

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201310016**

Release Date: 3/8/2013

Index Number: 1504.00-00, 1504.01-00

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:
, ID No.

Telephone Number:

(

Refer Reply To:

CC:CORP:B03

PLR-126930-12

Date:

December 06, 2012

LEGEND:

Foreign Parent =

US Parent =

Subsidiary 1 =

Subsidiary 2 =

Subsidiary 3 =

Department =

Business A =

Business B =

State X =

Country Z =

Year A =

Year B =

Date M =

Dear :

This letter responds to your request for rulings, dated June 20, 2012, submitted by your authorized representatives on behalf of US Parent. The information submitted for consideration is summarized below.

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

US Parent, a State X corporation, is the common parent of an affiliated group of corporations that join in filing a consolidated return (the "US Parent Group"). US Parent is a wholly-owned subsidiary of Foreign Parent, which is a publicly-traded Country Z entity. US Parent owns all of the issued and outstanding stock of Subsidiary 1. Subsidiary 1 owns all of the issued and outstanding stock of Subsidiary 2. Subsidiary 2 acquired all of the outstanding stock of Subsidiary 3 in Year A. US Parent and its direct and indirect subsidiaries, including Subsidiaries 1 and 2, filed consolidated returns prior to the acquisition of Subsidiary 3. After the acquisition of Subsidiary 3, Subsidiary 3 and its direct or indirect US subsidiaries have also been included in the US Parent Group's consolidated return.

Subsidiary 2 is engaged in Business A. In order for Subsidiary 2 (and certain of its own direct or indirect subsidiaries) to perform certain contracts, Subsidiary 2 needs facility security clearance(s) granted by Department. Because of the indirect foreign ownership of stock in Subsidiary 2, Department requires that Subsidiary 2 be effectively insulated from foreign ownership, control, or influence in order to maintain those clearances.

To create a security measure designed to insulate Subsidiary 2 from any foreign control or influence that might arise from Foreign Parent's indirect ownership of stock in Subsidiary 2, Foreign Parent, US Parent, Subsidiary 1, Subsidiary 2, and Department became parties to a Special Security Agreement ("SSA"). Under the SSA, the management of Subsidiary 2 must be conducted by a board of directors that is constituted in accordance with, and whose powers are defined by, certain requirements (described below) related to national security. These requirements do not impact Subsidiary 1's economic interest in, and rights with respect to, Subsidiary 2 (and indirectly Subsidiary 2's subsidiaries); rather, Subsidiary 1 retains all the economic benefit and risk, including the right to distributions and the right to sell or otherwise

transfer its interests in Subsidiary 2 and the latter's subsidiaries. Moreover, Subsidiary 1 appoints (in some cases, as explained below, with prior government approval) all members of Subsidiary 2's board of directors and retains the powers normally retained by shareholders.

The SSA contains certain provisions relating to Subsidiary 2's board of directors ("the Board"). The SSA provides that the directors shall be appointed by Subsidiary 1, but requires that the Board be composed of (i) a minimum of three directors with no prior relationship with Subsidiary 2, Subsidiary 1, or entities controlling or controlled by Subsidiary 1 ("Outside Directors"); (ii) at least one representative of Subsidiary 1 ("Inside Directors"), and one or more security-cleared officer(s) of Subsidiary 2. Under the SSA, the number of Inside Directors cannot exceed the combined total of Outside Directors and Officer/Directors. In addition, the chairman of the Board, as well as the principal officers of Subsidiary 2, must be resident citizens of the United States who have or who are eligible to process Department personal security clearances at the level of Subsidiary 2's facility security clearances. Third, the chairman of the Board, who casts the deciding vote in the event of a tie, cannot be an Inside Director. Fourth, all the directors of Subsidiary 2 must satisfy appropriate Department personnel security requirements. Finally, Outside Directors cannot be removed until Department provides written notice stating no objection and a successor who is qualified to become an Outside Director has been nominated by Subsidiary 2 and approved by Department.

The Board generally has all of the powers afforded a board of directors. Subsidiary 1, however, has additional control of the actions of Subsidiary 2 in certain circumstances. The SSA provides that prior written approval by Subsidiary 1 is required for the Board to undertake the following actions: (i) the sale, lease, or other disposition of any of the property, assets, or business of Subsidiary 2, or purchase of any property or assets by Subsidiary 2 other than in the ordinary course of business; (ii) the merger, consolidation, reorganization, dissolution, or liquidation of Subsidiary 2; (iii) the merger, consolidation, reorganization, sale, sale of all or substantially all assets, dissolution, or liquidation of Subsidiary 2; (iv) the filing or making of any petition under the federal Bankruptcy Code or any applicable bankruptcy law or other acts of similar character; and (v) the initiation of an action to terminate the SSA.

The SSA has a term of 10 years and can be terminated by the Department only (i) in the event of a sale of the business or all the shares to a company or person not under foreign ownership, control, or influence; (ii) when the Department determines that existence of the SSA is no longer necessary to maintain a facility security clearance for Subsidiary 2; (iii) when the Department determines that continuation of a facility security clearance for Subsidiary 2 is no longer necessary; (iv) when the Department determines that there has been a breach of the SSA requiring termination or termination is otherwise in the national interest; or (v) when Subsidiary 1 and Subsidiary 2 petition the Department to terminate the SSA (such petition is granted by the Department at its sole discretion).

An amendment (“the Amendment”), party to which were the original parties to the SSA and Subsidiary 3, was made in Year B to the SSA. The Amendment slightly altered the SSA requirement regarding composition of the Board. As described above, the SSA required that the number of Inside Directors not exceed the combined total of Outside Directors and Officer/Directors. The Amendment now requires that the number of Outside Directors exceed the number of Inside Directors. With respect to the termination, amendment, and interpretation of the SSA, the Amendment provides that the SSA may be terminated for any reason upon or following Date M, and that the Amendment may continue in successive thirty-day periods until such time as the parties to the Amendment execute a revised, restated, or alternative agreement effectively mitigating foreign ownership, control, or influence at Subsidiary 2. Although the Amendment added Subsidiary 3 to the SSA due to Subsidiary 2’s acquisition of Subsidiary 3, there was no significant change to Subsidiary 1’s economic interests in Subsidiary 2 and the Amendment did not affect Subsidiary 2’s ownership of the Subsidiary 3 stock.

RULINGS

Based on the facts submitted and the representations made, we rule as follows:

Neither the SSA prior to the Amendment thereto nor the SSA as amended by the Amendment prevent Subsidiary 2 from being a member of the affiliated group (within the meaning of section 1504(a)) of which US Parent is the common parent or prevent Subsidiary 2 from joining in the filing of a consolidated federal income tax return (within the meaning of sections 1501 and 1502 and the regulations thereunder) with such affiliated group.

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) 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 this ruling letter.

A copy of this ruling letter is being sent to your first representative listed on the power of attorney on file with this office..

Sincerely,

Mark S. Jennings
Branch Chief, Branch 1
Office of Associate Chief Counsel (Corporate)

cc: