

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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PLR-105786-12

Date:
March 29, 2013

Foreign Parent =

Target =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

New US Inc. =

New US Inc. 2 =

State Y =

State Z =

Country X =

State Y Entity =

Date A =

a =

b =

c =

d =

e =

f =

g =

h =

i =

Dear _____ :

This letter responds to your February 6, 2012 request for rulings regarding certain federal income tax consequences of a proposed transaction. The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on 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.

SUMMARY OF FACTS

Foreign Parent is the parent corporation of a multinational group of companies. The group includes entities incorporated in the U.S. and in Country X. It also includes entities organized in other non-U.S. jurisdictions. Prior to the proposed transaction, Foreign Parent wholly owned all of the common stock of target, an entity treated as a domestic corporation for federal income tax purposes. Target was incorporated in Country X ("Target X") and subsequently filed certificates of domestication and incorporation in State Y pursuant to a State Y domestication statute ("Target"). Target was the common parent of a consolidated group for federal income tax purposes (the "Target Consolidated Group"). Target wholly owned all of the common stock of Sub 1, an entity treated as a domestic corporation for federal income tax purposes. Sub 1 was incorporated in Country X ("Sub 1X") and subsequently filed certificates of domestication and incorporation in State Y pursuant to a State Y domestication statute ("Sub 1"). Target and Sub 1 each directly owned h and i percent, respectively, of Sub 2. Sub 2 was organized as a State Y Entity that elected to be treated as a corporation for federal income tax purposes and is treated as a partnership for Country X tax purposes.

The only assets held by Target and Sub 1 were their respective interest in Sub 2. Sub 2 owned all of the common stock of Sub 3, a State Z corporation. Sub 2 also owned all of the common stock of each of Sub 4, Sub 5, and Sub 6. Sub 4, Sub 5, and Sub 6 are corporations for federal income tax purposes (collectively, the "Other US Subsidiaries"). Target, Sub 1, Sub 2, and Sub 3 and the Other US Subsidiaries (collectively, the "Sub 3 Holding Structure") were members of the Target Consolidated Group.

The Transaction

For what has been represented to be a valid business purpose, the following steps were proposed as of Date A, and have been undertaken (collectively, the “Transaction,” with steps (xiii) through (xvi) below constituting the “Reorganization”):

Refinancing of Sub 2’s External Debt

- (i) Foreign Parent borrowed \$c from a third-party lender under existing facilities.
- (ii) Foreign Parent contributed the loan proceeds of \$c to Target in exchange for additional Target common stock (“Contribution 1”).
- (iii) Target contributed \$c dollars in the amount of \$e and \$d to the capital of Sub 1 and Sub 2, respectively, in exchange for common stock of Sub 1 and Sub 2. Sub 1 contributed the \$e received from Target to the capital of Sub 2 in exchange for Sub 2 common stock (“Contribution 2”).
- (iv) Sub 2 used the funds received in step (iii) to repay \$c of its existing external debt.

New US Inc.’s Acquisition of Other US Subsidiaries

- (v) Foreign Parent formed New US Inc. with nominal capital.
- (vi) Foreign Parent contributed \$b to New US Inc. in exchange for New US Inc. common stock.
- (vii) New US Inc. used the cash received in step (vi) to acquire the Other US Subsidiaries’ common stock from Sub 2.
- (viii) Sub 2 distributed the \$b received in step (vii) up the chain to Foreign Parent.

Pre-Reorganization Steps

- (ix) Sub 1 was dissolved under State Y law (the “Sub 1 Liquidation”). Under § 301.7701-3(c)(1)(i), Sub 1X filed a protective election to be disregarded as an entity separate from its owner for federal income tax purposes (the “Sub 1X CTB Election”), which was intended to be effective concurrently with the Sub 1 Liquidation.
- (x) At least one day subsequent to step (ix), under § 301.7701-3(c)(1)(i), Sub 2 elected to be disregarded as an entity separate from its owner for federal income tax purposes (the “Sub 2 CTB Election”).

- (xi) Sub 3 distributed a note of \$f (the "Sub 3 Note") to Target (through Sub 2) ("Distribution 1").
- (xii) Target distributed the Sub 3 Note to Foreign Parent ("Distribution 2").

Reorganization Steps

- (xiii) Foreign Parent formed New US Inc. 2, a State Y limited liability company that elected to be treated as a corporation for federal income tax purposes.
- (xiv) New US Inc. 2 issued a \$g note ("New US Inc. 2 Note") to Target (through Sub 2) in exchange for Sub 3 common stock.
- (xv) Foreign Parent contributed the common stock of Target to New US Inc. 2 in exchange for New US Inc. 2 common stock.
- (xvi) Target was dissolved under State Y law (the "Target Liquidation"). Under § 301.7701-3(c)(1)(i), Target X filed a protective election to be classified as a disregarded entity for federal income tax purposes (the "Target X CTB Election"). The Target X CTB Election was intended to be effective concurrently with the Target Liquidation.

Post-Reorganization Steps

- (xvii) Following step (xvi), New US Inc. 2 undertook additional restructuring steps in preparation of a sale by Foreign Parent of a% of the stock of New US Inc. 2 to an unrelated buyer.

REPRESENTATIONS

Taxpayer makes the following representations regarding the Transaction:

New US Inc.'s Acquisition of Other US Subsidiaries

- (a) The transfers and exchanges constituting steps (v) through (viii) occurred on the same day and were prearranged as part of a single plan.

Pre-Reorganization Steps

Sub 1 Liquidation

(b) Sub 1 adopted a plan of liquidation under State Y law and the Sub 1 Liquidation occurred pursuant to that plan.

(c) Target, immediately prior to the Sub 1 Liquidation, and at all times thereafter, until the Sub 1 Liquidation, was the owner of at least 80 percent of Sub 1's single class of stock. Sub 1 did not have any outstanding warrants, options, convertible securities, or other obligations that may be classified as equity for federal income tax purposes.

(d) No shares of Sub 1 stock have been redeemed during the three years preceding the Sub 1 Liquidation.

(e) All transfers from Sub 1 to Target occurred on the effective date of the Sub 1 Liquidation.

(f) Sub 1 ceased to be a going concern and ceased to conduct any activities as a corporation, for federal income tax purposes.

(g) Sub 1 retained no assets following the Sub 1 liquidation.

(h) Other than pursuant to the Transaction, no assets of Sub 1 were disposed of by either Sub 1 or Target except for dispositions in the ordinary course of business and dispositions occurring more than three years prior to the Sub 1 Liquidation.

(i) Other than pursuant to the Transaction, the Sub 1 Liquidation was not preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation ("Recipient") of any of the businesses or assets of Sub 1, if persons holding, directly or indirectly, more than 20 percent in value of Sub 1's stock (as determined by application of § 318(a) as modified by § 304(c)(3)) also hold, directly or indirectly, more than 20 percent in value of the stock in the Recipient.

(j) Prior to the Sub 1 Liquidation, no assets of Sub 1 were distributed in kind, transferred or sold to Target, except for (i) transactions in the ordinary course of business, and (ii) transactions more than three years before the Sub 1 Liquidation.

(k) Sub 1 will report all earned income represented by assets that will be treated as distributed to Target.

(l) The fair market value of the assets of Sub 1 exceeded its liabilities, at the date of the Sub 1 Liquidation and immediately before the time that the Sub 1 Liquidation was effective.

(m) At the time of the Sub 1 Liquidation, there was no inter-corporate debt existing between Target and Sub 1, and none has been cancelled, forgiven, or

discounted, except for transactions that occurred more than three years prior to the Sub 1 Liquidation.

(n) The Sub 1X CTB Election satisfied all applicable requirements for electing classification as a disregarded entity under § 301.7701-3, effective concurrently with the Sub 1 Liquidation.

Sub 2 CTB Election

(o) Sub 2 was an “eligible entity” as defined in § 301.7701-3(b)(3) for purposes of making an entity classification election and was not subject to the 60-month limitation of § 301.7701-3(c)(1)(iv).

(p) Target, immediately prior to the Sub 2 CTB Election, and at all times thereafter until the Sub 2 CTB Election, was the owner of at least percent of Sub 2’s single class of stock, and Sub 2 did not have outstanding warrants, options, convertible securities, or other obligations that may be classified as equity for federal income tax purposes.

(q) No shares of Sub 2 stock were redeemed during the three years preceding the Sub 2 CTB Election.

(r) By operation of law, all transfers from Sub 2 to Target deemed to occur for federal income tax purposes occurred once the Sub 2 CTB Election was effective.

(s) Other than pursuant to the Transaction, no assets of Sub 2 were disposed of by either Sub 2 or Target except for dispositions in the ordinary course of business and dispositions occurring more than three years prior to the Sub 2 CTB Election.

(t) Other than pursuant to the Transaction, the Sub 2 CTB Election was not preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation (“Recipient”) of any of the businesses or assets of Sub 2, if persons holding, directly or indirectly, more than percent in value of Sub 2’s stock (as determined by application of § 318(a) as modified by § 304(c)(3)) also hold, directly or indirectly, more than percent in value of the stock in the Recipient.

(u) Prior to the Sub 2 CTB Election, no assets of Sub 2 were distributed in kind, transferred or sold to Target, except for (i) transactions in the ordinary course of business, and (ii) transactions more than three years before the Sub 2 CTB Election.

(v) Sub 2 will report all earned income represented by assets that will be treated as distributed to Target such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.

(w) The fair market value of the assets of Sub 2 exceeded its liabilities, immediately before and at the date the Sub 2 CTB Election was effective.

(x) At the time of the Sub 2 CTB Election, there was no inter-corporate debt existing between Target and Sub 2, and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years prior to the Sub 2 CTB Election.

(y) At the time of the Sub 2 CTB Election, there was no deferred intercompany item, within the meaning of § 1.1502-13(b), with respect to the Sub 2 stock.

(z) All transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to the Sub 2 CTB Election have been fully disclosed.

The Reorganization

(aa) Foreign Parent received solely New US Inc. 2 common stock in the Reorganization.

(bb) The fair market value of the New US Inc 2 common received by Foreign Parent in the Reorganization was approximately equal to the fair market value of Target stock surrendered.

(cc) Following the Reorganization, Foreign Parent owned all of the outstanding New US Inc. 2 common stock and owned the stock solely by reason of its ownership of Target immediately prior to the Reorganization.

(dd) Immediately after the Reorganization, New US Inc. 2 held all the assets and liabilities held by Target immediately prior to the Reorganization, except for assets used to pay expenses incurred in connection with the Reorganization. The assets used to pay expenses were less than percent (%) of the fair market value of the net assets of Target immediately prior to the Reorganization.

(ee) With regard to the assets that were transferred from Target to New US Inc. 2 in the Reorganization, the fair market value of the assets equaled or exceeded the sum of the liabilities (as determined under §357(d)) that were assumed by New US Inc. 2, if any.

(ff) All liabilities to which Target assets were subject to at the time of the Reorganization and all liabilities of Target that were properly treated as being assumed by New US Inc. 2 in the Reorganization (as determined under §357(d)), were liabilities that were incurred by Target in the ordinary course of its business and were associated with the assets transferred from Target to New US Inc. 2.

(gg) Except as contemplated in connection with the Transaction, at all times prior to acquiring the assets and liabilities of Target in the Reorganization: (i) New US Inc. 2 was not engaged in any business activity; (ii) New US Inc. 2 had no federal income tax attributes (attributes described in § 381(c)); and (iii) New US Inc. 2 held no assets (except for a nominal amount of cash to maintain New US Inc. 2's charter under State Y law).

(hh) At the time of the Reorganization, Target did not have outstanding warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Target.

(ii) Target was not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

(jj) The transfers and exchanges constituting the Reorganization occurred under a plan, agreed to before the Reorganization, in which the rights of the parties were defined.

(kk) All exchanges described in the Reorganization occurred on the same day.

(ll) Target was not a United States real property holding corporation, within the meaning of § 897(c)(2), at any time during the five-year period ending on the date of the Reorganization.

(mm) Prior to the date of the Reorganization, Target and Foreign Parent complied with any applicable notice and filing requirements set forth in § 897 and § 1445, and the Regulations thereunder, which relate to Foreign Investment in Real Property Tax Act ("FIRPTA").

(nn) The Target X CTB Election satisfied all applicable requirements for electing classification as a disregarded entity under § 301.7701-3, effective concurrently with the Target Liquidation.

(oo) Immediately after the Reorganization, Target ceased to exist for federal income tax purposes.

RULINGS

Based solely on the information and representations submitted, we rule as follows regarding each named transaction:

New US Inc.'s Acquisition of Other US Subsidiaries

(1) For federal tax purposes, steps (v) through (viii) are treated as if: (i) Sub 2 distributed the stock of the Other US Subsidiaries to its shareholders, Target and Sub 1; (ii) Sub 1 distributed the stock of the Other US Subsidiaries received from Sub 2 to Target; (iii) Target distributed the stock of the Other US Subsidiaries to Foreign Parent; (steps (i), (ii) and (iii), each, a taxable distribution) and (iv) Foreign Parent contributed the stock of the Other US Subsidiaries to New US Inc.

Pre-Reorganization Step

Sub 1 Liquidation

- (2) The Sub 1 Liquidation will qualify as a distribution by Sub 1 to Target in complete liquidation of Sub 1 under § 332 and § 1.332-2(d).
- (3) No gain or loss will be recognized by Target on the receipt of the assets and liabilities of Sub 1 as a result of the Sub 1 Liquidation (§ 332(a)).
- (4) No gain or loss will be recognized by Sub 1 on the distribution of its assets and liabilities as a result of the Sub 1 Liquidation (§ 337(a)).
- (5) The basis of each asset of Sub 1 received by Target pursuant to the Sub 1 Liquidation will equal the basis of that asset in the hands of Sub 1 immediately before the Sub 1 Liquidation (§ 334(b)(1)).
- (6) The holding period of each asset of Sub 1 received by Target in the Sub 1 Liquidation will include the period during which Sub 1 held such asset (§ 1223(2)).
- (7) Target will succeed to and take into account all of Sub 1's tax attributes described in § 381(c) (§ 381(a)(1) and § 1.381(a)-1). These items will be taken into account by Target subject to the conditions and limitations specified in §§ 381, 382, 383 and 384 and the Regulations thereunder.
- (8) Target will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Sub 1 as of the date of the Sub 1 Liquidation (§ 381(c)(2)(A) and § 1.381(c)(2)-1). Any deficit in the earnings and profits of Sub 1 or Target will be used only to offset earnings and profits accumulated after the date of the Sub 1 Liquidation (§ 381(c)(2)(B)). Notwithstanding the above, to the extent that Sub 1's earnings and profits are reflected in Target's earnings and profits, the Sub 1 earnings and profits to which Target succeeds must be adjusted to prevent duplication (§ 1.1502-33(a)(2)).

- (9) Sub 1X will be disregarded as an entity separate from its owner for federal income tax purposes following the Target Liquidation and the Sub 1X CTB Election.

Sub 2 CTB Election

- (10) For federal income tax purposes, the Sub 2 CTB Election will constitute a complete liquidation of Sub 2 under §332 (§ 301.7701-3(g)).
- (11) No gain or loss will be recognized by Target on the deemed receipt of the assets and liabilities of Sub 2 as a result of the Sub 2 CTB Election (§ 332(a)).
- (12) No gain or loss will be recognized by Sub 2 on the deemed distribution of its assets and liabilities as a result of the Sub 2 CTB Election (§ 337(a)).
- (13) The basis of each asset of Sub 2 deemed received by Target pursuant to the Sub 2 CTB Election will equal the basis of that asset in the hands of Sub 2 immediately before the Sub 2 CTB Election (§ 334(b)(1)).
- (14) The holding period of each asset of Sub 2 deemed received by Target in the Sub 2 CTB Election will include the period during which Sub 2 held such asset (§ 1223(2)).
- (15) Target will succeed to and take into account all of Sub 2's tax attributes described in § 381(c) (§ 381(a)(1) and § 1.381(a)-1). These items will be taken into account by Target subject to the conditions and limitations specified in §§ 381, 382, 383 and 384 and the Regulations thereunder.
- (16) Target will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Sub 2 as of the date of the deemed liquidation pursuant to the Sub 2 CTB Election (§ 381(c)(2)(A) and § 1.381(c)(2)-1). Any deficit in the earnings and profits of Sub 2 or Target will be used only to offset earnings and profits accumulated after the date of the deemed liquidation pursuant to the Sub 2 CTB Election (§ 381(c)(2)(B)). Notwithstanding the above, to the extent that Sub 2's earnings and profits are reflected in Target's earnings and profits, the Sub 2 earnings and profits to which Target succeeds must be adjusted to prevent duplication (§ 1.1502-33(a)(2)).

The Reorganization

- (17) For federal income tax purposes, the Reorganization is treated as a transfer by Target of its assets to New US Inc. 2 in exchange for New US Inc. 2 common stock and the assumption of the liabilities, followed by Target's liquidating distribution of such stock to Target's sole shareholder, Foreign Parent. The Reorganization will qualify as a reorganization described in § 368(a)(1)(F). Target and New US Inc. 2 will each be "a party to a reorganization" within the meaning of § 368(b).
- (18) Target X will be disregarded as an entity separate from its owner for federal income tax purposes following the Target Liquidation and the Target X CTB Election.
- (19) No gain or loss will be recognized by Target on the transfer of its assets and liabilities to New US Inc. 2 in exchange for New US Inc. 2 common stock and the assumption of liabilities (§§ 361(a) and 357(a)).
- (20) No gain or loss will be recognized by Target on the distribution of New US Inc. 2 common stock to Foreign Parent (§ 361(c)).
- (21) No gain or loss will be recognized by New US Inc. 2 on its receipt of the Target assets in exchange for the New US Inc. 2 common stock (§ 1032(a)).
- (22) New US Inc. 2's basis in the assets acquired from Target will be the same as Target's basis in such assets immediately before the Reorganization (§ 362(b)).
- (23) The holding period for the New US Inc. 2 common stock in the hands of Foreign Parent will include the holding period during which Foreign Parent held the Target stock exchanged therefore, provided that the Target stock is held as a capital asset in the hands of the Foreign Parent on the date of the exchange (§ 1223(1)).
- (24) New US Inc. 2's holding period for the assets acquired from Target will include the period during which such assets were held by Target (§ 1223(2)).
- (25) No gain or loss is recognized by Foreign Parent on its receipt of the common stock of New US Inc. 2 in exchange for the stock of Target (§ 354(a)(1)).
- (26) Foreign Parent's basis in each share of New US Inc. 2 common stock received in the exchange for Target stock will be equal to the basis of each share of Target stock treated as exchanged therefore (§ 358(a)(1) and § 1.358-2(a)(2)(i)).

- (27) As provided by § 381(a), New US Inc. 2 will succeed to the tax attributes of Target enumerated in § 381(c).

CAVEATS

No opinion is expressed about the tax treatment of the Transaction under other provisions of the Internal Revenue Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Transaction that are not specifically covered by the above rulings. Specifically, no rulings have been requested and no opinion is expressed or implied concerning the federal income tax consequences of certain aspects of the Transaction including: (1) steps (i) through (iv); (2) steps (xi) and (xii); and, step (xvii).

PROCEDURAL MATTERS

This ruling letter is directed only to the taxpayer who requested 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 for which it is relevant. Alternatively, any taxpayer filing its return electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of this letter ruling.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Richard K. Passales
Senior Counsel, Branch 4
Office of Associate Chief Counsel (Corporate)

cc: