

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.

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Date:
August 29, 2013

Legend

Parent =

Country =
A

Business =

USCo =

State B =

Opco 1 =

Opco 2 =

State C =

Opco =
Sub 1

Opco =
Sub 2

LP =

GPCo =

Dear _____ :

This letter responds to your request for rulings dated May 8, 2013, regarding certain Federal income tax consequences, under the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations thereunder, of a proposed transaction. The information provided in that request is summarized below.

The rulings contained in this letter are based on 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 ruling request. Verification of the information, representations, and other data may be required as part of the audit process.

SUMMARY OF FACTS

Parent is a Country A corporation that is not publicly traded. Parent conducts Business through its subsidiaries both in Country A and the U.S. Specifically, Parent conducts Business in the U.S. through USCo, a State B entity treated as a corporation for U.S. tax purposes. Parent's interest in USCo constitutes a United States Real Property Interest ("USRPI") within the definition of section 897(c)(1). USCo directly owns Opco 1 and Opco 2, State C and State B LLCs, respectively, which are disregarded entities for U.S. tax purposes. Opco 1 owns Opco 1 Sub, a State C LLC also disregarded from its owner for U.S. tax purposes. Opco 2 owns Opco 2 Sub, a State B corporation. USCo files a consolidated return together with Opco 2 Sub (together the USCo group).

The USCo group does not have any net operating loss carryovers and is not currently operating at a loss.

The USCo group has lower levels of debt relative to its assets and earnings compared to that of Parent's Country A entities. Interest expense of the USCo group is allocated and apportioned under section 861 and the regulations thereunder.

For what have been represented as valid accounting and financial purposes, Parent wishes to engage in the following transaction ("Proposed Transaction"). USCo will transfer the assets and liabilities of Opco 1 and 2 to a new State C limited partnership (LP), and then liquidate, such that LP would be directly owned by Parent ("Liquidation"). Specifically:

- 1) Opco 2 Sub will convert to an LLC pursuant to State B law.
- 2) USCo will establish a wholly-owned LLC in State C (GPCo), which will be treated as disregarded from its owner for tax purposes.

- 3) GPCo will buy a nominal interest in each of Opco 1 and Opco 2 directly from each Opco.
- 4) Each of Opco 1 and Opco 2 will transfer all of their assets and liabilities to LP and then liquidate and dissolve under State C law.
- 5) Pursuant to a plan, USCo will liquidate and distribute its interests in LP and GPCo to Parent.

The Proposed Transaction is intended to qualify as a complete liquidation of USCo into Parent under section 332 of the Code. As a result of the Proposed Transaction, GPCo will operate as a branch in the U.S. ("USCo branch") and any deductions for interest of Parent will be determined pursuant to the rules in Treas. Reg. § 1.882-5.

REPRESENTATIONS

The taxpayer has provided the following representations with regard to this request for a private letter ruling:

- (a) Immediately before the Liquidation, Parent will be the owner of at least 80% of the combined voting power of all classes of stock of USCo and the owner of at least 80% of the total value of all classes of stock of USCo.
- (b) The Liquidation will constitute a complete liquidation of USCo into Parent as described in section 332 for US tax purposes.
- (c) All income associated with the business and assets of the US Group distributed pursuant to the plan of liquidation will be effectively connected (or deemed effectively connected) with a US trade or business.
- (d) There is no current intention or plan to sell the assets of the US Group.
- (e) There is no current intention or plan to reincorporate assets of the US Group.
- (f) USCo will recognize gain with respect to the distribution to Parent of intangibles described in section 936(h)(3)(B), if any.
- (g) Nearly all of USCo's assets by value at the time of the Liquidation will be USRPIs. Non-USRPI assets will include (i) equipment and (ii) a contract with a union held by Opco 2 Sub, which will be a disregarded entity.
- (h) USCo and Parent will comply with such filing and other requirements under Treas. Reg. §§ 1.897-5T(d)(1)(iii) and 1.1445-5(b)(2)(ii), as may be applicable.

- (i) With respect to the property of USCo that is distributed to Parent in liquidation other than the USRPIs and shares of Opco 2, the property will have been used by USCo in the conduct of a United States trade or business immediately after the date of the Liquidation and has no current intention to discontinue such use for at least ten years thereafter.
- (j) USCo will attach the statement described in Treas. Reg. § 1.367(e)(2)(b)(2)(i)(C) to its US income tax return for the taxable year that includes the date of the Liquidation. This statement will be prepared by USCo and signed under penalties of perjury by an authorized officer of USCo and by an authorized officer of Parent.
- (k) Parent will attach a copy of the property description contained in Treas. Reg. § 1.367(e)-2(b)(2)(2)(i) to its US income tax return for the taxable year that includes the date of the Liquidation.
- (l) Parent and USCo will file Forms 926 and 966 in respect of the Liquidation.

ANALYSIS

Section 337(a) of the Code generally provides that a liquidating corporation does not recognize gain or loss on the distribution of any property to an 80 percent distributee (as defined in section 337(c) of the Code) in a complete liquidation to which section 332 of the Code applies.

Section 367(e)(2) of the Code provides that, in the case of any liquidation to which section 332 of the Code applies, except as provided in regulations, sections 337(a) and (b)(1) of the Code shall not apply where the 80 percent distributee is a foreign corporation. Therefore, absent an exception in the regulations under section 367(e)(2) of the Code, a domestic corporation must recognize gain or loss on a liquidating distribution to an 80 percent foreign distributee under section 332 of the Code.

If certain requirements are satisfied, the regulations under section 367(e)(2) of the Code provide a nonrecognition exception to this general rule for distributions of property used in a U.S. trade or business. Treas. Reg. § 1.367(e)-2(b)(2)(i). To qualify for this exception, the foreign distributee corporation, immediately after the distribution and for ten years thereafter, must use the distributed property in the conduct of a trade or business within the United States. In addition, the domestic liquidating corporation must attach a statement described in Treas. Reg. § 1.367(e)-2(b)(2)(i)(C) to its U.S. income tax returns for the taxable years that include the distributions in liquidation. Finally, the foreign distributee corporation must attach a copy of the property description contained in Treas. Reg. § 1.367(e)-2(b)(2)(i)(C)(2) to its U.S. income tax returns for the taxable years that include the distributions in liquidation.

However, this nonrecognition exception is subject to a general anti-abuse rule. This rule provides that the Commissioner may require the domestic liquidating corporation to recognize gain on a distribution in liquidation (or treat the liquidating corporation as if it had recognized a loss on a distribution in liquidation) if a principal purpose of the liquidation is the avoidance of U.S. tax (including, but not limited to, the distribution of a liquidating corporation's earnings and profits with a principal purpose of avoiding U.S. tax). A liquidation may have a principal purpose of tax avoidance even though the tax avoidance purpose is outweighed by other purposes when taken together. Treas. Reg. § 1.367(e)-2(d).

RULINGS

Based solely on the information and representations submitted in the taxpayer's ruling request, we rule that USCo will not recognize gain on the distribution of its assets in liquidation to Parent, except with respect to gain attributable to intangibles described in section 936(h)(3)(B) of the Code. Section 367(e)(2) and Treas. Reg. § 1.367(e)-2(b)(2)(i).

CAVEATS

No opinion is expressed about the federal tax treatment of the proposed transaction under other provisions of the Code or Regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction that are not specifically covered by the above ruling. In particular, no opinion is expressed regarding the following:

1. The treatment or allocation of any interest expense;
2. To the extent not otherwise specifically ruled upon above, any other consequence under sections 367 or 897 of the Code of any transaction in this letter ruling.

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 the taxpayer.

Sincerely,

Jason T. Smyczek
Assistant to the Branch Chief, Branch 4
(International)

cc: