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Washington, DC 20224

Third Party Communication: None

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PLR-111501-12

Date:

June 27, 2012

Legend

Parent =

DSub =

FSub =

FCo 1 =

FCo 2 =

TopCo 1 =

TopCo 2 =

Trust =

Management =

Business A =

Country X =

Country Y =

Class B Voting
Stock =

Class B
Non-Voting Stock =

Class C Stock =

Class E Stock =

Date 1 =

Date 2 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

o =

p =

Dear :

This letter responds to your March 15, 2012 letter requesting that we supplement a private letter ruling dated February 1, 2012 (PLR 133055-11) (the "Original Ruling"), and subsequent correspondence. The information submitted for the Original Ruling, this Supplemental request, and additional information submitted in subsequent correspondence is summarized below. The material facts and representations of the Original Ruling and Supplemental ruling are as stated below.

The rulings contained in this letter are based upon facts 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 as part of the audit process.

Original Facts

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

Supplemental Facts

The Original Proposed Transaction is modified for what are presented to be valid business reasons. The DSub, FCo 1, and FCo 2 (the "Incorporators") executed steps 1 and 2 and the Incorporators, Trust and Management intend to complete the following steps, collectively the Supplemental Proposed Transaction (steps 3-5 comprise the "Pre-Reorganizational Steps," steps 4-13 comprise the "Modified Proposed Transaction," and steps 14-16 comprise the "Post-Reorganizational Steps").

Executed Steps

- 1) On Date 1, the Incorporators entered into a subscription agreement subscribing for shares in TopCo 1, a Country Y entity. Pursuant to the subscription agreement, the Incorporators subscribed for approximately j shares of TopCo 1 common stock for a total share capital of approximately \$k. TopCo 1 is taxed as an association for federal income tax purposes pursuant to Treas. Reg. § 301.7701-3(b)(2)(i)(B).
- 2) On Date 2 the Incorporators subscribed for l shares in TopCo 2. TopCo 2 will have a total share capital of approximately \$m. TopCo 2 is a Country Y entity, which will be treated as a corporation under Treas. Reg. § 301.7701-3(b)(2)(i)(B).

Modified Transaction Steps

- 3) DSub will subscribe for additional shares in TopCo 1 for a nominal amount.
- 4) Immediately prior to step 3 DSub may subscribe for additional shares in TopCo 1.
- 5) Management's Class C Stock will be redesignated into Class B Voting Stock and Class E Stock. The Class E Stock will be purchased for \$n and cancelled by FSub. DSub will acquire FSub shares held by Management and Trust for cash.

Steps 6 through 9 are hereinafter referred to collectively as the "First Reorganization."

- 6) The Incorporators will contribute all their shares of FSub Class B Voting and Non-Voting Stock to TopCo 1 in exchange for additional shares of TopCo 1 common stock.
- 7) Shortly following the contribution in step 6, TopCo 1 will recapitalize itself by means of a reverse stock split.

- 8) The outstanding employee share option plan in FSub and its obligations will be assumed by TopCo 1, with each former FSub stock option being exercisable into shares of TopCo 1 stock. The employee share option plan in TopCo 1 will have the identical terms and vesting periods in TopCo 1 as exist under the FSub option plan.
- 9) 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. FSub will make such election effective no earlier than the day following the completion of step 6.

Steps 10 through 13 are hereinafter referred to collectively as the “Second Reorganization.”

- 10) The Incorporators will contribute all their shares of TopCo 1 to TopCo 2 in exchange for additional shares of TopCo 2 common stock.
- 11) The outstanding employee share option plan in TopCo 1 and its obligations will be assumed by TopCo 2, with each former TopCo 1 stock option being exercisable into shares of TopCo 2 stock. The employee share option plan in TopCo 2 will have the identical terms and vesting periods in TopCo 2 as exist under the TopCo 1 option plan.
- 12) TopCo 1 will elect to be treated as a disregarded entity for federal income tax purposes under Treas. Reg. §§ 301.7701-2 and 301.7701-3. TopCo 1 will make such election effective no earlier than the day following the completion of step 10.
- 13) Most of FSub’s subsidiaries will elect to be treated as disregarded entities for federal tax purposes under Treas. Reg. §§ 301.7701-2 and 301.7701-3 (the “Subsidiary CTB Transactions”). Such election will be effective no earlier than the day following the completion of step 10.
- 14) All the outstanding shares of TopCo 1 will be acquired by a third party for cash (the “Sale”).
- 15) Shortly following step 14, a portion of the cash received by TopCo 2 will be used to redeem all the shares held by FCo 1 and FCo 2 and to cancel TopCo 2’s outstanding employee share options.
- 16) It is also anticipated that a portion of the proceeds will be distributed to DSub and the balance will be loaned to affiliates of DSub.

Supplemental Representations

Taxpayer has made the following representations in connection with the First Reorganization:

- a) FCo 1, FCo 2 and DSub will receive solely TopCo 1 stock in the First Reorganization.
- b) The fair market value of the stock of TopCo 1 received by each FCo 1, FCo 2 and DSub 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 First Reorganization, FCo 1, FCo 2 and DSub will own all of the outstanding TopCo 1 stock and, except for TopCo 1 stock issued to FCo 1, FCo 2 and DSub for a nominal amount, will own such stock solely by reason of their ownership of FSub stock immediately prior to the First Reorganization.
- d) Immediately following consummation of the First Reorganization, TopCo 1 will possess the same assets and liabilities as those possessed by FSub immediately prior to the First Reorganization.
- e) The liabilities of FSub to be assumed (within the meaning of section 357(d)) by TopCo 1 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 no earlier than one day after TopCo 1 acquires its shares.
- g) Except for the employee share option plan in FSub, at the time of the First Reorganization, 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 8 of the First Reorganization is executed, any such FSub employee share options will become the equivalent employee share options in TopCo 1.
- h) Immediately after the First Reorganization, the proportionate interest of each of FCo 1, FCo 2 and DSub in TopCo 1 will be the same as the proportionate interest each held in FSub immediately before the First Reorganization. For purposes of this representation, any variation in the proportionate interest of each of FCo 1, FCo 2 and DSub in TopCo 1 from the proportionate interest that each held in FSub will be less than one percent (1%).

- i) The Class E Stock will have a fair market value of \$o, a basis of \$p and will be repurchased by FSub for \$n and subsequently cancelled by FSub.
- j) At the time of the First Reorganization, 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 Supplemental Proposed Transaction.
- l) Immediately before and after the First Reorganization, TopCo 1 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 First Reorganization, and TopCo 1 will not hold any such interests immediately after the First Reorganization.
- n) At all times prior to acquiring the assets of FSub in the First Reorganization: (i) TopCo 1 will have been engaged in no business activity; (ii) TopCo 1 will have had no federal income tax attributes (attributes described in section 381(c)); and (iii) TopCo 1 will have held no assets (except for a nominal amount of cash transferred by FCo 1, FCo 2 and DSub).
- o) Immediately after the First Reorganization, TopCo 1 will hold (directly and through FSub as a disregarded entity) all the assets held by FSub immediately prior to the First Reorganization, except for assets used to pay expenses in connection with the First Reorganization. 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 First Reorganization. No assets will be distributed, and there will be no dissenting shareholders in the First Reorganization.
- 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 Class B Non-Voting Stock and Class E Stock received in respect of shares of Class C Stock; 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 First Reorganization.
- r) \$k is less than one percent (1%) of the net fair market value of FSub.

Taxpayer has made the following representations in connection with the Second Reorganization:

- s) FCo 1, FCo 2 and DSub will receive solely TopCo 2 stock in the Second Reorganization.
- t) The fair market value of the stock of TopCo 2 received by each FCo 1, FCo 2 and DSub will be approximately equal to the fair market value of the TopCo 1 stock deemed to be surrendered by each in the exchange.
- u) Immediately following consummation of the Second Reorganization, FCo 1, FCo 2 and DSub will own all of the outstanding TopCo 2 stock, except for TopCo 2 stock issued to FCo 1, FCo 2 and DSub for \$m, and will own such stock solely by reason of their ownership of TopCo 1 stock immediately prior to the Second Reorganization.
- v) Immediately following consummation of the Second Reorganization, TopCo 2 will possess the same assets and liabilities as those possessed by TopCo 1 immediately prior to the Second Reorganization.
- w) The liabilities of TopCo 1 to be assumed (within the meaning of section 357(d)) by TopCo 2 plus the liabilities, if any, to which the transferred assets are subject, were incurred by TopCo 1 in the ordinary course of its business and are associated with assets to be transferred.
- x) TopCo 1 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 no earlier than one day after TopCo 2 acquires its shares.
- y) Except for the employee share option plan in TopCo 1, at the time of the Second Reorganization, TopCo 1 will not have any outstanding warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire shares of TopCo 1. After step 12 of the Second Reorganization is executed, any such TopCo 1 employee share options will become the equivalent amount of employee share options in TopCo 2.
- z) Immediately after the Second Reorganization, the proportionate interest of each of FCo 1, FCo 2 and DSub in TopCo 2 will be the same as the proportionate interest each held in TopCo 1 immediately before the Second Reorganization. For purposes of this representation, any variation in the proportionate interest of each of FCo 1, FCo 2 and DSub in TopCo 2 from the proportionate interest that each held in TopCo 1 will be less than one percent (1%).
- aa) At the time of the Second Reorganization, TopCo 1 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).

- bb) Immediately before and after the Second Reorganization, TopCo 2 will not be a passive foreign investment company (within the meaning of section 1297(a)).
- cc) TopCo 1 will not hold any United States real property interests, as defined in section 897(c)(1), immediately before the Second Reorganization, and TopCo 2 will not hold any such interests immediately after the Second Reorganization.
- dd) At all times prior to acquiring the assets of TopCo 1 in the Second Reorganization: (i) TopCo 2 will have been engaged in no business activity; (ii) TopCo 2 will have had no Federal income tax attributes (attributes described in section 381(c)); and (iii) TopCo 2 will have held no assets (except for a nominal amount of cash transferred by FCo 1, FCo 2 and DSub).
- ee) Immediately after the Second Reorganization, TopCo 2 will hold (directly and through TopCo 1 as a disregarded entity) all the assets held by TopCo 1 immediately prior to the Second Reorganization, except for assets used to pay expenses in connection with the Second Reorganization. The assets used to pay expenses will be less than one percent (1%) of the fair market value of the net assets of TopCo 1 immediately prior to the Second Reorganization. No assets will be distributed, and there will be no dissenting shareholders in the Second Reorganization.
- ff) Each party will pay its own expenses, if any, incurred in connection with the Second Reorganization.
- gg) $\$m$ is less than one percent (1%) of the net fair market value of TopCo 1.

Supplemental Rulings

Based solely on the information and representations set forth herein, we rule as follows regarding the First Reorganization and regarding the Supplemental Proposed Transaction.

1. The First Reorganization qualifies as a reorganization within the meaning of section 368(a)(1)(F). TopCo 1 and FSub will each be “a party to the reorganization” within the meaning of section 368(b).
2. No gain or loss will be recognized by FSub upon the deemed transfer of all of its assets to TopCo 1 in exchange for TopCo 1 stock and the assumption of liabilities (sections 361(a) and 357(a)).
3. No gain or loss will be recognized by TopCo 1 upon its receipt of the FSub assets in exchange for the TopCo 1 stock (section 1032(a)).

4. TopCo 1's basis in the assets acquired from FSub will be the same as FSub's basis in such assets immediately before the Original Proposed Transaction (section 362(b)).
5. TopCo 1's holding period for the assets acquired from FSub will include the period during which such assets were held by FSub (section 1223(2)).
6. No gain or loss will be recognize by FSub on the distribution of TopCo 1 stock to its shareholders (section 361(c)(1)).
7. No gain or loss will be recognized by FSub's shareholders upon the receipt of the TopCo 1 stock in exchange for the FSub stock (section 354(a)(1)).
8. FSub shareholders' basis in each share of TopCo 1 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)).
9. The holding period for the TopCo 1 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)).
10. Subject to the conditions and limitations of sections 381, 382, 383 and 384, and Treasury Regulations thereunder, TopCo 1 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.

Rulings with respect to the Second Reorganization:

11. The Second Reorganization qualifies as a reorganization within the meaning of section 368(a)(1)(F). TopCo 2 and TopCo 1 will each be "a party to the reorganization" within the meaning of section 368(b).
12. No gain or loss will be recognized by TopCo 1 upon the deemed transfer of all of its assets to TopCo 2 in exchange for TopCo 2 stock and the assumption of liabilities (sections 361(a) and 357(a)).
13. No gain or loss will be recognized by TopCo 2 upon its receipt of the TopCo 1 assets in exchange for the TopCo 2 stock (section 1032(a)).
14. TopCo 2's basis in the assets acquired from TopCo 1 will be the same as TopCo 1's basis in such assets immediately before the Second Reorganization (section 362(b)).

15. TopCo 2's holding period for the assets acquired from TopCo 1 will include the period during which such assets were held by TopCo 1 (section 1223(2)).
16. No gain or loss will be recognized by TopCo 1 on the distribution of TopCo 2 stock to its shareholders (section 361(c)(1)).
17. No gain or loss will be recognized by TopCo 1's shareholders upon the receipt of the TopCo 2 stock in exchange for the TopCo 1 stock (section 354(a)(1)).
18. TopCo 1 shareholders' basis in each share of TopCo 2 stock received in the exchange for TopCo 1 stock will be equal to the basis of each share of TopCo 1 stock treated as exchanged therefore (section 358(a)(1) and Treas. Reg. § 1.358-2(a)(2)(i)).
19. The holding period for the TopCo 2 stock in the hands of the TopCo 1 shareholders will include the holding period during which the TopCo 1 shareholders held the TopCo 1 stock exchanged therefore, provided that the TopCo 1 stock is held as a capital asset in the hands of the TopCo 1 shareholders on the date of the exchange (section 1223(1)).
20. Subject to the conditions and limitations of sections 381, 382, 383 and 384, and Treasury Regulations thereunder, TopCo 2 will succeed to and take into account the tax attributes of TopCo 1 described in section 381(c) under section 381(a) and Treas. Reg. § 1.381(a)-1.

Ruling with respect to the overall Supplemental Proposed Transaction:

21. The Sale will be treated as a sale of TopCo 1's assets by TopCo 2 for federal income tax purposes.

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item not discussed or referenced in this letter. In particular, no opinion was requested and no opinion is expressed regarding any distributions or loans from TopCo 2 described in step 16.

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 Technician Reviewer, Branch 5
Office of Associate Chief Counsel (Corporate)