Internal Revenue Service

Number: **202334014**
Release Date: 8/25/2023

Index Number: 367.00-00, 368.00-00, 368.06-00, 1502.00-00, 1502.13-00, 1502.99-00

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:B04
PLR-123671-22

Date:
May 25, 2023

Parent =

DE1 =

DE2 =

Sub1 =

FSub1 =

Country =

Business =

Section 367(d) IP =

Date 1 =

Date 2	=
Date 3	=
a	=
b	=

Dear :

This letter responds to your authorized representative's letter dated November 30, 2022, requesting rulings on certain federal income tax consequences of a transaction (the "Completed Transaction"). The material information submitted in that request and in later correspondences is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This office expresses no opinion as to the overall tax consequences of the transactions described in this letter or as to any issue not specifically addressed by the rulings below.

SUMMARY OF FACTS

Parent is a publicly traded domestic corporation and the common parent of a consolidated group (the "Parent Group"). Parent owns all of the interests in DE1, a domestic eligible entity (within the meaning of Treas. Reg. § 301.7701-3(a)) that is disregarded as separate from its owner for federal income tax purposes (a "disregarded entity") and a% of the interests in DE2, a domestic disregarded entity. DE1 owns the remaining b% of the interests in DE2.

Prior to the Completed Transaction, DE2 owned all of the stock in FSub1, a foreign entity classified as a corporation for federal income tax purposes. FSub1 used the Section 367(d) IP to operate Business in Country. FSub1 acquired the Section 367(d) IP in a transaction to which section 367(d) applied (the "Prior Reorganization"). Accordingly, FSub1 was deemed to have made a series of annual payments to Parent over the useful life of the Section 367(d) IP (each, a "Deemed Royalty Payment").

COMPLETED TRANSACTION

In the Completed Transaction, Parent relocated the Section 367(d) IP to within the Parent Group. The relevant steps of the Completed Transaction are set forth below.

1. On Date 1, DE2 formed Sub1, a domestic corporation and member of the Parent Group.

2. On Date 2, DE2 transferred its interest in FSub1 to Sub1.

3. On Date 3, FSub1 converted to a foreign eligible entity in Country.

4. Effective the same day but after Step 3, FSub1 filed an entity classification election under Treas. Reg. § 301.7701-3 to be a disregarded entity (together with steps 2 and 3, the "Reorganization").

REPRESENTATIONS

1. Since the completion of the Prior Reorganization, Parent (or a predecessor company) has included the Deemed Royalty Payment in income for U.S. federal income tax purposes for every tax year where Parent has filed a tax return.

2. To the best knowledge and belief of Parent, the Reorganization qualifies as a tax-free reorganization under section 368(a)(1)(F).

3. If the requested ruling is granted, then following the Reorganization, and for each of the Parent Group's consolidated return years in the remaining useful life of the Section 367(d) IP, no member of the Parent Group will:

    a. Include the amount of any Deemed Royalty Payment in Gross Income;

    b. Take any deduction for any Deemed Royalty Payment;

    c. Make any adjustments to earnings and profits with respect to any Deemed Royalty Payment;

    d. Make any adjustments to stock basis with respect to any Deemed Royalty Payment under Treas. Reg. § 1.1502-32 or Treas. Reg. § 1.367(d)-1T(g)(1)(ii)(B); or

    e. Make any other adjustments to any item of income, gain, deduction, or loss with respect to any Deemed Royalty Payment, or otherwise take into account any Deemed Royalty Payment for federal income tax purposes, in any manner that is inconsistent with the treatment of such Deemed Royalty Payment as paid between divisions of a single corporation.

4. The Reorganization occurred after the beginning of the 61st month beginning after the first taxable year of FSub1 following the Prior Reorganization.

RULINGS

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

1. Each Deemed Royalty Payment received following the Reorganization is redetermined to be excluded from gross income under Treas. Reg. § 1.1502-13(c)(6)(ii)(D). Accordingly, the Deemed Royalty Payment is redetermined to be excluded from Parent's gross income for each of the Parent Group's consolidated return years for the remaining useful life of the Section 367(d) IP.

2. For purposes of determining the effect of the Deemed Royalty Payment, under Treas. Reg. § 1.1502-13(c)(1):

    a. Parent's intercompany item from the deemed receipt of the Deemed Royalty Payment will not be: (i) taxable income, (ii) tax exempt income, or (iii) a distribution with respect to stock, within the meaning of Treas. Reg. § 1.1502-32(b)(2); or taken into account for purposes of earnings and profits under Treas. Reg. § 1.1502-33;

    b. Sub1's corresponding item from the deemed payment of the Deemed Royalty Payment will not be: a non-capital, non-deductible amount, within the meaning of Treas. Reg. § 1.1502-32(b)(2); or taken into account for purposes of earnings and profits under Treas. Reg. § 1.1502-33; and

    c. The Deemed Royalty Payment will not be subject to Treas. Reg. § 1.367(d)-1T(g)(1).

CLOSING AGREEMENT

We will, accordingly, approve a closing agreement with the taxpayer with respect to certain of those issues affecting its tax liability on the basis set forth above. The necessary closing agreement for Parent has been prepared in triplicate and is enclosed. In pursuance of our practice with respect to such agreements, the agreement contains a stipulation to the effect that any change or modification of applicable statutes enacted subsequent to the date of this agreement and made applicable to the taxable period involved will render the agreement ineffective to the extent that it is dependent upon such statutes.

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this

letter under any provision of the Internal Revenue Code (the “Code”) and the regulations thereunder. Furthermore, no opinion is expressed or implied with respect to the appropriate amount of any income inclusions under section 367(d) (other than the excluded Deemed Royalty Payments), the remaining useful life of property giving rise to such other inclusions, or the effect of any other transaction on the amount of the Deemed Royalty Payments.

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 representatives.

Sincerely,

Lisa Fuller
Lisa Fuller
Acting Associate Chief Counsel (Corporate)
Office of Associate Chief Counsel (Corporate)

cc: