

Internal Revenue Service

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TY:

LEGEND

Parent =

Entity 1 =

Entity 2 =

FS 1 =

Sub 1 =

Sub 2 =

Owner =

Purchaser =

Country X =

State A =

State B =

Date A =

Date B =

Date C =

Date D =

E =

Dear :

This letter is in response to a letter dated February 14, 2012, submitted on your behalf by your authorized representatives, requesting a ruling that Parent be granted consent to revoke an election to treat a contiguous country corporation as a domestic corporation under section 1504(d) of the Internal Revenue Code (the "Code") and, if granted, certain rulings on the federal income tax consequences of the Revocation (as defined below). Additional information was submitted in letters dated March 21, 2012 and April 17, 2012, and additional representations were submitted in letters dated April 5, 2012, April 17, 2012, April 24, 2012, and June 12, 2012.

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

Prior to the Acquisition (as defined below), Parent was a State A corporation and was the common parent of an affiliated group of corporations that filed a consolidated federal income tax return on a calendar year basis (the "Parent Group"). Prior to the Acquisition, Parent owned all of the outstanding stock of FS 1, a Country X corporation, Sub 1, a State A limited liability company, and Sub 2, a State B corporation. FS 1 is engaged in the business of E in Country X. Purchaser is a State A corporation and is the common parent of an affiliated group of corporations that files a consolidated federal income tax return (the "Purchaser Group").

Entity 1, Parent's predecessor by merger, made an election under section 1504(d) to treat FS 1 as a domestic corporation for all purposes of subtitle A of the Code (the "Election") on its Form 1120 for the taxable year ended Date A. Thereafter and until the Acquisition, FS 1 joined in the filing of a consolidated federal income tax return with Entity 1 or Parent as the common parent. On Date C, a wholly owned subsidiary of Purchaser acquired all of the outstanding shares of Parent (the "Acquisition") from an indirect, wholly owned subsidiary of Owner, and certain other persons in exchange for cash pursuant to an Agreement and Plan of Merger dated as of Date B. The Parent Group terminated as of Date C. On Date D, Parent was converted into a limited liability company and renamed Entity 2. In connection with the Acquisition, Parent requested consent to revoke its election made with respect to FS 1 under section 1504(d), effective as of Date C (the "Revocation"), which would cause FS 1 to constructively transfer all of its assets and liabilities (the "Transaction") to a Country X corporation ("New FS 1").

REPRESENTATIONS

Parent and Entity 2 have provided the following representations in connection with Parent's request for a private letter ruling.

(a) Neither Parent nor Purchaser has a plan or intention to include FS 1 or its successor entity in any future federal income tax return filed by the Parent Group or the Purchaser Group (or by another affiliated group with the same common parent or a successor of such common parent) after the Transaction.

(b) Neither the Parent Group nor the Purchaser Group will include FS 1 or any successor thereof in any U.S. federal income tax return filed by it (or by another affiliated group with the same common parent or a successor of such common parent) before the 61st month beginning after its first taxable year in which FS 1 ceased to be a member of the Parent Group.

(c) Neither Parent nor Purchaser will make a section 1504(d) election with respect to FS 1 or any successor entity thereof before the 61st month beginning after the Transaction.

(d) New FS 1 (or any successor entity thereof) will continue FS 1's historic business after the Transaction.

(e) The fair market value of the New FS 1 shares constructively issued in the Transaction approximately equaled the fair market value of the FS 1 shares deemed surrendered in the Transaction.

(f) Parent owned all the outstanding stock of New FS 1 constructively issued in the Transaction and owned such stock by reason of its ownership of the FS 1 shares immediately prior to the Transaction.

(g) Immediately after the consummation of the Transaction, New FS 1 possessed the same assets and liabilities, except for assets used to pay expenses incurred in connection with the Transaction (if any), as those possessed by FS 1 immediately before the Transaction. Assets used to pay expenses (if any) constituted less than one percent of the fair market value of the net assets of FS 1 immediately before the Transaction. No assets were distributed by FS 1 pursuant to the Transaction.

(h) Any liabilities of FS 1 that were constructively assumed (as determined under section 357(d)) by New FS 1 in the Transaction were incurred in the ordinary course of business and are associated with the assets constructively transferred.

(i) There is no plan or intention for New FS 1 to issue any additional stock following the Transaction, except possibly in connection solely with a post-closing internal restructuring undertaken by Purchaser.

(j) At the time of the Transaction, FS 1 did not have outstanding any warrants, options, convertible securities, or other type of right pursuant to which any person could acquire shares in FS 1.

(k) All parties have paid and will pay their respective expenses, if any, incurred in connection with the Transaction, except that Purchaser has borne, and will bear, all reasonable costs and expenses associated with the preparation and filing of this private letter ruling request.

(l) FS 1 is not under the jurisdiction of a court in a title 11 or similar case within the meaning of section 368(a)(3)(A).

(m) The Parent Group will take into account any income, gain, or recapture resulting from the Revocation, including any income arising as a result of the application of section 367(a), section 367(d), section 904(f), section 987, section 1503(d), and the regulations thereunder, as applicable.

(n) On its Form 1120 for the taxable year ended Date A, Entity 1 made a valid section 1504(d) election with respect to FS 1. At all times from the effective date of the Election through the date of the Acquisition, one hundred percent of the capital stock of FS 1 (exclusive of directors' qualifying shares) was owned by Entity 1 and Parent, Entity 1's successor by merger.

(o) FS 1 was organized under the laws of Country X and has been maintained solely for the purpose of complying with the laws of Country X as to title and operation of property at all times since the effective date of the Election.

(p) FS 1 would not have been allowed to operate its business E in Country X but for its formation as a corporation under the laws of Country X.

(q) To the best of taxpayer's knowledge, the sole reason FS 1 was organized and maintained under the laws of Country X was to conduct its predominant business of E in County X.

(r) Parent received no assets as a result of the Revocation other than its deemed receipt of New FS 1 stock.

(s) The Parent Group will report the tax consequences of the Revocation on its federal income tax return for its taxable year that ended as a result of the Acquisition (in which the Parent Group terminated).

(t) The acquiring corporation in the Acquisition is a U.S. corporation that is a member of an affiliated group of corporations that file a consolidated U.S. federal tax return.

ANALYSIS

Section 1504(d) provides that a domestic corporation, owning or controlling, directly or indirectly, 100 percent of a corporation organized under the laws of a contiguous foreign country and maintained solely for the purpose of complying with the laws of such country as to title and operation of property, may elect to treat such a corporation as a domestic corporation for federal income tax purposes.

Treas. Reg. § 1.367(a)-1T(c)(5) states that section 367(a) applies to the termination of a section 1504(d) election. The Revocation in this case resulted in a constructive transfer of all the assets and liabilities of FS 1 to New FS 1, a foreign corporation, in exchange for all of the stock of New FS 1. FS 1 was then deemed to make a liquidating distribution of all the stock of New FS 1 to Parent. Following the termination of the section 1504(d) election, New FS 1 became a Country X corporation that is treated as a foreign corporation for United States federal tax purposes.

The termination of a section 1504(d) election has collateral consequences under the Code and regulations. The revocation of a section 1504(d) election involves a transfer of the assets of a foreign branch of a United States corporation to a foreign corporation, which is subject to the provisions of sections 367(a) and (d) and the regulations thereunder. The revocation of a section 1504(d) election will generally trigger gain or loss under section 987 and recapture under section 904(f). The revocation of such an election also constitutes a triggering event under Treas. Reg. § 1.1503(d)-6(e)(i) or Treas. Reg. § 1.1503-2(g)(2)(iii)(A), as applicable, requiring the recapture of any dual consolidated losses incurred by a foreign branch of the taxpayer.

RULINGS

Based solely upon the information and representations submitted in the taxpayer's ruling request, we rule as follows:

1. Consent is hereby granted to Parent to revoke the Election.
2. The Revocation was effective as of Date C.
3. FS 1 ceased to be a member of the Parent Group at the end of the day on which the section 1504(d) election is revoked.
4. The Transaction, as described above, constituted a reorganization within the meaning of section 368(a)(1)(F). Rev. Rul. 87-27, 1987-1 C.B. 138. FS 1 and New FS 1 were each "a party to the reorganization" within the meaning of section 368(b).
5. No gain or loss was recognized by FS 1 on the constructive transfer of its assets to New FS 1. Sections 361(a) and 357(a).
6. No gain or loss was recognized by New FS 1 on its constructive receipt of the assets from FS 1 in constructive exchange for New FS 1 stock. Section 1032(a).
7. New FS 1's basis in the assets of FS 1 is the same as FS 1's basis in its assets immediately before the Transaction. Section 362(b).
8. New FS 1's holding period for each of the assets of FS 1 includes the period during which such asset was held by FS 1. Section 1223(2).
9. No gain or loss was recognized by FS 1 on the constructive distribution to Parent of the New FS 1 stock. Section 361(c)(1).
10. No gain or loss was recognized by Parent on the constructive receipt of the stock of New FS 1 in constructive exchange for the stock of FS 1. Section 354(a)(1).

11. Parent's basis in the New FS 1 stock constructively received equals the basis of the FS 1 stock constructively surrendered in exchange therefore. Section 358(a)(1).

12. Parent's holding period for the New FS 1 stock constructively received includes the period during which Parent held the FS 1 stock exchanged therefor, provided that the FS 1 stock is held as a capital asset in the hands of Parent on the date of the exchange. Section 1223(1).

13. The taxable year of FS 1 ended with the close of the date of the Transaction, and the taxable year of New FS 1 shall end with the close of the date on which FS 1's taxable year would have ended but for the occurrence of the Transaction. Rev. Rul. 87-27, 1987-1 C.B. 138.

14. As provided by section 381(a), New FS 1 succeeded to the tax attributes of FS 1 enumerated in section 381(c), including any FS 1 earnings and profits or any deficit therein.

CAVEATS

Except as expressly provided above, no opinion is expressed, or implied, as to the treatment of the transactions described herein under any provision of the Code and regulations. In particular:

1. No opinion is expressed as to whether, prior to the date of the Revocation, FS 1 was formed and at all times maintained solely to comply with foreign law as to the title and operation of property, or whether the section 1504(d) election made with respect to FS 1 was otherwise valid.

2. No opinion is expressed as to how sections 367(a) and (d), section 987, section 1503(d), section 904(f), and the regulations thereunder, apply to the facts described in this ruling.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. No ruling has been requested, and none is expressed, as to the application of any other section of the Code or regulations to the facts presented.

Pursuant to a power of attorney on file in this office, a copy of this ruling letter is being furnished to the taxpayer's 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,

David B. Bailey
Senior Technical Reviewer, Branch 4
Office of Associate Chief Counsel
(International)

Enclosure:
Copy for 6110 purposes

cc: