Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
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Date:
September 8, 2000

LEGEND:

Parent =

Acquiring 1 =

Acquiring 2 =

Target 1 =

Target 2 =

Holdings =

Country X =

State Y =

State Z =

Business A =

Date a =

Date b =

Dear:

This letter responds to your letter dated April 25, 2000, requesting rulings as to certain federal income tax consequences of a proposed transaction. Additional information was received on July 26, August 3 and August 13, 2000. The information submitted for consideration is summarized below.

Parent, a publicly traded Country X corporation, is actively engaged in Business A. Parent incorporated a domestic corporation, Acquiring 1, to consummate the acquisition transaction described below. Parent also owns all of the outstanding stock

of Acquiring 2, a domestic corporation. Acquiring 2 owns all of the stock of several domestic subsidiaries also engaged in Business A.

Parent incorporated Holdings, a domestic corporation, to act as the holding company for the domestic operations of Parent. Parent desired to expand its business operations in the United States. Accordingly, on or about Date a, Target 1, an unrelated State Y corporation, merged with and into Acquiring 1 under the law of State Y ("Merger 1"). In Merger 1, each Target 1 shareholder received solely voting stock of Parent in exchange for its stock in Target 1. Acquiring 1 was the surviving corporation. On or about Date b, Target 2, an unrelated State Z corporation, merged with and into Acquiring 2 under the corporate law of State Y ("Merger 2"). In Merger 2, each Target 2 shareholder received solely voting stock of Parent in exchange for its stock in Target 2. Acquiring 2 was the surviving corporation.

Parent desires Holdings to own the stock of Acquiring 1 and Acquiring 2. Accordingly, Parent proposes the following transfers:

(i) Parent will contribute all of the stock of Acquiring 1 to Holdings in constructive exchange solely for additional stock of Holdings ("Contribution 1"); and

(ii) Parent will contribute all of the stock of Acquiring 2 to Holdings in constructive exchange solely for additional stock of Holdings ("Contribution 2").

Parent makes the following representations with respect to the proposed transaction:

With respect to Merger 1 and Contribution 1:

(a) But for the effect of Contribution 1, Merger 1 qualifies as a reorganization under § 368(a)(1)(A) by reason of § 368(a)(2)(D).

(b) Contribution 1 will qualify as an exchange subject to § 351(a).

(c) In Merger 1, fifty percent or less of both the total voting power and the total value of the stock of Parent will be received, in the aggregate, by Target 1 shareholders who are United States persons within the meaning of Treas. Reg. § 1.367(a)-3(c)(5)(iv).

(d) Immediately after Merger 1, fifty percent or less of each of the total voting power and the total value of the stock of Parent will be owned, in the aggregate, by United States persons who are either officers, directors, or five percent target shareholders of Target 1. A five percent target shareholder is defined in Treas. Reg. § 1.367(a)-3(c)(5)(iii). For purposes of this representation, any stock of Parent owned by U.S. persons immediately after the transfer is taken into account, whether or not it was received in exchange for stock of Target 1.

(e) No former shareholder of Target 1 will be a “five percent transferee shareholder” as defined in Treas. Reg. § 1.367(a)-3(c)(5).

(f) Parent will have been engaged in an active trade or business outside the United States within the meaning of Treas. Reg. § 1.367(a)-3(c)(3) for the entire 36-month period immediately before Merger 1.

(g) At the time of Merger 1, and without regard to the fair market value of the assets acquired in Merger 2, the fair market value of Parent will at least equal the fair market value of Target 1.

(h) At the time of Merger 1, Parent had no plan or intention to substantially dispose of or discontinue its active trade or business.

(i) The reporting requirements of Treas. Reg. § 1.367(a)-3(c)(6) will be met by Target 1 with respect to the merger with Acquiring 1 (“Merger 1”).

(j) Acquiring 1 will not be a USRPHC, as defined in § 897(c)(2), at any time during the 5 year period ending on the date of Merger 1, and it will not be a USRPHC immediately after Merger 1.

(k) Parent was not a passive foreign investment company (“PFIC”), within the meaning of § 1297(a), at any time during the five-year period ending on the completion date of Merger 1, and will not be a PFIC immediately after Merger 1.

With respect to Merger 2 and Contribution 2:

(l) But for the effect of Contribution 2, Merger 2 qualifies as a reorganization under § 368(a)(1)(A) by reason of § 368(a)(2)(D).

(m) Contribution 2 will qualify as an exchange subject to § 351(a).

(n) In Merger 2, fifty percent or less of both the total voting power and the total value of the stock of Parent will be received, in the aggregate, by Target 2 shareholders who are United States persons within the meaning of Treas. Reg. § 1.367(a)-3(c)(5)(iv).

(o) Immediately after Merger 2, fifty percent or less of each of the total voting power and the total value of the stock of Parent will be owned, in the aggregate, by United States Persons who are either officers, directors, or five percent target shareholders of Target 2. A five percent target shareholder is defined in Treas. Reg. § 1.367(a)-3(c)(5)(iii). For purposes of this representation, any stock of Parent owned by U.S. persons immediately after the transfer is taken into account, whether or not it was received in exchange for stock of Target 2.

(p) No former shareholder of Target 2 will be a “five percent transferee shareholder” as defined in Treas. Reg. § 1.367(a)-3(c)(5).

(q) Parent will have been engaged in an active trade or business outside the United States within the meaning of Treas. Reg. § 1.367(a)-3(c)(3) for the entire 36-month period immediately before Merger 2.

(r) At the time of Merger 2, and without regard to the fair market value of the assets acquired in Merger 1, the fair market value of Parent will at least equal the fair market value of Target 2.

(s) At the time of Merger 2, Parent had no plan or intention to substantially dispose of or discontinue its active trade or business.

(t) The reporting requirements of Treas. Reg. § 1.367(a)-3(c)(6) will be met by Target 2 with respect to the merger with Acquiring 2 (“Merger 2”).

(u) Acquiring 2 will not be a United States Real Property Holding Company (“USRPHC”), as defined in § 897(c)(2), at any time during the 5 year period ending on the date of Merger 2, and it will not be a USRPHC immediately after Merger 2.

(v) Parent was not a PFIC, within the meaning of § 1297(a) at any time during the five-year period ending on the completion date of Merger 2, and will not be a PFIC immediately after Merger 2.

Section 3.01(23) of Rev. Proc. 2000-3, 2000-1 I.R.B. 103, 105 provides that the Internal Revenue Service will not rule on the qualification of a transaction as a reorganization under § 368(a)(1)(A) by reason of § 368(a)(2)(D). Although Rev. Proc. 2000-3 provides a general no-rule policy concerning § 368(a)(1)(A), the Service will rule on collateral issues where the consequences of qualification are not adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice or other authority published in the Internal Revenue Bulletin.

Based solely on the information submitted and the representations set forth above, the classification of Parent as a corporation within the meaning of § 7701(a)(3), and the satisfaction of the notice requirements of § 1.367(a)-3(c)(6) and (7), we rule as follows:

(1) The transfer of the stock of Acquiring 1 by Parent to Holdings (Contribution 1) will not preclude Merger 1 from qualifying as a reorganization under § 368(a)(1)(A) by reason of § 368(a)(2)(D).

(2) The transfer of the stock of Acquiring 2 by Parent to Holdings (Contribution 2) will not preclude Merger 2 from qualifying as a reorganization under § 368(a)(1)(A) by reason of § 368(a)(2)(D).

No opinion is expressed about the tax treatment of the proposed transaction 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 proposed transaction that are not directly covered by the above rulings. Specifically, no opinion is expressed regarding the tax consequences of the outbound transfer of stock or securities of Target 1 and Target 2 under § 367(a). Treas. Reg. § 1.367(a)-3(c)(1).

The rulings contained in this letter are predicated upon the facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for a ruling. Verification of the information, representations, and other data may be required as part of the audit process. See § 12.04 of Rev. Proc. 2000-1, 2000-1 I.R.B. 4, which discusses in greater detail the revocation or modification of ruling letters. However, when the criteria in § 12.05 of Rev. Proc. 2000-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

This ruling letter is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Each taxpayer involved in the proposed transaction should attach a copy of this letter to the taxpayer's federal income tax return for the taxable year in which the proposed transaction is completed.

Sincerely,
Assistant Chief Counsel (Corporate)
By: Lewis K Brickates
Assistant to Chief, Branch 2