

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201252008**
Release Date: 12/28/2012

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

Index Number: 165.06-00, 267.00-00, 301.00-00, 304.01-03, 331.00-00, 331.07-00

, ID No.
Telephone Number:

Refer Reply To:
CC:CORP:B05
PLR-119586-11
Date:
September 18, 2012

Legend

Parent =

Sub1 =

Sub2 =

Sub3 =

Sub4 =

Sub5 =

Sub6 =

Sub7 =

Sub8 =

Sub9 =

Sub10 =

Sub11 =

Sub12 =

Sub13 =

Sub14 =

Sub15 =

Sub16 =

Sub17 =

Sub18 =

Sub19 =

Sub20 =

State A =

State B =

State C =

Country A =

Country B =

Country C =

Country D =

Business A =

Business B =

Business C =

Business D =

Date A =

Date B =

Date C =

Date D =

Date E =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

Dear _____ :

This letter responds to your letter dated May 2, 2011, and subsequent correspondence, requesting rulings as to the federal income tax consequences of certain transactions. The information provided in that request and in later correspondence is summarized below.

SUMMARY OF FACTS

Parent is a publicly-traded State A corporation and the common parent of an affiliated group of corporations that files a consolidated U.S. federal income tax return.

Parent owns all the class A voting common stock, and indirectly owns all of the class D nonvoting common stock, of Sub1, a State B corporation. Parent indirectly owns a percent of the stock of a corporation that owns all of the nonvoting class B preferred stock of Sub1.

Parent indirectly owns all the stock of Sub2, a State C corporation; Sub3, a Country A entity classified as a corporation for U.S. federal income tax purposes; and Sub4, a Country B entity classified as a corporation for U.S. federal income tax purposes. Sub4 owns all of the stock of Sub20, a Country A entity that will be classified as an entity disregarded as separate from its owner for U.S. federal income tax purposes under Treasury Regulations section 301.7701-3 (a “disregarded entity”) at the time of the Sub14 Sale (defined below).

Except for one share of class A common stock held by Sub5 (an indirect, wholly-owned subsidiary of Parent) as nominee for Sub2, Sub2 owns all the stock of Sub6, a disregarded entity organized in Country A.

Sub6 owns a nominal share, and indirectly owns the remaining shares, of the stock of Sub7, a Country A entity classified as a corporation for U.S. federal income tax purposes.

Prior to Date A, Sub7 owned all the stock of Sub8, a Country A entity classified as a corporation for U.S. federal income tax purposes. Sub8 is engaged in Business A.

Prior to Date A, Sub3 owned all the stock of Sub9, a Country A entity classified as a corporation for U.S. federal income tax purposes. Sub9 is engaged in Business B.

Prior to Date B, Sub3 owned all the stock of Sub10, a Country A entity that was, prior to Date C, classified as a corporation for U.S. federal income tax purposes. Sub10 is engaged in Business A.

In connection with the Completed Transaction (defined below), Sub3 formed Sub11, a Country A entity classified as a corporation for U.S. federal income tax purposes.

Sub 12 is a Country A entity classified as a corporation for U.S. federal income tax purposes and has three classes of stock outstanding, one class of ordinary shares and two classes of preference shares (the class A preference shares and the class B preference shares).

Parent and Sub1 own b percent and c percent, respectively, of the Sub12 ordinary shares. Sub3 and Sub9 each owns d percent of the Sub 12 class A preference shares, and Sub6 and Sub7 own e percent and f percent, respectively, of the Sub12 class B preference shares.

Sub12 owns all the stock of Sub13, a disregarded entity organized in Country A. Sub13 is engaged in Business C. Businesses A, B, and C are all a part of Business D.

Prior to Date B, Sub13 owned all the stock of Sub14, a Country A entity classified as a corporation for U.S. federal income tax purposes, and all the stock of Sub15, a disregarded entity organized in Country A.

Prior to Date A, Sub13 owned all of the stock of Sub16, a Country C entity classified as a corporation for U.S. federal income tax purposes.

Prior to Date B, Sub13 owned, and currently owns, all the stock of Sub17, a Country A entity classified as a corporation for U.S. federal income tax purposes. Prior to Date B and ending on Date A, Sub17 owned all the stock of Sub18, a Country D entity classified as a corporation for U.S. federal income tax purposes.

On Date B, in addition to the stock of Sub16 and Sub17, Sub13 also owned stock in other subsidiaries that it controlled within the meaning of section 304(c) (these subsidiaries, together with Sub16 and Sub17, the "Controlled Subsidiaries").

As of Date B, Sub13's liabilities consisted of debt owed to Sub19 in the amount of approximately g units in Country A currency and other liabilities in the amount of approximately h units in Country A currency. Sub19 is a disregarded entity organized in Country A, which is owned through other disregarded entities by Sub7. Sub19 provides financing services to certain entities in the Parent group.

Prior to Date B, Sub12 had debt owing to Sub13 in the amount of approximately i units in Country A currency (the "Sub12 Debt").

THE COMPLETED TRANSACTION

To combine Parent's Country A subsidiaries that are engaged in Business D into a single corporate group and for other reasons, the following transactions were undertaken (collectively, the "Completed Transaction"):

- (i) On Date B, Sub12 borrowed approximately i units in Country A currency from Sub19 and transferred this amount to Sub13 in exchange for all the stock of Sub14 and Sub15. Sub13 used the proceeds from this sale to repay debt owing to Sub19.
- (ii) On Date B, Sub3 contributed all of the stock of Sub10 to Sub11, and Sub10 elected to be classified as a disregarded entity, effective one day after the contribution.
- (iii) On Date B, Sub12 borrowed approximately i units in Country A currency from Sub19 and transferred this amount to Sub13 in repayment of the Sub12 Debt. On a net basis, Sub13 used a portion of the proceeds from the repayment of the Sub12 Debt to repay its remaining debt owing to Sub19 and lent the remaining amount to Sub19.

- (iv) On Date B, following the repayment of the Sub12 Debt, Sub12 sold all the stock of Sub13 to Sub11 in exchange for a debt instrument of Sub11 in the amount of approximately k units in Country A currency (the "Sub11 Receivable," and such sale, the "Sub13 Sale"). Because Sub13 was a disregarded entity at the time of the Sub13 Sale, Sub11's acquisition of the stock of Sub13 was treated, for U.S. federal income tax purposes, as an acquisition of Sub13's assets (including the stock in the Controlled Subsidiaries) by Sub11 in exchange for the Sub11 Receivable and Sub11's assumption of Sub13's liabilities (the consideration deemed to be received in exchange for Sub 13's assets, the "Sub13 Sale Consideration," and the deemed exchange of a portion of such consideration for the stock of each of the Controlled Subsidiaries, a "Cross-Chain Stock Sale," and collectively, the "Cross Chain Stock Sales").
- (v) On Date A, Sub13 transferred all of the stock of Sub16 to Sub11 in exchange for approximately l units in Country A currency, and Sub17 transferred all of the stock of Sub18 to Sub11 in exchange for approximately l units in Country A currency.
- (vi) On Date A, but after the completion of step (v), Sub7 transferred all the stock of Sub8 to Sub9 in exchange for a new class of Sub9 non-voting preferred stock.
- (vii) On Date A, but after the completion of steps (v) and (vi), Sub11 transferred all of the stock of Sub13 and Sub10 to Sub9 in exchange for newly issued Sub9 common stock.
- (viii) On Date D, Sub9 transferred all the stock of Sub13 and Sub10 to Sub8 in exchange for Sub8 common stock.

Following the Completed Transaction, on Date E, Sub18 distributed approximately m units of Country D currency to Sub11.

PROPOSED TRANSACTIONS

The following transactions have been proposed:

- (i) Sub12 will sell approximately b percent of the stock of Sub14 (the "Transferred Sub14 Stock") to Sub20 in exchange for cash equal to the fair market value of that stock (the "Sub14 Sale").
- (ii) Sub12 will declare and distribute a dividend that should not exceed approximately n units in Country A currency with respect to its class A preference shares (the "Sub12 Distribution").

- (iii) After the completion of the Sub14 Sale and the Sub12 Distribution, Sub12 will adopt a plan of liquidation solely for U.S. federal income tax purposes (the "Plan of Liquidation"). Pursuant to the Plan of Liquidation, Sub12 will make a check-the-box election under Treasury Regulations section 301.7701-3 (the "CTB Election") pursuant to which it will be deemed, solely for U.S. federal income tax purposes, to distribute all of its assets and liabilities to its shareholders in liquidation (the "Sub12 Liquidation"). Under Treasury Regulations section 301.7701-3(g)(3)(i), the Sub12 Liquidation will be deemed to occur immediately before the close of the day before the CTB Election is effective (the "Sub12 Liquidation Effective Date").

REPRESENTATIONS

Cross-Chain Stock Sales

Parent makes the following representations with respect to the Cross-Chain Stock Sales:

- (a) The fair market value of the stock of the Controlled Subsidiaries deemed transferred to Sub11 approximately equaled the fair market value of the portion of the Sub13 Sale Consideration deemed exchanged for such stock.
- (b) There is no plan or intention to liquidate any Controlled Subsidiary or Sub11.
- (c) None of the Controlled Subsidiaries is or has been a passive foreign investment company (a "PFIC") within the meaning of section 1297.
- (d) The notice requirements of Treasury Regulations section 1.367(b)-1(c) will be satisfied for the deemed section 351 contribution of the stock of the Controlled Subsidiaries from Sub12 to Sub11.
- (e) Sub12 has not at any time directly owned stock of Sub11 prior to the Cross-Chain Stock Sales.

Sub14 Sale

Parent makes the following representations with respect to the Sub14 Sale:

- (f) The fair market value of the Transferred Sub14 Stock will approximately equal the fair market value of the consideration that will be exchanged for such stock.
- (g) There is no plan or intention to liquidate Sub14 or Sub4.
- (h) Sub14 is not and has not been a PFIC within the meaning of section 1297.

- (i) Sub14 will be a controlled foreign corporation, within the meaning of section 957(a), immediately before and after the Sub14 Sale.
- (j) Parent and Sub1 will each be a section 1248 shareholder, within the meaning of Treasury Regulations section 1.367(b)-2(b), with respect to Sub14 immediately before the Sub14 Sale, and Parent and Sub1 will each be a section 1248 shareholder with respect to Sub4 immediately after the Sub14 Sale.

Sub12 Distribution

Parent makes the following representations with respect to the Sub12 Distribution:

- (k) The Sub12 Distribution will be declared and paid prior to the adoption of the Plan of Liquidation.
- (l) The Sub12 Distribution will not be conditioned in any respect upon the CTB Election.

Sub12 Liquidation

Parent makes the following representations with respect to the Sub12 Liquidation:

- (m) The Sub12 class B preference shares and the Sub12 ordinary shares were not worthless (within the meaning of section 165(g)) at any time prior to the year in which the Sub12 Liquidation will occur.
- (n) The fair market value of Sub12's assets, taking into account Sub12's intangible assets such as goodwill and going concern value, will exceed the sum of Sub12's liabilities (the "Sub12 Net Asset Value") both on the date of the adoption of the Plan of Liquidation and at the time of the Sub12 Liquidation.
- (o) The full amount of the Sub12 class A liquidation preference is entitled to a priority claim on Sub12's assets in an actual liquidation that takes precedence over the claim on such assets embodied in the Sub12 class B preference shares and the Sub12 ordinary shares, and thus the Sub12 class A liquidation preference must be satisfied in full, in an actual liquidation of Sub12, before any payment or distribution can be made with respect to any claim in liquidation on Sub12's assets that is attributable to the Sub12 class B preference shares or the Sub12 ordinary shares.
- (p) The full amount of the Sub12 class B liquidation preference is entitled to a priority claim on Sub12's assets in an actual liquidation that takes precedence over the claim embodied in the Sub12 ordinary shares, and thus the Sub12 class B liquidation preference must be satisfied in full, in an actual liquidation of Sub12, before any payment or distribution can be made with respect to any

claim in liquidation on Sub12's assets that is attributable to the Sub12 ordinary shares.

- (q) Sub12 will not have acquired any property, other than cash or stock that was sold prior to the Sub12 Liquidation, in a transaction to which section 351 would have applied, or as a contribution to capital, during the five-year period ending on the Sub12 Liquidation Effective Date.
- (r) No property will have been contributed to Sub12 as part of a plan a principal purpose of which is to recognize a loss by Sub12 with respect to such property in connection with its complete liquidation.
- (s) No formal or informal plan of liquidation has ever been adopted by Sub12, except for the Plan of Liquidation which will be adopted prior to the Sub12 Liquidation.
- (t) Other than in the Completed Transaction or the Sub14 Sale, the liquidation of Sub12 will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation (Recipient) of any of the business or assets of Sub12, if persons holding more than 20 percent in value of the stock in Sub12 also hold more than 20 percent in value of the stock in Recipient. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of section 318, as modified by section 304(c)(3).
- (u) By virtue of the transaction that will be deemed to occur as a result of the CTB Election, all assets of Sub12 will be distributed in complete liquidation of Sub12 within the 12-month period beginning on the date of the adoption of the Plan of Liquidation.
- (v) If the Sub12 class A liquidation preference exceeds the Sub12 Net Asset Value, no part of the consideration to be received by any shareholder of Sub12 will be received by the shareholder as a creditor, employee, or in some capacity other than that of a shareholder of Sub12. If the Sub12 Net Asset Value exceeds the Sub12 class A liquidation preference but not the aggregate of the Sub12 class A liquidation preference and the Sub12 class B liquidation preference, no part of the consideration to be received by any shareholder of Sub12, other than Sub7, will be received by the shareholder as a creditor, employee, or in some capacity other than that of a shareholder of Sub12.
- (w) No distribution of assets representing earned but unreported income will be made by Sub12 to its shareholders in the liquidation.
- (x) Sub12 does not maintain a reserve for bad debts.

RULINGS

Cross-Chain Stock Sales

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the Cross-Chain Stock Sales:

- (1) Section 304(a)(1) will apply to the Cross-Chain Stock Sales.
- (2) The portion of the Sub13 Sale Consideration deemed exchanged for the stock of the Controlled Subsidiaries (held through Sub13) will be treated as a distribution in redemption of Sub11's stock. Section 304(a)(1).
- (3) The deemed distribution in redemption of Sub11's stock will be treated as a distribution of property to which section 301 applies. Section 302(d).
- (4) Sub12 and Sub11 will be treated in the same manner as if Sub12 had transferred the stock of the Controlled Subsidiaries to Sub11 in exchange for Sub11 stock in a transaction to which section 351(a) applies, and then Sub11 had redeemed the corresponding portion of stock it was treated as issuing. Section 304(a)(1).
- (5) The deemed 351 contribution of the stock of the Controlled Subsidiaries from Sub12 to Sub11 will be an exchange to which Treasury Regulations sections 1.367(b)-(1)(c) and 1.367(b)-4(a) apply.
- (6) The exception of Treasury Regulations section 1.367(b)-4T(e)(1) applies to the deemed section 351 contribution.
- (7) No amount will be included in income as a deemed dividend equal to the 1248 amount under section 367(b) as a result of the deemed section 351 contribution. Treas. Reg. sections 1.367(b)-(1)(b) and 1.367(b)-4(b).

Sub14 Sale

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the Sub14 Sale:

- (8) Section 304(a)(1) will apply to the Sub14 Sale.
- (9) The consideration exchanged for the stock of Sub14 in the Sub14 Sale will be treated as a distribution in redemption of Sub4's stock. Section 304(a)(1).
- (10) The deemed distribution in redemption of Sub4's stock will be treated as a distribution of property to which section 301 applies. Section 302(d).
- (11) Sub12 and Sub4 will be treated in the same manner as if Sub12 had transferred the stock of Sub14 to Sub4 in exchange for Sub4 stock in a

transaction to which section 351(a) applies, and then Sub4 had redeemed the stock it was treated as issuing. Section 304(a)(1).

- (12) The deemed section 351 contribution of the stock of Sub14 from Sub12 to Sub4 will be an exchange to which Treasury Regulations sections 1.367(b)-1(c) and 1.367(b)-4(a) apply.
- (13) No amount will be included in income as a deemed dividend equal to the section 1248 amount under section 367(b) as a result of the deemed section 351 contribution. Treas. Reg. sections 1.367(b)-1(b) and 1.367(b)-4(b); Notice 2012-15.

Sub12 Distribution

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the Sub12 Distribution:

- (14) The Sub12 Distribution will be treated as a distribution of property to which section 301 applies.

Sub12 Liquidation

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the Sub12 Liquidation:

- (15) If the Sub12 class A liquidation preference exceeds the Sub12 Net Asset Value at the time of the Sub12 Liquidation, the holders of the Sub12 class A preference shares will be treated as having received a distribution in complete liquidation of Sub12 in full payment in exchange for their Sub12 class A preference shares. Section 331(a). In that case, the Sub12 class A preference shareholders will recognize gain or loss on their Sub12 class A preference shares in an amount equal to the difference between the net fair market value of the property treated as distributed with respect to those shares and the shareholders' adjusted bases in those shares. Section 1001(a).
- (16) If the Sub12 class A liquidation preference exceeds the Sub12 Net Asset Value at the time of the Sub12 Liquidation, the holders of the Sub12 class B preference and the Sub12 ordinary shares will be treated as having received no payment for their Sub12 class B preference shares or their Sub12 ordinary shares in the Sub12 Liquidation. In that case, the Sub12 class B preference shareholders and the Sub12 ordinary shareholders may claim a worthless stock deduction under section 165(g) with respect to their Sub12 class B preference shares and their Sub12 ordinary shares upon the Sub12 Liquidation. Rev. Rul. 2003-125.

- (17) If the Sub12 Net Asset Value exceeds the Sub12 class A liquidation preference but not the aggregate of the Sub12 class A liquidation preference and the Sub12 class B liquidation preference, the holders of the Sub12 class A preference shares and the Sub12 class B preference shares will be treated as having received a distribution in complete liquidation of Sub12 in full payment in exchange for their Sub12 class A preference shares and their Sub12 class B preference shares. Section 331(a). In that case, the Sub12 class A preference shareholders and the Sub12 class B preference shareholders will recognize gain or loss on the Sub12 class A preference shares and the Sub12 class B preference shares, as the case may be, in an amount equal to the difference between the net fair market value of the property treated as distributed with respect to those shares and the shareholders' adjusted bases in those shares. Section 1001(a).
- (18) If the Sub12 Net Asset Value exceeds the Sub12 class A liquidation preference but not the aggregate of the Sub12 class A liquidation preference and the Sub12 class B liquidation preference, the holders of the Sub12 ordinary shares will be treated as having received no payment for those shares in the Sub12 Liquidation. In that case, the Sub12 ordinary shareholders may claim a worthless stock deduction under section 165(g) with respect to their Sub12 ordinary shares upon the Sub12 Liquidation. Rev. Rul. 2003-125.
- (19) Any loss recognized by a Sub12 shareholder, or any worthless stock deduction otherwise allowable to a Sub12 shareholder, will not be disallowed under section 267(a)(1) or deferred under section 267(f)(2).
- (20) Sub12 will recognize gain or loss on its deemed distribution of property in the Sub12 Liquidation in an amount equal to the difference between the fair market value of such property on the date of the deemed distribution (or, if greater, the amount of any Sub12 liabilities to which the property is subject) and its adjusted basis in the property on such date. Section 336(a), (b). The gain or loss will be computed on a property-by-property basis.
- (21) Any loss recognized by Sub12 under section 336(a) will not be disallowed under section 267(a)(1) or deferred under section 267(f).

CAVEATS

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties 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.

We express no opinion as to the treatment of the Proposed Transactions under other provisions of the Code and regulations or the treatment of any conditions existing at the time or as a result of the Proposed Transactions that are not specifically covered by the rulings. In particular, no opinion is expressed to the extent not specified or as specifically ruled on above upon (1) any other consequence under section 367 on any internal restructuring transaction in this letter ruling, and (2) whether any or all of the above referenced corporations are PFICs within the meaning of section 1297(a). If it is determined that any such corporations are PFICs, no opinion is expressed with respect to the application of sections 1291 through 1298 to the Proposed Transactions. In particular, in a transaction in which gain otherwise is not recognized, regulations under section 1291(f) may require gain recognition notwithstanding any other provisions of the Code.

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 representatives.

Sincerely,

Gerald B. Fleming

Gerald B. Fleming
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel
(Corporate)

cc: