

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:INTL:PLR-140591-02

Date:

October 23, 2002

Legend:

Parent =

Holding =

Partner =

DC1 =

DC2 =

DC3 =

Newco =

DS1 =

FP =

D1 =

CC:INTL:4:PLR-140591-02

Dear _____ :

This responds to the letter dated July 16, 2002, submitted on behalf of Parent requesting rulings with respect to transactions occurring subsequent to the taxpayer's execution of the transactions in LTR 9704004 (October 23, 1996) and LTR _____ (September 20, 2002, PLR-125782-01)("PLR-125782-01").

The rulings contained in this letter are based upon information 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 material submitted in support of the ruling requests. Verification of the information, representations, and other data may be required as part of the examination process.

FACTS

DC1 and DC2 are wholly owned by Holding, which is wholly owned by Parent. DC1 and DC2 own 75 percent and 25 percent, respectively in DC3. DC1, DC2, DC3, Holding and Parent are all domestic corporations and members of a group that files a consolidated return ("Parent Group").

DC3 is a 50 percent partner in FP. FP wholly owns Newco, a domestic corporation, which wholly owns DS1, a domestic corporation.

Pursuant to LTR 9704004, gain recognition agreements ("GRAs") were required to be entered into by DC1 and DC2. Subsequent to carrying out the transactions set forth in LTR 9704004, DC1 and DC2 each transferred their interests in FP to DC3. Pursuant to PLR-125782-01, Parent complied with the requirements of §1.367(a)-3T(g)(7) and filed the disclosures of the transfers and caused a new GRA to be executed.

Parent proposes that:

- (1) DC3 increase its interest in FP from 50 percent to 81 percent by a cash purchase at fair market value an amount of Partner's interest in FP;
- (2) DS1 liquidate into Newco; and
- (3) Newco merge into a newly formed limited liability company (LLC) that will be wholly owned by FP.

Parent represents that LLC will be treated as an entity that is disregarded as an entity separate from its owner under §301.7701-3(b)(1)(ii).

LAW AND ANALYSIS

Section 367(a) provides that when appreciated property held by U.S. persons is transferred to a foreign corporation in a transaction that would otherwise qualify as a nonrecognition transfer, the transfer will be taxable unless one of the enumerated exceptions applies.

Treasury Decision 8702 (61 FR 68633, December 30, 1996) promulgated regulations (hereafter "1996 final regulations") under §1.367(a)-3(c) which were effective for transfers of property occurring after January 29, 1997. See §1.367(a)-3(c)(11). The transactions undertaken by taxpayer pursuant to LTR 9704004 are subject to these regulations. These regulations also apply to the new GRA executed pursuant to PLR-125782-01.

CC:INTL:4:PLR-140591-02

The provisions of former Temp. Treas. Reg. §1.367(a)-3T(g) also apply to the new GRA that was executed pursuant to PLR 125782-01. Specifically, §1.367(a)-3T(g)(3)(i) provides that if, prior to the close of the fifth taxable year following the taxable year of the transfer, the transferee foreign corporation disposes of the transferred stock in any manner (other than in a liquidation of the transferred corporation), then by the 90th day thereafter the transferor will file an amended return for the year of the transfer and recognize thereon the gain realized but not recognized upon the initial transfer. Further §1.367(a)-3T(g)(3)(iii) provides that for purposes of paragraph (g)(3)(i) and (ii), a disposition not in the ordinary course of business by the transferred corporation of all or a substantial portion of its assets (other than a distribution, including a liquidation distribution, to the transferee foreign corporation) shall be treated as a disposition by the transferee foreign corporation of a proportionate amount of stock of the transferred corporation.

For purposes of §1.367(a)-3T(g) and the ruling herein, Newco is the transferred corporation, the stock of Newco is the transferred stock, and FP is the transferee foreign corporation.

CONCLUSION

Based solely on the facts submitted and representations made, and provided that:

(1) FP holds the assets received in the merger of Newco into LLC for the remainder of the period for which the GRA described in PLR 125782-01 is in effect; and (2) if FP recognizes gain on the liquidation of Newco that is less than or equal to the inherent gain in the Newco stock when DC1 was deemed to contribute the stock to FP, then, the gain must be allocated to DC3 pursuant to §704(c) of the Internal Revenue Code, and such gain shall be reported by DC3 and tax paid with interest accruing from D1, we conclude that:

(1) The merger of Newco into LLC is treated for federal tax purposes as a liquidation of Newco into FP, subject to §§331 and 336 of the Internal Revenue Code,

(2) Pursuant to §1492(2) and §1.367(a)-3T(g)(3)(iii), the deemed liquidation of Newco into FP does not trigger the GRA executed pursuant to PLR-125782-01.

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. Specifically, no opinion is expressed concerning whether or not the GRAs entered into by the taxpayer are triggered by any event not ruled upon in this letter.

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.

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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,

/s/ Michael H. Frankel
Michael H. Frankel
Senior Technical Reviewer, Branch 4
(International)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes