Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Date:
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Acquiring =

Acquiring Sub =

Target =

Sub 1 =
Sub 2 =
Sub 3 =
Sub 4 =
Sub 5 =
Sub 6 =
Sub 7 =
Sub 8 =
Sub 9 =
Sub 10 =
Sub 11 =
Sub 12 =
Sub 13 =
Sub 14 =
Sub 15 =
Sub 16 =
Sub 17 =

Country A =
Country B =
Country C =
Country D =
Country E =
Country F =
Country G =
Country H =
Country I =
Country J =
Country K =

Business X =

Business Y =

Date 1 =

This letter responds to your May 30, 2001 request for a ruling on the federal income tax consequences of a series of transactions. The information submitted in that request and in subsequent correspondence is summarized below.

Acquiring is a publicly traded domestic corporation engaged in Business X. Acquiring is the common parent of an affiliated group of corporations that files a consolidated return.

Target is a domestic corporation engaged in Business Y. Prior to the Acquisition Merger (defined below), Target was the common parent of an affiliated group of corporations that filed a consolidated return.

For what are represented to be valid business reasons, the managements of Acquiring and Target recently determined to combine the businesses of Acquiring and Target. Accordingly, on or about Date 1, Acquiring formed domestic Acquiring Sub. Acquiring Sub conducted no business or operations except those necessary to facilitate the combination. On Date 1, Acquiring Sub merged into Target in a transaction in which the Target shareholders received solely Acquiring voting common stock in exchange for their Target stock (the "Acquisition Merger").

In the Acquisition Merger, Acquiring and Target believed that a fast and efficient integration was necessary to maximize the operating synergies of the two companies. Thus, the parties would have preferred that Target merge directly into Acquiring. However, an immediate combination by direct merger was not feasible because Target had outstanding contracts, agreements, licenses, and other business arrangements with primary customers, suppliers, distributors, and business partners for which assignments could not be readily negotiated.

Acquiring has now resolved all the necessary contracts, agreements, license assignments, and other business arrangements with respect to the Acquisition Merger, and would like to complete the integration of Target. Accordingly, it now proposes to have Target merge into it (the “Upstream Merger”).

The following transactions, designed to eliminate duplicative foreign operations in certain jurisdictions within the Acquiring affiliated group, also occurred: (i) Target contributed the stock of Sub 1 (a Country A corporation), Sub 2 (a Country B corporation), Sub 3 (a Country C corporation), Sub 4 (a Country D corporation), and Sub 5 (a Country E corporation), all wholly owned by Target, to Sub 6, a wholly owned domestic subsidiary of Acquiring, (ii) Sub 4 merged into Sub 14, a Country D corporation wholly owned by Sub 6, (iii) Sub 6 contributed the shares of Sub 1 to Sub 7, a Country A corporation wholly owned by Sub 6, (iv) Sub 1 merged into Sub 7, (v) Sub 6 contributed the shares of Sub 2 to Sub 8, a Country B corporation wholly owned

by Sub 6, (vi) Sub 2 merged into Sub 8, (vii) Sub 6 contributed a note to Sub 9, a Country C corporation wholly owned by Sub 6, in an amount sufficient to purchase Sub 3, (viii) Sub 9 purchased Sub 3 in exchange for the note and Sub 3 elected under § 301.7701-3(c) to be a disregarded entity for U.S. federal tax purposes, (ix) Sub 6 contributed the shares of Sub 17, a wholly owned Country E subsidiary of Sub 6, to Sub 5, (x) Sub 17 sold its assets to Sub 5 in exchange for a note, and Sub 17 elected under § 301.7701-3(c) to be a disregarded entity for U.S. federal tax purposes, (xi) Acquiring contributed its Sub 13 stock, a wholly owned Country F corporation, to Sub 6, (xii) Sub 12, a Country F corporation owned by Target transferred certain assets to Sub 13, a Country F corporation wholly owned by Sub 6, in exchange for cash, (xiii) Target transferred its Country H branch assets to the Country H branch of Sub 6 in exchange for cash, (xiv) Target transferred its Country I branch assets to Sub 15, a Country I corporation wholly owned by Sub 6, in exchange for cash, and (xv) Target transferred its Country J branch to the Country J branch of Sub 16, a Country K corporation wholly owned by Sub 6, in exchange for cash.

The following additional foreign transactions are also contemplated: (xvi) Sub 10, a Country G corporation currently wholly owned by Target and following the Upstream Merger wholly owned by Acquiring, will transfer certain specified assets to Sub 11, a Country G corporation wholly owned by Sub 6, in exchange for cash, and (xvii) after a period of dormancy, Sub 10 will be struck off the corporate registry pursuant to Country G law.

Hereafter, the transactions described in numerals (i) through (xvii) above will be referred to, collectively, as the Foreign Transactions.

The taxpayer has made the following representations regarding the Acquisition Merger and the Upstream Merger:

(a) The Acquisition Merger, viewed independently of the Upstream Merger, qualified as a reorganization under § 368(a)(1)(A) by reason of § 368(a)(2)(E).

(b) The Upstream Merger will qualify as a statutory merger under applicable state law, and viewed independently of the Acquisition Merger, would qualify under § 332.

(c) If the Acquisition Merger had not occurred, and Target had merged directly into Acquiring, such merger would have qualified as a reorganization under § 368(a)(1)(A).

(d) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to the proposed Upstream Merger have been fully disclosed.

(e) The Acquisition Merger and the Upstream Merger, whether viewed independently of each other or viewed as a single transaction, did not and will not result in a reverse acquisition within the meaning of § 1.1502-75(d)(3).

(f) Following the Upstream Merger, Acquiring will continue Target's historic business or use a significant portion of Target's historic business assets in a business.

(g) No parties to the transactions are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(h) No intercorporate debt exists between Acquiring, Target, and any other Acquiring subsidiary that was issued, acquired, or will be settled at a discount in connection with the Upstream Merger.

(i) The fair market value of Target's assets transferred to Acquiring will equal or exceed the sum of the liabilities assumed by Acquiring plus the amount of liabilities, if any, to which the transferred assets are subject.

The taxpayer has made the following representations regarding the Foreign Transactions:

(j) Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 7, Sub 8, Sub 9, Sub 14, and Sub 17 are not passive foreign investment corporations as defined in § 1297.

(k) Sub 1 and Sub 7 were controlled foreign corporations within the meaning of § 957 immediately before the transaction combining Sub 1 with Sub 7, and Sub 7 was a controlled foreign corporation immediately after the transaction. Also, Sub 6 was a § 1248 shareholder, within the meaning of § 1.367(b)-2(b), of Sub 1 and Sub 7 immediately before that transaction and Sub 6 was a § 1248 shareholder of Sub 7 immediately after that transaction.

(l) Sub 2 and Sub 8 were controlled foreign corporations within the meaning of § 957 immediately before the transaction combining Sub 2 with Sub 8, and Sub 8 was a controlled foreign corporation immediately after this transaction. Also, Sub 6 was a § 1248 shareholder, within the meaning of § 1.367(b)-2(b), of Sub 2 and Sub 8 immediately before that transaction and Sub 6 was a § 1248 shareholder of Sub 8 immediately after that transaction.

(m) Sub 3 and Sub 9 were controlled foreign corporations within the meaning of § 957 immediately before the transaction combining Sub 3 and Sub 9, and Sub 9 was a controlled foreign corporation immediately after this transaction. Also, Sub 6 was a § 1248 shareholder, within the meaning of § 1.367(b)-2(b), of Sub 3 and Sub 9 immediately before that transaction and Sub 6 was a § 1248 shareholder of Sub 9 immediately after that transaction.

(n) Sub 4 and Sub 14 were controlled foreign corporations within the meaning of § 957 immediately before the transaction combining Sub 4 with Sub 14, and Sub 14 was a controlled foreign corporation immediately after this transaction. Also, Sub 6 was a § 1248 shareholder, within the meaning of § 1.367(b)-2(b), of Sub 4 and Sub 14 immediately before that transaction and Sub 6 was a § 1248 shareholder of Sub 14 immediately after that transaction.

(o) Sub 5 and Sub 17 were controlled foreign corporations within the meaning of § 957 immediately before the transaction combining Sub 5 with Sub 17, and Sub 5 was a controlled foreign corporation immediately after this transaction. Also, Sub 6 was a § 1248 shareholder, within the meaning of § 1.367(b)-2(b), of Sub 5 and Sub 17 immediately before that transaction and Sub 6 was a § 1248 shareholder of Sub 5 immediately after that transaction.

(p) The assets of Sub 10 that are being sold to Sub 11 are being sold at an arm's length, fair market value price.

(q) The assets of Sub 12 were sold to Sub 13 at an arm's length, fair market value price.

(r) The assets of Target's Country H branch were sold to Sub 6's Country H branch at an arm's length, fair market value price.

(s) The assets of Target's Country I branch were sold to Sub 15 at an arm's length, fair market value price.

(t) The assets of Target's Country J branch were sold to Sub 16's Country J branch at an arm's length, fair market value price.

(u) Acquiring will provide the notice as required by § 1.367(b)-1(c)(1).

(v) Acquiring will comply with the rules for subsequent exchanges in § 1.367(b)-4(d) when and where applicable.

Pursuant to section 3.01(29) of Rev. Proc. 2001-3, 2001-1 I.R.B. 111, the Internal Revenue Service will not rule on whether a proposed transaction qualifies under § 368(a)(1)(A). However, the Service has discretion to rule on significant subissues that must be resolved to determine whether a transaction qualifies under § 368(a)(1)(A).

Based solely on the information submitted and representations made, and provided that (i) the Acquisition Merger and Upstream Merger are treated as steps in an integrated plan pursuant to the step transaction doctrine, and (ii) the Acquisition Merger and Upstream Merger qualify as statutory mergers under applicable state law, we rule as follows:

(1) For federal income tax purposes, the Acquisition Merger and the Upstream Merger will be treated as if Acquiring had directly acquired Target's assets in exchange for Acquiring stock and the assumption of Target's liabilities through a statutory merger as that term is used in § 368(a)(1)(A).

No opinion is expressed about the tax treatment of the above-described transactions under any other provisions of the Code or regulations, or the tax treatment

of any conditions existing at the time of, or effects resulting from, the above-described transactions that are not specifically addressed by the above ruling. In particular, no opinion is expressed as to:

(A) Whether the Acquisition Merger and the Upstream Merger should be viewed as integrated steps pursuant to a plan under the step transaction doctrine,

(B) Whether the Acquisition Merger and the Upstream Merger will qualify as a reorganization under § 368(a)(1)(A) if the step transaction doctrine is found to apply,

(C) The federal tax treatment of the Acquisition Merger and the Upstream Merger if the step transaction doctrine is found not to apply to these transactions,

(D) The federal tax consequences of the Foreign Transactions, including their effect (if any) on the application of the step transaction doctrine to the Acquisition Merger and the Upstream Merger,

(E) The application of § 367 to the Foreign Transactions,

(F) Whether the assets transferred by Sub 10, Sub 12, and Target's branches in Country H, Country I, and Country J were "sold" at an arm's length, fair market value price,

(G) The federal tax consequences, including the effects of § 987, of the "sale" of assets by, and any distribution of proceeds from, Sub 10, Sub 12, and Target's branches in Country H, Country I, and Country J,

(H) The application of Subpart F to the Foreign Transactions, and

(I) Whether any of the foreign subsidiaries in the Foreign Transactions are passive foreign investment companies within the meaning of § 1297(a). If it is determined that any of these corporations are passive foreign investment companies, no opinion is expressed concerning the application of §§ 1291 through 1298 to the transactions. In particular, in a transaction in which gain is not otherwise recognized, regulations under § 1291(f) may require gain recognition notwithstanding any other provision of the Code.

The rulings contained in this letter are predicated on the facts and representations submitted by the taxpayer and accompanied by the signature of an appropriate party under penalty of perjury. This office has not verified any of the materials submitted in support of the ruling request. The taxpayer, as part of the audit process, may be required to verify the information, representations, and other data.

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

A copy of this letter should be attached to the federal income tax return of each

taxpayer affected by the transactions described in this letter.

Under a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,
Associate Chief Counsel (Corporate)
By: Lewis K Brickates
Senior Technical Reviewer, Branch 4
Office of the Associate Chief Counsel
(Corporate)