

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:02
PLR-100235-23

Date:
May 26, 2023

Parent =

Sub 1 =

Sub 2 =

LLC 1 =

LLC 2 =

LLC 3 =

LLC 4 =

LLC 5 =

FSub =

Foreign Partnership 1 =

Foreign Partnership 2 =

State A =

State B =

Country A =

Country B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Intangible Property A =

Intangible Property B =

a =

b =

c =

Dear :

This letter ruling responds to your authorized representative's letter dated October 19, 2022, requesting rulings under section 367(d) and Treas. Reg. § 1.1502-13. The material information submitted in the request 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.

FACTS

Parent, a State A corporation, is the parent of a worldwide group of corporations and the common parent of a consolidated group (within the meaning of Treas. Reg. § 1.1502-1(h)) (the "Parent Group"). Parent indirectly owns all the common stock of Sub 1, a State B corporation that is a member of the Parent Group. Sub 1 owns LLC 1, a State B limited liability company treated as a disregarded entity.

On Date 1, Sub 1 directly owned all the stock of Sub 2, a State B corporation that was a member of the Parent Group. Sub 1 also owned a of FSub, a Country A limited partnership treated as a corporation for U.S. federal income tax purposes. LLC 1 owned the remaining interest in FSub and all of LLC 2, a State B limited liability company that was treated as a disregarded entity. FSub owned LLC 3, a State B limited liability company that was treated as a disregarded entity U.S. federal income tax purposes. FSub also owned b of Foreign Partnership 1 and c of Foreign Partnership 2, both of which were Country B limited partnerships treated as disregarded entities for U.S. federal income tax purposes. LLC 3 owned the remaining interest in Foreign Partnership 1 and Foreign Partnership 2. Foreign Partnership 1 owned LLC 4, a State B limited liability company treated as a disregarded entity. Foreign Partnership 2 owned LLC 5, a State B limited liability company treated as a disregarded entity for U.S. federal income tax purposes.

As a result of prior restructurings, all legal title and economic rights to use, exploit, and develop patents, copyrights, trademarks, trade names, know-how, goodwill, and any other intangible property described in Treas. Reg. § 1.482-4(b) associated with (i) Intangible Property A and (ii) Intangible Property B (collectively, the "Section 367(d) IP") were transferred to the predecessors of LLC 4 and LLC 5, respectively, in outbound contributions described in section 351 (the "Outbound Transfers"). Section 367(d) applied to the Outbound Transfers and resulted in a stream of deemed annual payments to Parent's Group (the "Deemed Payments"). LLC 4 owned Intangible Property A and LLC 5 owned Intangible Property B.

COMPLETED TRANSACTIONS

Effective Date 2 through Date 3, the following transactions occurred, which were intended to be treated as a reorganization under section 368(a)(1)(F) (the "Inbounding Transactions"):

- (i) Sub 1 contributed all of its interests in FSub to Sub 2;
- (ii) LLC 1 contributed all of its interests in FSub to LLC 2;
- (iii) Sub 1 contributed all of its shares in Sub 2 to LLC 1;

(iv) LLC 1 contributed all of its interests in LLC 2 to Sub 2; and

(v) LLC 2 liquidated through a legal dissolution and distributed its FSub interests to Sub 2.

As a result of the Inbounding Transactions, FSub ceased to exist by operation of Country A law. Consequently, LLC 4 and LLC 5, which are the disregarded entities that own the Section 367(d) IP, became owned by a member of the Parent Group.

On Date 4, Foreign Partnership 1 and Foreign Partnership 2 directly, and indirectly through LLC 3, transferred their respective interests in LLC 4 and LLC 5 to Sub 2.

STATEMENT OF LAW

Treas. Reg. § 1.367(d)-1T(c)(2) provides that when the recipient of a deemed payment under section 367(d) includes the deemed payment into income, the payor reduces its earnings and profits by the amount of the deemed payment. However, the payor is allowed no other adjustments to its earnings and profits, basis, or gross income.

Treas. Reg. § 1.1502-13(c)(6) provides that under Treas. Reg. § 1.1502-13(c)(1)(i), S's intercompany item might be redetermined to be excluded from gross income or treated as a noncapital, nondeductible amount. However, S's intercompany income or gain is redetermined to be excluded from gross income only to the extent Treas. Reg. §§ 1.1502-13(c)(6)(ii)(A), (B), (C), or (D) applies.

Treas. Reg. § 1.1502-13(c)(6)(ii)(D) provides that, under certain circumstances, the Commissioner may determine that treating S's intercompany item as excluded from gross income is consistent with the purposes of § 1.1502-13 and other applicable provisions of the Internal Revenue Code, regulations, and published guidance. One such circumstance may occur if the corresponding item relevant to that intercompany item of income is permanently disallowed.

REPRESENTATIONS

The taxpayer has made the following representations with respect to this letter ruling:

1. Following the Inbounding Transactions, all Section 367(d) IP is owned by a member of Parent Group's consolidated group.
2. The Inbounding Transactions are intended to qualify as a reorganization under section 368(a)(1)(F).
3. Taxpayer will report the Inbounding Transactions as a reorganization under section 368(a)(1)(F) on the relevant U.S. federal income tax returns.

RULINGS

Based solely on the information and representations made, and conditioned upon the execution of a closing agreement, we rule as follows:

1. Following the Inbounding Transactions, the Deemed Payments are redetermined to be excluded from gross income under Treas. Reg. § 1.1502-13(c)(6)(ii)(D). Accordingly, the Deemed Payments are redetermined to be excluded from gross income for each of the Parent Group's consolidated return years for the remaining useful life of the Intangible Property.
2. For purposes of determining the effect of the Deemed Payments on the Parent Group's consolidated return, under Treas. Reg. § 1.1502-13(c)(1):
 - a. The intercompany item from the deemed receipt of the Deemed Payments will not be taken into account for purposes of earnings and profits under Treas. Reg. § 1.1502-33;
 - b. No stock basis adjustment under Treas. Reg. § 1.1502-32(b)(2) will arise as a result of the deemed payment of the Deemed Payments because the corresponding item will not be (i) taxable income, (ii) tax exempt income, (iii) a non-capital, non-deductible amount, or (iv) a distribution with respect to stock, within the meaning of such regulations; and
 - c. The Deemed Payments will not be subject to Treas. Reg. § 1.367(d)-1T(g)(1).
3. Section 1504(a)(3) will not prevent Sub 2 from being eligible to be included in the Parent Group's consolidated U.S. federal income tax return immediately on completion of the Inbounding Transactions.

CLOSING AGREEMENT

We will, accordingly, approve a closing agreement with the taxpayer with respect to those issues affecting its tax liability on the basis set forth above. The necessary closing agreement 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 treatment of the Inbounding Transactions 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 Inbounding Transactions that is not specifically covered by the above rulings. Specifically, we express no opinion on whether the Inbounding Transactions qualify under section 368(a)(1)(F). In addition, we express no opinion with respect to the application of Treas. Reg. § 1.1502-13(c)(6)(ii)(D) to items subject to any other provision of the Code and regulations.

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.

A copy of this letter must be attached to any 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 and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Lisa A. Fuller

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

cc: