Internal Revenue Service

Number: **200448013**
Release Date: 11/26/04
Index Number: 367.40-00

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:INTL:B04
PLR-120662-04
Date:
July 26, 2004

In Re:

Tax Year =
Foreign Parent =

Domestic Parent =

Foreign D.E. =

Country X =

Business A =

Business B =

Business C =

Business D =

Business E =

Dear :

This is in response to a letter dated April 12, 2004, submitted on your behalf by your authorized representative, requesting a ruling regarding the application of § 367(e)(2) of the Internal Revenue Code with respect to a proposed transaction. You have not requested a ruling with respect to any other transaction that would precede the proposed transaction. Additional information was submitted in letters dated June 14, 2004, June 30, 2004, July 8, 2004, July 14, 2004, July 20, 2004, July 21, 2004, and July 23, 2004.

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.

OWNERSHIP STRUCTURE

Foreign Parent, a Country X corporation, is a corporation engaged through its subsidiaries in Businesses A, B, C, and D. Foreign Parent currently owns all of the outstanding stock of Foreign D.E., a Country X corporation that is treated for U.S. federal income tax purposes as a disregarded entity under § 301.7701-3(a). Foreign D.E. owns all of the stock of Domestic Parent, a domestic corporation that is the parent of a consolidated return group. Domestic Parent currently owns directly, indirectly, or a combination thereof, all of the stock of domestic subsidiaries . Some of Domestic Parent's subsidiaries, in turn, own additional subsidiaries.

Subs engage, directly or indirectly through subsidiaries, in Businesses A, B, C, and D in the following manner: Subs engage in Business A. Subs engage in Business B. Subs engage in Business C. Sub has additional subsidiary corporations that engage in Businesses B, C, and D.

Sub engages in Business E.

PROPOSED TRANSACTION

Domestic Parent will completely liquidate and distribute its assets, including the shares of its subsidiaries, to Foreign D.E., which will be treated as a distribution to Foreign Parent for U.S. federal income tax purposes (the "Transaction"). The Transaction is intended to qualify as a liquidation under § 332. Foreign D.E. will form Country X holding companies corresponding to Businesses A, B, C, and D. The Country X holding companies will be treated as corporations for Country X purposes but as disregarded entities for U.S. federal income tax purposes under § 301.7701-3(a). For valid business reasons, Foreign D.E. then will transfer the stock of Subs that it will receive in the liquidation to the newly formed Country X holding companies that correspond with their different lines of business. Thus, Foreign D.E. will transfer the stock of Subs to Foreign Holding , Subs to Foreign Holding , and Subs to Foreign Holding . Foreign D.E. will transfer the stock of Sub to Foreign Holding . Foreign D.E. will not transfer the stock of Sub to any of the Country X holding companies.

The Transaction will be undertaken for valid business reasons that include focusing management review on specific business lines and developing brand identities. Additionally, the Transaction is intended to create an overall corporate structure that will facilitate the formation of joint ventures and a more effective evaluation of the performance of the various business lines.

Domestic Parent and Foreign Parent also have undertaken various restructurings (the "Preliminary Transactions") within the affiliated group in preparation for the Transaction. The U.S. federal income tax consequences of the Preliminary Transactions are not discussed in this letter.

REPRESENTATIONS

The taxpayer has provided the following representations with regard to this request for a private letter ruling:

1. There are no plans or intent to sell or otherwise dispose of any of Domestic Parent's stock prior to the Transaction, or for Domestic Parent to issue any additional shares of its stock.

2. Foreign Parent, Domestic Parent, and the domestic subsidiary corporations will be duly formed and in good standing under all applicable laws and regulations and will be treated as corporations for U.S. federal income tax purposes under § 301.7701-1 through 301.7701-03.

3. Foreign D.E. is duly formed and in good standing under all applicable laws and regulations and treated as a disregarded entity for U.S. federal income tax purposes under § 301.7701-3(a).

4. Foreign Parent's principal class of shares is and will be listed on, and is and will be regularly traded on, a recognized stock exchange.

5. Foreign Parent and Foreign D.E. are liable to tax in Country X on all of their income by reason of their domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature.

6. Foreign D.E. will not be subject to U.S. federal income tax withholding on a dividend received from Domestic Parent pursuant to the U.S.-Country X treaty.

7. The distribution by Domestic Parent of its assets in complete liquidation in the Transaction will be done for valid business reasons, and the Transaction will satisfy the requirements of § 332.

8. Foreign Parent is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.

9. All of the Preliminary Transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the Transaction have been fully disclosed, and such Preliminary Transactions have been or will be entered into for valid business reasons. The occurrence of some of the Preliminary Transactions is subject to change primarily for foreign legal and regulatory reasons, and such changes will be disclosed as these issues are resolved.

10. The liquidating distribution in the Transaction will consist solely of stock of domestic corporations owned by Domestic Parent.

11. Domestic Parent will not distribute any intangible property, within the meaning of § 936(h)(3)(B), in the Transaction.

12. None of the domestic subsidiaries is a foreign corporation that has made an election under § 897(i) to be treated as a U.S. corporation for purposes of § 897.

13. On the date of the liquidating distribution, and at all times until the final liquidating distribution is completed, Domestic Parent will own directly (without regard to § 1.367(e)-2(b)(1)(iii)) 100 percent of the total voting power and value of all stock of each of the domestic corporations distributed in the liquidation, except for Sub . Domestic Parent will own directly %, and indirectly %, of the total voting power and value of the outstanding stock of Sub .

14. At the time of the liquidating distribution, Domestic Parent will not be a U.S. real property holding company (as defined in § 897(c)(2)) and will not be a

former U.S. real property holding corporation the stock of which is treated as a U.S. real property interest for 5 years under § 897(c)(1)(A)(ii).

15. The sole purposes for the Transaction are as described in the ruling request.

16. Domestic Parent will comply with the reporting requirements of § 6038B and Treas. Reg. § 1.6038B-1(e)(4).

ANALYSIS AND RULINGS

Section 337(a) generally provides that a liquidating corporation does not recognize gain or loss on the distribution of any property to an 80-percent distributee (as defined in § 337(c)) in a complete liquidation to which § 332 applies. Section 367(e)(2) provides that, in the case of any liquidation to which § 332 applies, except as provided in regulations, § 337(a) and (b)(1) shall not apply where the 80-percent distributee is a foreign corporation. Therefore, absent an exception under the regulations under § 367(e)(2), a domestic corporation must recognize gain or loss on a § 332 liquidating distribution to an 80-percent foreign distributee.

If certain requirements are satisfied, the regulations under § 367(e)(2) provide a nonrecognition exception to this general rule for distributions of stock of domestic subsidiary corporations. Treas. Reg. § 1.367(e)-2(b)(2)(iii). To qualify for this exception, the domestic subsidiary corporation must be an 80 percent domestic subsidiary (as described in Treas. Reg. § 1.367(e)-2(b)(2)(iii)), and the domestic liquidating corporation must attach a statement described in Treas. Reg. § 1.367(e)-2(b)(2)(iii)(D) to its U.S. income tax return for the year of the distribution of such stock. However, this nonrecognition exception is subject to both a specific and a general anti-abuse rule.

The specific anti-abuse rule provides that the above exception will not apply if a principal purpose of the distribution of the 80 percent domestic subsidiary corporation's stock is the avoidance of U.S. tax that would have been imposed on the domestic liquidating corporation's disposition of such stock (directly or indirectly) to an unrelated party. Treas. Reg. § 1.367(e)-2(b)(2)(iii)(C).

Additionally, the general anti-abuse rule provides that the Commissioner may require a domestic liquidating corporation to recognize gain on a distribution in liquidation (or treat the liquidating corporation as if it had recognized loss on a distribution in liquidation) if a principal purpose of the liquidation is the avoidance of U.S. tax (including, but not limited to, the distribution of a liquidating corporation's earnings and profits with a principal purpose of avoiding U.S. tax). A liquidation may have a principal purpose of tax avoidance even though the tax avoidance purpose is outweighed by other purposes when taken together. Treas. Reg. § 1.367(e)-2(d).

Based solely on the information submitted, the representations set forth above, the specific circumstances in this case, the entry into the closing agreement attached hereto and made a part hereof, and continuing to meet the requirements of Treas. Reg. § 1.367(e)-2, it is held as follows:

> Domestic Parent will not recognize gain on the distribution of the shares of the domestic subsidiary corporations in liquidation to Foreign Parent under § 367(e)(2) and the regulations thereunder. Treas. Reg. § 1.367(e)-2(b)(2)(iii) and -2(d).

We have approved and executed a closing agreement with the taxpayer with respect to the application of § 367(e)(2) to the liquidating distribution by Domestic Parent. The necessary closing agreement for Domestic Parent, Foreign Parent, and Foreign D.E. has been prepared with six originals 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 the applicable statutes will render the agreement ineffective to the extent that the agreement is dependent upon such statutes.

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. No opinion is expressed on any related transaction.

A copy of this letter and the executed closing agreement must be attached to the taxpayer's federal income tax return for the year in which the Transaction is consummated.

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 a Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Harry J. Hicks III
Harry J. Hicks III
Associate Chief Counsel
Office of the Associate Chief Counsel,
(International)

Attachments:
Copy for § 6110 purposes
Closing agreement

DEPARTMENT OF THE TREASURY-INTERNAL REVENUE SERVICE

CLOSING AGREEMENT ON FINAL DETERMINATION COVERING SPECIFIC MATTERS

Under § 7121 of the Internal Revenue Code of 1986, as amended ("the Code"), ("Foreign Parent"), a corporation, ("Foreign D.E."), a corporation that has elected to be treated as a disregarded entity for U.S. federal income tax purposes, ("Domestic Parent"), as a domestic corporation and as common parent on behalf of all the members of a consolidated group ("the Domestic Parent Group") and the Commissioner of Internal Revenue hereby make the following closing agreement ("Closing Agreement") based on the representations made by Domestic Parent, Foreign Parent and Foreign D.E., in the paragraphs below:

WHEREAS, based on the information submitted with the taxpayer's request dated April 12, 2004, and in additional letters dated June 14, 2004, June 30, 2004, July 8, 2004, July 14, 2004, July 20, 2004, July 21, 2004, and July 23, 2004, in the absence of other material circumstances as part of the proposed transaction, and in conjunction with a letter from the Associate Chief Counsel (International) to Domestic Parent that will be issued in connection with this Closing Agreement, it has been determined for federal income tax purposes, that:

(1) Except as provided in paragraph (4), Domestic Parent (or Foreign Parent on behalf of Domestic Parent) shall include in income for the taxable year of the liquidation of Domestic Parent, all of the gain realized on the liquidating distribution of the stock of a subject domestic corporation if, for U.S. federal income tax purposes, there is a, direct or indirect, sale, exchange, distribution, contribution, transfer or other disposition (collectively, a "Disposition") of any of the stock of that subject domestic corporation within the two year period beginning on the date of the liquidating distribution to Foreign Parent by Domestic Parent. For purposes of this Closing Agreement, if a subject domestic corporation distributes stock of a controlled corporation ("Controlled"), as defined in § 355, to its shareholder(s) in a transaction described in § 355, such shareholder(s) shall be considered as having exchanged its stock in such subject domestic corporation, and such exchange shall be considered a Disposition. If the Disposition described in

the preceding sentence qualifies for the exception to gain recognition contained in paragraph (4), such Controlled stock also shall be treated as stock of such subject domestic corporation for purposes of this Closing Agreement.

(2) Foreign Parent shall be the successor-in-interest to Domestic Parent upon its liquidation under § 332 of the Code.

(3) The stock of the following domestic corporations is subject to the provisions of this Closing Agreement and is sometimes referred to as the stock of the subject domestic corporations:

(4) Domestic Parent (or Foreign Parent on behalf of Domestic Parent) shall not be required to recognize gain under paragraph (1) upon a Disposition of the stock of a subject domestic corporation to a member of the Foreign Parent's affiliated group (as described in § 1504(a) without applying the exceptions contained in § 1504(b)) if Foreign Parent directly, indirectly, or a combination thereof, owns (i) 100 percent of the stock of the subject domestic corporation distributed in the liquidation, and (ii) 100 percent of the affiliated transferee corporation, for the remainder of the two year period beginning on the date of the liquidation. The stock of the affiliated transferee corporation shall be treated as stock of a subject domestic corporation for purposes of paragraph (1), and a direct or indirect Disposition of such stock by Foreign Parent shall

be subject to the provisions of paragraph (1) and the other provisions of this Closing Agreement.

(5) The transfer by Foreign Parent of its property to another corporation in exchange for stock of that corporation under § 361 of the Code pursuant to a reorganization under § 368(a)(1) of the Code shall be subject to the recognition provisions of paragraph (1) of this Closing Agreement. In appropriate instances, the Commissioner may consider entering into a subsequent closing agreement with additional terms and conditions substituting the acquiring corporation under § 381 for Foreign Parent so that the recognition provisions of paragraph (1) are not applicable to the exchange under § 361.

(6) Subject to all of the provisions of this Closing Agreement, the liquidating distribution of the stock of the subject domestic corporations by Domestic Parent to Foreign Parent (through its ownership in Foreign D.E.) shall not be considered to have been done for (i) a principal purpose of avoidance of U.S. tax that would have been imposed on Domestic Parent's, direct or indirect, Disposition of the stock of the subject domestic corporations to an unrelated party under § 1.367(e)-2(b)(2)(iii)(C) of the regulations or (ii) a principal purpose of the avoidance of U.S. tax (including, but not limited to, the distribution of a liquidating corporation's earnings and profits with a principal purpose of avoiding U.S. tax) under § 1.367(e)-2(d) of the regulations.

(7) Any gain recognized under the provisions of this Closing Agreement shall be included on the consolidated income tax return (or an amended return) for the Domestic Parent Group for the year of the liquidating distribution to Foreign Parent. If the income tax return has already been filed, Foreign Parent, as successor to Domestic Parent, shall cause an amended U.S. income tax return for Domestic Parent to be filed to include the gain recognized. Domestic Parent, the members of the Domestic Parent Group and Foreign Parent (including Foreign D.E.) shall be jointly and severally liable for any tax resulting from the gain recognized under this Closing Agreement and any interest that must be paid on any additional tax due. If any additional tax is required to be paid, then interest must be paid on that amount at the rates determined under § 6621 with respect to the period between the date that was prescribed for filing the consolidated income tax return for the year of the liquidating distribution and the date on which the additional tax for that year is paid.

(8) A copy of this Closing Agreement shall be attached to the Form 926 required to be filed with the income tax return of Domestic Parent for the taxable year of the liquidation and to the income tax returns of the subject domestic corporations for the first taxable year following the liquidation. Each subject domestic corporation shall attach a certification to its income tax return for its

taxable years covering the two year period after the liquidation that there has not been, a direct or indirect, Disposition of its stock during the taxable year under the provisions of this Closing Agreement. If there has been, a direct or indirect, Disposition of its stock during the taxable year under the provisions of this Closing Agreement during the taxable year, then the subject domestic corporation shall attach a statement to its income tax return detailing the facts and circumstances, and fully explaining how this Closing Agreement applies.

(9) On the consolidated income tax return or amendment thereof filed, Domestic Parent only may use losses (or credits) existing in the year of the distribution, that were otherwise available to Domestic Parent in that year and not used in another year, to offset the gain (or tax thereon) required to be recognized. Any amended consolidated income tax return shall be filed no later than 90 days after the event causing the inclusion of the gain under this Closing Agreement.

(10) Domestic Parent and Foreign Parent (including Foreign D.E.) agree to extend the statute of limitations on assessments and collections under § 6501 in regard solely to the distribution of the stock of the subject domestic corporations in the liquidation until December 31, 2009.

(11) Foreign Parent (including Foreign D.E.) irrevocably waives any benefits that could be claimed under any applicable income tax treaty (or any other treaty) in regard to any provision of this Closing Agreement, including the inclusion of any gain in income.

WHEREAS, the determinations set forth above are hereby agreed to by said taxpayers

NOW THIS CLOSING AGREEMENT WITNESSETH, that the taxpayers and the Commissioner of Internal Revenue hereby mutually agree to the determinations set forth above and further mutually agree that those determinations shall be final and conclusive, subject, however, to reopening in the event of fraud, malfeasance, or misrepresentation of material fact, and provided that any change or modification of applicable statutes or tax conventions shall render this Closing Agreement ineffective to the extent that it is dependent upon such statutes or tax conventions.

IN WITNESS WHEREOF, by signing the foregoing, the above parties signify that they have read and agreed to the terms of this document.

(Foreign Parent)

By: _____ Date: _____

Title: _____

(Foreign D.E.)

By: _____ Date: _____

Title: _____

(Domestic Parent)

By: _____ Date: _____

Title: _____

COMMISSIONER OF INTERNAL REVENUE

By: _____ Date: _____
Title: Associate Chief Counsel (International)