Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

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Refer Reply To:
CC:INTL:B04
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Date:
June 23, 2016

Legend

Parent =

FSub 1 =

FSub 2 =

Partnership =

State A =

Country B =

Country C =

Business D =

a =

b =

Year 1 =

Year 2 =

Year 3 =

Date 1 =

Dear :

This letter responds to your March 4, 2016, request, submitted by your authorized representative, for a ruling regarding certain federal income tax consequences of a proposed transaction. The information submitted in that letter 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 penalties of perjury statement executed by the appropriate party. This office has not verified any of the materials 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

Parent is a publicly traded State A corporation and is the common parent of an affiliated group of corporations that files a consolidated return. Parent conducts Business D through direct and indirect subsidiaries and joint ventures, including through an a percent interest in Partnership, a State A partnership.

Prior to the transactions described below, Parent directly or indirectly wholly owned both FSub 1, a Country B corporation, and FSub 2, a Country C corporation. In Year 1, pursuant to a series of transactions (the "Year 1 Transactions"), Parent was treated for U.S. federal income tax purposes as transferring FSub 1 to FSub 2 (the "FSub 1 Stock Transfer"). Parent treated the FSub 1 Stock Transfer as an exchange described in section 351 and, on its Year 1 tax return, Parent entered into a gain recognition agreement (the "Year 1 GRA") with respect to the FSub 1 Stock Transfer under Treas. Reg. § 1.367(a)-8.

In Year 2, FSub 1 converted to a Country B unlimited liability company. Following this conversion (the "FSub 1 Liquidation"), FSub 1 was disregarded as an

entity separate from FSub 2 for U.S. federal income tax purposes. Parent treated the FSub 1 Liquidation as being unrelated to the FSub 1 Stock Transfer, and qualifying as a liquidation of FSub 1 under section 332. Parent determined that the FSub 1 Liquidation was not a triggering event with respect to the Year 1 GRA pursuant to Treas. Reg. § 1.367(a)-8(k)(8). On its Year 2 tax return, Parent entered into a new gain recognition agreement (the "Year 2 GRA") with respect to the FSub 1 Liquidation. Under Treas. Reg. § 1.367(a)-8(c)(5)(i), Parent treated the Year 2 GRA as replacing the Year 1 GRA such that the Year 1 GRA terminated without further effect.

In Year 3, Parent directly or indirectly owned a b percent interest in Partnership. In Year 3, as part of a series of transactions (the "Year 3 Transactions"), FSub 2 made an election to be disregarded as an entity separate from its owner, Parent, for U.S. federal income tax purposes under Treas. Reg. § 301.7701-3 (the "Inbound Reorganization"). Subsequent to the Inbound Reorganization, pursuant to further steps in the Year 3 Transactions, Parent was treated as transferring substantially all of the historic assets of FSub 1 to Partnership (the "Partnership Contribution"). Parent determined that the Inbound Reorganization resulted in a deemed liquidation of FSub 2 and a reorganization under section 368(a)(1)(C).

Parent entered into a new gain recognition agreement (the "Year 3 GRA") on its Year 3 tax return. The Year 3 GRA described the Inbound Reorganization and the Partnership Contribution and cited the triggering event exceptions in Treas. Reg. §§ 1.367(a)-8(k)(6), 1.367(a)-8(k)(14), and 1.367(a)-8(k)(8). Under Treas. Reg. § 1.367(a)-8(c)(5)(i), Parent treated the Year 3 GRA as replacing the Year 2 GRA such that the Year 2 GRA terminated without further effect.

Proposed Transaction

In the proposed transaction, Partnership will sell substantially all of the assets of FSub 1 (the "FSub 1 Assets") to an unrelated buyer.

Representations

Parent has made the following representations:

a. The FSub 1 Stock Transfer qualified as an exchange described in section 351.

b. The FSub 1 Liquidation qualified as a liquidation under section 332.

c. FSub 2 was eligible to elect to be treated for U.S. federal income tax purposes as a disregarded entity under Treas. Reg. § 301.7701-3 and

filed a valid election to be treated as a disregarded entity effective on Date 1.

d. The Inbound Reorganization qualified as a reorganization described in section 368(a)(1)(C), and Parent complied with the requirements under Treas. Reg. §1.367(b)-3 resulting from such reorganization.

e. The Partnership Contribution was a section 721 transfer.

f. Parent entered into the Year 3 GRA due to uncertainty over whether the Year 2 GRA was terminated in the Inbound Reorganization.

g. There were no transactions that resulted in an increase in the basis of the FSub 1 Assets between the FSub 1 Stock Transfer and the Inbound Reorganization.

h. Substantially all of the FSub 1 Assets will be sold by Partnership in the Proposed Transaction.

i. The FSub 1 Liquidation was not a triggering event with respect to the Year 1 GRA.

j. FSub 2 did not hold any United States real property interests, as defined in section 897(c)(1), immediately before or after the FSub 1 Stock Transfer or the FSub 1 Liquidation, or immediately before the Inbound Reorganization.

k. FSub 1 did not hold any United States real property interests, as defined in section 897(c)(1), immediately before or after the FSub 1 Stock Transfer, or immediately before the FSub 1 Liquidation.

Law and Analysis

Section 367(a) and the regulations promulgated thereunder provide rules governing the circumstances under which the nonrecognition rules of sections 351, 354, 356, and 361 apply to transfers of property to foreign corporations. Section 367(a)(1) provides the general rule that gain is recognized on such outbound transfers. This general rule, however, is subject to several exceptions. In particular, section 367(a)(2) provides that the nonrecognition rules apply to outbound transfers of stock or securities of a foreign corporation, except as provided in regulations.

Treas. Reg. § 1.367(a)-3(b)(1) provides that a transfer of stock or securities of a foreign corporation by a U.S. transferor (who owns more than five percent of the stock

of the transferred foreign corporation) to a foreign corporation qualifies for nonrecognition treatment if the U.S. transferor enters into a gain recognition agreement with respect to such transfer.

Treas. Reg. § 1.367(a)-8 describes the conditions for entering into a gain recognition agreement, including that the U.S. transferor agrees to recognize gain on the outbound stock transfer if a "triggering event" occurs before the close of the fifth taxable year following the close of the taxable year of the initial transfer.

Treas. Reg. § 1.367(a)-8(j) lists the triggering events. Specifically, Treas. Reg. § 1.367(a)-8(j)(1) provides that a triggering event includes a complete or partial disposition of the transferred stock or securities. Treas. Reg. § 1.367(a)-8(j)(2)(i) provides that a triggering event includes a disposition in one or more related transactions of substantially all of the assets of the transferred corporation.

Treas. Reg. § 1.367(a)-8(k)(8) provides that a liquidation of the transferred corporation into the transferee foreign corporation to which sections 332 and 337 apply will not constitute a triggering event provided that the U.S. transferor enters into a new GRA.

Treas. Reg. § 1.367(a)-8(k)(14) provides, in relevant part, that a disposition or other event that would constitute a triggering event shall not constitute a triggering event if (i) the disposition qualifies as a nonrecognition transaction, (ii) immediately after the disposition or other event, a U.S. transferor retains a direct or indirect interest in the transferred stock or securities or, as applicable, in substantially all of the assets of the transferred corporation, and (iii) a new gain recognition agreement is entered into by the U.S. transferor that includes (A) an explanation of why paragraph (k)(14) applies to the disposition or other event; and (B) a description of each subsequent disposition or other event that would constitute a triggering event, other than those described in paragraph (j) of this section, with respect to the new gain recognition agreement based on the principles of paragraphs (j) and (k) of this section.

Treas. Reg. § 1.367(a)-8(o)(5) generally provides, notwithstanding Treas. Reg. § 1.367(a)-8(j), that a gain recognition agreement will terminate without further effect when the transferred stock is distributed or transferred to the U.S. transferor pursuant to certain transactions and certain requirements are satisfied, including that the basis in the distributed stock is not greater than the basis of such stock at the time of the initial transfer. Treas. Reg. § 1.367(a)-8(k) (introductory language) cross references the rules of Treas. Reg. § 1.367(a)-8(o).

The Inbound Reorganization is described in Treas. Reg. § 1.367(a)-8(k)(14) because the disposition of the FSub 2 stock and the disposition of substantially all of the FSub 1 Assets, qualified as nonrecognition transactions; immediately after Parent retained a direct or indirect interest in substantially all the FSub 1 Assets; and Parent entered into the Year 3 GRA that met the requirements of Treas. Reg. § 1.367(a)-

8(k)(14)(iii). Accordingly, the Inbound Reorganization did not trigger the Year 2 GRA and, under Treas. Reg. § 1.367(a)-8(c)(5)(i), the Year 2 GRA terminated without further effect.

Under Treas. Reg. § 1.367(a)-8(k)(14), the principles of paragraphs (j) and (k) must be applied to identify any transactions that would constitute triggering events but that are not specifically listed in paragraph (j). Because Treas. Reg. § 1.367(a)-8(o) applies to transactions to which Treas. Reg. § 1.367(a)-8(j) applies, in the case of a gain recognition agreement filed pursuant to Treas. Reg. § 1.367(a)-8(k)(14), the principles of paragraph (o) also apply to determine whether the transaction constitutes a triggering event or a termination event. Because Parent received substantially all of the historic assets of FSub 1 with a carryover basis, and any gain on a subsequent disposition of such assets by Parent would be subject to U.S. tax in the hands of Parent, under the principles of Treas. Reg. § 1.367(a)-8(o)(5), any gain by Parent on the sale of the FSub 1 assets previously held by FSub 2 represents the gain on stock of FSub1 described in the Year 1 GRA. Thus, on the Inbound Reorganization, the Year 3 GRA immediately terminated upon its filing.

Ruling

Based solely on the information submitted and the representations set forth above, the Year 3 GRA first prevented the Inbound Reorganization from triggering the Year 2 GRA, and then immediately terminated without further effect upon its filing. Therefore, the sale of substantially all of the FSub 1 Assets by Partnership will not constitute a triggering event with respect to the Year 3 GRA.

Caveats

We express no opinion about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings.

In particular, we express no opinion regarding:

i. The federal tax classification under Treas. Reg. §§ 301.7701, et seq., of any of the entities involved in the Year 1 Transactions, the FSub 1 Liquidation, the Year 3 Transactions, or the Proposed Transaction, or the validity of any entity classification election made with respect to any of the entities.

ii. The federal income tax treatment or consequences of the Year 1 Transactions, the FSub 1 Liquidation, the Year 3 Transactions, or the Proposed Transaction, other than as expressly provided above.

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.

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

Sincerely,

Jason Smyczek
Senior Technical Reviewer, Branch 4
(International)