

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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Date:
March 19, 2020

Legend

UPE =

FS 1 =

FS 2 =

FDE =

Holdco US =

Holdco US Group =

USS 1 =

USS 2 =

Entity Y =

Country A =

Exchange =

State A =

State B =

a =

b =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

=

Dear :

This is in response to your letter dated November 26, 2019, requesting rulings with respect to the federal income tax treatment of FS 2's proposed transaction, as described below in part III (the "Proposed Transaction").

The rulings contained in this letter are predicated upon facts and representations submitted by FS 2 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 factual information, representations, and other

data may be required as part of the audit process. The information submitted for consideration is substantially as set forth below.

I. PRE-TRANSACTION STRUCTURE

UPE is a Country A corporation that functions as a holding company. UPE's common stock is traded on Exchange. UPE owns all of the outstanding stock of FS 1 and FS 2, each a Country A corporation.

FS 2 owns all of the outstanding interests in FDE, an entity chartered under a governmental subdivision of Country A that is disregarded as separate from FS 2 for federal tax purposes. FDE owns all of the outstanding stock of Holdco US, a State A limited liability company that is treated as a corporation for federal tax purposes.

Holdco US is the common parent of Holdco US Group, an affiliated group that files a consolidated federal income tax return on a calendar year basis. Holdco US owns all of the outstanding stock of USS 2, a State A corporation. USS 2 owns all of the outstanding stock of USS 1, a State B corporation.

Entity Y is a State A limited liability company that has elected to be treated as a corporation for federal tax purposes. Entity Y has two classes of shares outstanding: Class A and Class B. Holdco US wholly owns the Class A shares. The Class A shares represent approximately a percent (more than 80 percent) of the voting power and value of Entity Y's outstanding shares. Senior management of Entity Y wholly owns the Class B shares. The Class B shares represent the remaining, approximately b percent, voting power and value of Entity Y's outstanding shares.

II. PREVIOUS TRANSACTIONS

A. Incorporation of U.S. Assets

On Date 1, FS 1 transferred U.S. assets used in its U.S. trade or business to USS 1 in exchange for stock, and FS 1 and USS 1 received a private letter ruling from the Internal Revenue Service ("IRS") on Date 2, stating that the transfer qualified for nonrecognition under section 351 of the Internal Revenue Code. With respect to the Date 1 section 351 transaction and subsequent transfers, USS 1 elected under Treas. Reg. § 1.884-2T(d)(4) to increase its earnings and profits ("E&P") by an allocable portion of FS 1's effectively connected E&P ("ECE&P") and non-previously taxed accumulated ECE&P. In addition, FS 1 reduced its ECE&P and non-previously taxed accumulated ECE&P in accordance with Treas. Reg. § 1.884-2T(d)(4)(iii).

Pursuant to Treas. Reg. § 1.884-2T(d)(5)(i), FS 1 agreed that, upon the disposition of part or all of the stock or securities it owned in USS 1 (or a successor-in-interest), it would treat as a dividend equivalent amount for the taxable year in which the disposition

occurred an amount equal to the lesser of (1) the amount realized upon such disposition, or (2) the total amount of ECE&P and non-previously taxed accumulated ECE&P that was allocated to USS 1 pursuant to Treas. Reg. § 1.884-2T(d)(4)(ii).

B. Formation of USS 2

In Year 1, FS 1 formed USS 2 and transferred to it all of the stock of USS 1 in exchange for USS 2 stock. This transfer qualified for nonrecognition under section 351. As part of the same transaction, FS 1 transferred all of the stock of USS 2 to FDE in exchange for an ownership interest in FDE. In connection with the transfer, UPE and USS 1 received a private letter ruling from the IRS on Date 3 stating, in part, the following:

(1) Provided that the Actual Transaction qualifies as an exchange under § 351, and provided: (1) [USS 2] makes a valid election to increase its earnings and profits by an amount equal to the earnings and profits previously allocated to [USS 1] pursuant to the prior elections by [FS 1] under § 1.884-2T(d)(4); (2) [FS 1] attaches a statement to its timely filed (including extensions) federal income tax return treating such earnings and profits as if they had been allocated from [FS 1] to [USS 2] pursuant to an election under § 1.884-2T(d)(4); and (3) [FS 1] attaches a statement to its timely filed (including extensions) federal income tax return agreeing that, upon the disposition of part or all of the stock or securities of either [USS 2] (or a successor-in-interest) or [FDE] (or a successor-in-interest), or upon a direct or indirect disposition of part or all of the stock or securities of [USS 1] (or a successor-in-interest), [FS 1] shall treat such disposition as a "disposition" for purposes of § 1.884-2T(d)(5)(i):

- a. [FS 1's] transfer of [USS 1's] stock to [USS 2] will not constitute a "disposition" of part or all of [USS 1's] stock within the meaning of § 1.884-2T(d)(5)(i); and
- b. [USS 1's] earnings and profits will be reduced by an amount equal to the earnings and profits allocated to [USS 2] pursuant to a valid election under § 1.884-2T(d)(4).

(2) If [FS 1] disposes of part or all of the stock or securities of either [USS 2] (or a successor-in-interest) or [FDE] (or a successor-in-interest), or if [USS 2] disposes of part or all of the stock or securities of [USS 1] (or a successor-in-interest),

[FS 1] shall treat such disposition as a "disposition" for purposes of § 1.884-2T(d)(5)(i).

C. Spin-Off of FS 2

In Year 2 and Year 3, pursuant to a reorganization described in section 368(a)(1)(D), FS 1 transferred all of its interests in FDE (which owned all the stock of USS 2) and cash to FS 2, a newly formed corporation, in exchange solely for stock of FS 2. FS 1 then distributed all the stock of FS 2 to UPE in a transaction to which section 355 applied. In connection with this transaction, UPE and USS 1 received a private letter ruling from the IRS on Date 4 stating, in part, the following:

(10) Provided that [FS 2] attaches a statement to its timely filed (including extensions) federal income tax return agreeing that [FS 2] will treat a disposition of part or all of the stock or securities of either [USS 2] (or a successor-in-interest) or [FDE] (or a successor-in-interest), as a "disposition" for purposes of § 1.884-2T(d)(5)(i), then [FS 1's] transfer of the [USS 2] stock to [FS 2] will not be treated as a "disposition" of stock under § 1.884-2T(d)(5)(i). If in the future [USS 2] is liquidated into [FS 2] in a liquidation under § 332, such liquidation of [USS 2] will be treated as a "disposition" for purposes of § 1.884-2T(d)(5)(i), notwithstanding § 1.884-2T(d)(5)(ii).

D. Acquisition of Entity Y Assets

In Year 4, FS 2 (through FDE) acquired all the assets of Entity Y. Pursuant to a restructuring involving the assets acquired from Entity Y, FS 2 (through FDE) formed Holdco US and transferred to Holdco the assets acquired from Entity Y and all of the stock of USS 2, in exchange solely for stock of Holdco (the "Entity Y Acquisition"). As a result of the Entity Y Acquisition, Holdco US became the new common parent of the Holdco US Group. In connection with the Entity Y Acquisition, on Date 6 the IRS issued a private letter ruling stating, in part, the following:

3. Pursuant to Treas. Reg. § 1.884-2T(d)(5)(ii), the transfer by [FDE] of the stock of [USS 2] to [Holdco US] pursuant to the [Entity Y Acquisition] will not be treated as a "disposition" of the Financial stock under Treas. Reg. § 1.884-2T(d)(5)(i).

4. [USS 2's] earnings and profits will be reduced by an amount equal to the earnings and profits allocated to [Holdco US] in accordance with [representations made in] this ruling letter.

5. The statement filed pursuant to [the representations made in] this ruling letter is in lieu of and replaces the statement filed pursuant to ruling 10 of the [ruling addressing the spin-off of FS 2] for dispositions occurring after the date of the [Entity Y Acquisition].

III. PROPOSED TRANSACTION

In order to simplify the structure of the UPE corporate group, UPE now proposes to liquidate FS 2 in a transaction that would constitute a tax-free liquidation of FS 2 under section 332(a) (the "Liquidation"). FS 2's liquidating distribution will include the stock of FDE and the stock of Holdco US that FS 2 owns through FDE. Following the Liquidation, UPE will own all of the stock of FDE, which will remain disregarded as separate from its owner for federal income tax purposes, and all of the stock of Holdco US through FDE.

IV. REPRESENTATIONS

FS 2 has made the following representations in connection with the Liquidation:

1. As required by Priv. Ltr. Rul. 200925030:
 - a. [FS 2] filed a Year 4 federal income tax return within 30 days of the date of that letter ruling and attached a statement to that return agreeing that it will treat a disposition of part or all of the shares or securities of [Holdco US] (or a successor-in-interest), or part or all of the interests in [FDE] (or a successor-in-interest), as a "disposition" for purposes of Temp. Treas. Reg. § 1.884-2T(d)(5)(i); and
 - b. [Holdco US] filed an amended Year 4 federal income tax return within 30 days of the date of that letter ruling and attached to that return a statement described in Temp. Treas. Reg. § 1.884-2T(d)(4)(i) agreeing to increase its earnings and profits by an amount equal to the earnings and profits previously allocated to [USS 2] pursuant to prior elections made with respect to [USS 2] under Temp. Treas. Reg. § 1.884-2T(d)(4) as if they had been allocated from [FS 2] to [Holdco] pursuant to an election under Temp. Treas. Reg. § 1.884-2T(d)(4).
2. The Liquidation will qualify as a tax-free liquidation of FS 2 under section 332(a); as a consequence, UPE will not recognize gain or loss on the Liquidation under section 332(a) and FS 2 will not recognize gain or loss on the Liquidation under section 337(a).

3. UPE will file a statement in accordance with the provisions of Treas. Reg. § 1.884-2T(d)(5)(i), providing that it will treat a disposition of part or all of the interests in FDE (or a successor-in-interest), or part or all of the shares or securities of Holdco US (or a successor-in-interest), as a "disposition" for purposes of Treas. Reg. § 1.884-2T(d)(5)(i).

V. RULINGS

Pursuant to Treas. Reg. § 1.884-2T(d)(5)(ii), a "disposition" does not include a transfer, by a foreign corporation that was engaged (or deemed engaged) in the conduct of a U.S. trade or business and that transferred its U.S. assets to a domestic corporation in a section 351 transaction (section 351 transferee), of stock or securities of the section 351 transferee pursuant to a complete liquidation described in section 332(b) or a reorganization described in section 368(a)(1)(F). Treas. Reg. § 1.884-2T(d)(5)(ii) further provides that any other transfer of the shares of the section 351 transferee that qualifies for nonrecognition of gain or loss shall be treated as a disposition for purposes of paragraph (d)(5)(i), unless the Commissioner has determined otherwise "by published guidance or by prior ruling issued to the taxpayer upon its request." FS 2 has therefore requested a ruling on the Proposed Transaction pursuant to Treas. Reg. § 1.884-2T(d)(5)(ii).

As required by prior ruling, FS 2 filed a statement under Treas. Reg. § 1.884-2T(d)(5)(i) agreeing to treat a disposition of part or all of the shares or securities of Holdco US (or a successor-in-interest), or part or all of the interests in FDE (or a successor-in-interest), as a "disposition" for purposes of Treas. Reg. § 1.884-2T(d)(5)(i).

Based solely on the information submitted and on the representations set forth above, we rule as follows:

1. Pursuant to Treas. Reg. § 1.884-2T(d)(5)(ii), the Liquidation will not be treated as a "disposition" of the shares of FDE or Holdco US by FS 2 for purposes of Treas. Reg. § 1.884-2T(d)(5)(i).
2. FS 2 will not be required to treat as a dividend equivalent amount for purposes of section 884(a) any portion of the amount realized on account of the Liquidation.

No opinion is expressed about the tax treatment of any of the transactions described herein under other provisions of the Code and regulations, or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions not specifically covered by the above rulings.

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.

Each affected taxpayer must attach a copy of this letter to the taxpayer's federal income tax return for the tax year in which the transaction covered by this ruling letter is consummated.

In accordance with the power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative. A copy of this ruling should be attached to any federal income tax return to which it is relevant.

Sincerely,

Frank W. Dunham III
Senior Technical Reviewer, Branch 1
Associate Chief Counsel (International)

Enclosure:
Copy for 6110 Purposes

cc: