intercorporate debt existing between Target Parent and Target, and none has been cancelled, forgiven, or discounted.
- (s) Target Parent is not an organization that is exempt from federal income tax under § 501 or another provision of the Code.
- (t) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the Target Sale have been fully disclosed.

Rulings

Based solely on the information submitted and the representations made above, we rule as follows regarding the Completed Transaction:

- (1) Acquiror's acquisition of the stock of Target in the Target Sale qualified as a "qualified stock purchase" within the meaning of § 338(d)(3) (the "QSP").
- (2) Target Parent (as common parent of the selling consolidated group), on the one hand, and Acquirer, on the other hand, will be eligible to make an election under § 338(h)(10) with respect to Acquirer's QSP of Target.
- (3) Assuming that a § 338(h)(10) election is effected with respect to the Target Sale, pursuant to Treas. Reg. § 1.338(h)(10)-1, "old" Target will recognize gain or loss on the deemed sale of its assets to "new" Target (and on "new" Target's assumption of "old" Target's liabilities) and "new" Target will determine its basis in the assets deemed acquired from "old" Target, in accordance with the rules of Treas. Reg. §§ 1.338-4, -5, -6, and to the extent applicable, -7.
- (4) Assuming that a § 338(h)(10) election is effected with respect to the Target Sale, Target will be treated as if, after the deemed sale of assets to "new" Target, it transferred all of its assets to Target Parent and ceased to exist (Treas. Reg. § 1.338(h)(10)-1(d)(4)(i)).
- (5) Assuming that a § 338(h)(10) election is effected with respect to the Target Sale, the deemed transfer of Target's assets to Target Parent will be treated as a distribution pursuant to a plan of liquidation and will qualify as a complete liquidation of Target into Target Parent under § 332, and no gain or loss will be recognized by Target Parent on its deemed receipt of the assets of Target or by Target on its deemed transfer of its assets to Target Parent (§§ 332(a), 336(d)(3), and 337(a)).
- (6) Assuming that a § 338(h)(10) election is effected with respect to the Target Sale, Target Parent's tax basis in each asset received from Target in the

deemed liquidation of Target will equal the tax basis of that asset in the hands of Target immediately before the deemed liquidation (§ 334(b)(1)).

- (7) Assuming that a § 338(h)(10) election is effected with respect to the Target Sale, Target Parent's holding period in each asset received from Target in the deemed liquidation of Target will include the period during which the asset was held by Target (§ 1223(2)).
- (8) Assuming that a § 338(h)(10) election is effected with respect to the Target Sale, Target Parent will succeed to and take into account the items described in section 381(c), including the earnings and profits (the "E&P"), or deficit in E&P, of Target as of the date of the deemed liquidation of Target, subject to the conditions and limitations specified in §§ 381, 382, 383, 384, and 1502, and the regulations thereunder (§§ 381(a)(1) and 381(c)(2)). Any deficit in E&P will be used only to offset E&P accumulated after the date of the deemed liquidation of Target (§ 381(c)(2)(A) and (B)). To the extent the Target E&P is reflected in the Target Parent E&P, the Target E&P to which Target Parent succeeds must be adjusted to prevent duplication (Treas. Reg. §§ 1.1502-33(a)(2) and -80(a)(2)).

Caveat

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. In particular, no ruling is given as to the tax treatment of the Share Distribution, or as to the tax treatment of the Target Sale in the event a section 338(h)(10) election is not effected.

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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.

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

Sincerely,

Maury Passman_____

Maury Passman
Assistant to the Branch Chief, Branch 1
Associate Chief Counsel
(Corporate)

cc: