

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.

Telephone Number:

Refer Reply To:
CC:CORP:2
PLR-109913-20

Date:
July 16, 2021

Legend

Parent =

Acquiring =

Target =

State A =

Country A =

Date A =

Date B =

Date C =

Date D =

a =

b =

c =

<u>d</u>	=
<u>e</u>	=
<u>f</u>	=
<u>g</u>	=
<u>h</u>	=
Subscription Service A	=
Subscription Service B	=
Subscription Service C	=
Transfer Agent	=

Dear _____ :

This letter responds to your authorized representative's letter dated March 27, 2020, and subsequent information, requesting a ruling on certain federal income tax consequences of an acquisition (the "**Acquisition**," as defined below). The material information submitted in that request and subsequent correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. The office has not verified any of the materials submitted in support of the request for rulings. Verification of the information submitted during this ruling process and the accompanying representations may be required as part of the audit process.

Summary of Facts

Parent is a State A corporation and the parent of a worldwide group that includes both domestic and foreign entities (the "**Parent Group**"). Parent is also the common parent of an affiliated group of corporations filing a consolidated federal income tax return (the "**Parent U.S. Group**"). Parent wholly owns Acquiring, a State A entity that is classified as a corporation for federal income tax purposes and is a member of the Parent U.S. Group. Target is a Country A entity that is classified as a corporation for federal income tax purposes and the parent of a worldwide group that includes both domestic and foreign entities.

Prior to the Acquisition (defined below), each of Parent and Target had a single class of common stock outstanding, the shares of which were publicly traded and widely held.

The Acquisition

On Date A, Parent announced that it entered into a binding agreement under which the Parent Group would acquire all the stock of Target in a stock and cash transaction, valued at \$a per Target share, or approximately \$b in total, based on Parent's then-current stock price (the "**Acquisition**"). At the closing of the Acquisition, Target shareholders received c shares of Parent common stock and \$d in cash for each of their existing Target shares.

In order to effectuate the Acquisition, on Date B, Acquiring acquired 100 percent of the issued and outstanding stock of Target pursuant to a local court-sanctioned "scheme of arrangement" and a letter of direction for Parent to deliver Parent stock and cash valued together at approximately \$b to Target shareholders on behalf of Acquiring.

Shareholder Overlap

Several institutional investors owned shares in both Parent and Target through various mutual funds and exchange-traded funds prior to the Acquisition. As a result, there was a potential for the Acquisition to be treated as a transaction described in section 304(a)(1).

In order to determine whether section 304 was applicable to the Acquisition, Parent obtained shareholder information of Parent and Target from several resources and synthesized the data in a model to identify the shareholder overlap of the two corporations.

Shareholder Identification Methodology

First, Parent retrieved publicly available shareholder information from the Securities and Exchange Commission ("**SEC**"), including Schedules 13D and 13G, Form 13F, Form 10-K, Form 10-Q, Form 3, and Form 4 as of Date C (i.e., the closest point in time preceding the Acquisition) and Date D (i.e., the closest reporting date after the Acquisition). However, those documents provided only the following limited information: (i) the total number of shares issued and outstanding with respect to Parent and Target; and (ii) the shareholder information of an investor that held greater than a five percent beneficial interest in Parent or Target, as applicable (such investor, a "**5-Percent Shareholder**"). In addition, Parent determined that each 5-Percent Shareholder was an institutional investor that was not the ultimate beneficial owner (i.e., the holder of the benefits and burdens of ownership other than legal title) of the stock of Parent or Target, as applicable. Rather, each 5-Percent Shareholder managed individual funds that were the ultimate beneficial owners of the stock of Parent, Target, or both corporations, as applicable. As a result, Parent determined that it was necessary to identify the individual funds that owned stock in Parent, Target, or both corporations.

Second, Parent retrieved datasets from Subscription Service A, Subscription Service B, and Subscription Service C. Based on a comparative analysis of each subscription service, Parent determined that Subscription Service A provided the most in-depth shareholder information of Parent and Target. Specifically, Subscription Service A provided information that identified, as of Date B, the following:

- (i) the total number of shares issued and outstanding for Parent and Target;
- (ii) the number of shares of Parent or Target, as applicable, beneficially owned by each investment fund managed by an institutional investor; and
- (iii) the number of shares of Parent or Target, as applicable, beneficially owned by each officer and director of Parent or Target, as applicable (each investment fund described in (ii) and each officer or director described in (iii), an “**Original Identified Shareholder**”).

However, Subscription Service A reported a total number of shares of each of Parent and Target that was less than the number of shares issued and outstanding of each corporation in public filings. Parent was unable to identify the holders of the shares that represented the difference between the total shares issued and outstanding reported in public filings of each of Parent and Target, respectively, and the total shares issued and outstanding according to Subscription Service A (such shares representing the difference, the “**Undisclosed Shares**”).

Third, Parent contacted Transfer Agent in an attempt to identify the Undisclosed Shares. Transfer Agent provided shareholder information with respect to Parent shares and Target shares that were directly registered with Transfer Agent. An analysis of the Transfer Agent dataset identified additional shareholders that held an interest in either Parent, Target, or both corporations (each additional shareholder identified in the Transfer Agent dataset, a “**New Identified Shareholder**”). Based on the analysis, Parent determined that e percent of the Parent shares owned by the New Identified Shareholders after the Acquisition were owned by a New Identified Shareholder that held an interest in both corporations immediately prior to the Acquisition.

Fourth, Parent verified whether Subscription Service A appropriately monitored changes in Parent and Target share ownership with respect to each individual that was an officer or director of either Parent or Target. Specifically, Parent reviewed share ownership information provided by each Parent officer and director to Parent’s legal department (i.e., following Date A, Parent directly inquired with each of its officers and directors on such officer’s or director’s Parent and Target share ownership) and Target regulatory filings required by Country A takeover rules (i.e., following Date A and leading up to Date B, Target was required to report when a Target director or the Target secretary purchased or sold Parent stock pursuant to Country A takeover rules). Following its review, Parent determined that the Subscription Service A dataset included (and correctly identified changes in position of) the shares of the corporation for which an individual was an officer or director. However, the Subscription Service A dataset did

not include the shares of the corporation for which such individual was not an officer or director. To fill this gap in the dataset, Parent identified additional shares from the Undisclosed Shares as shares of Parent or Target, as applicable, that were held by an individual who was an officer or director of the other corporation (such officers and directors of Parent or Target, as applicable, that held shares in the other corporation added together with the Original Identified Shareholders and the New Identified Shareholders, the “**Identified Shareholders**”).

However, after exhausting all reasonable methods to identify the remaining Undisclosed Shares, the total shares issued and outstanding reported in public filings of each of Parent and Target remained in excess of the Identified Shares. Accordingly, approximately f percent and g percent of issued and outstanding shares of Parent and Target, respectively, remained Undisclosed Shares.

Overlap Calculation

Parent used this data to estimate the shareholder overlap percentage (i.e., the post-closing percentage of Acquiring shares owned indirectly by shareholders who held Target stock immediately before the Acquisition) as shown below.

First, in order to account for the Parent shares issued to Target shareholders in the Acquisition, the consolidated data was used to calculate the post-closing ownership of Parent by the Target shareholders based on the exchange ratio of c shares of Parent stock received for each share of Target exchanged in the Acquisition. The calculated ownership represented the percentage of post-closing Parent shares that the Target shareholders would have owned if none of the Target shareholders had also been a shareholder of Parent (i.e., if there had been no overlap among the shareholder bases of the two corporations).

Second, Parent grouped the Identified Shareholders into three categories based on their pre-closing share ownership: those which owned solely Parent shares, those which owned solely Target shares, and those which owned shares of both corporations (such Identified Shareholders that owned shares of both corporations, the “**Overlapping Shareholders**”). Parent then calculated the post-closing ownership percentages of the Overlapping Shareholders in order to account for the number of Parent shares that were issued in the Acquisition. The calculated ownership represented the percentage of post-closing Parent shares owned by Overlapping Shareholders by reason of their pre-Acquisition ownership in Parent and the Parent shares that were issued in the Acquisition.

Third, Parent extrapolated the e percent overlap in the Parent shares held by the New Identified Shareholders to the remaining Undisclosed Shares to determine an estimated overlap for the remaining Undisclosed Shares.

Taking into account the due diligence described above to identify the Identified Shareholders and the inability to identify the shareholders of the remaining Undisclosed

Shares, Parent calculated that the shareholder overlap percentage with respect to the Acquisition was h percent (i.e., an amount less than 50 percent).

Representations

Parent makes the following representations with respect to the Acquisition:

- (1) Parent has performed all means available by which to identify the holders of the Parent Undisclosed Shares and Target Undisclosed Shares immediately before the Acquisition (or at the closest point in time preceding the closing of the Acquisition for which the relevant information is available) that would not be unreasonable, impractical, or unduly burdensome to perform.
- (2) Parent has no actual knowledge that would give it reason to believe that there is sufficient overlap in ownership among the holders of the Parent Undisclosed Shares and Target Undisclosed Shares that would result in an acquisition of control, as defined in section 304(c), of Acquiring by virtue of their ownership of Parent stock.

Rulings

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

- (1) Section 304 does not apply to any of the exchanges of Target stock for cash and Parent stock pursuant to the Acquisition.

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Acquisition under any provision of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the Acquisition that is not specifically covered by the above rulings.

Procedural Statements

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 your authorized representative.

A copy of this letter must be attached to the federal 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 on and control number (PLR-109913-20) of this letter ruling.

Sincerely,

Douglas C. Bates
Chief, Branch 4
Office of Associate Chief Counsel (Corporate)

cc: