Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200733002**
Release Date: 8/17/2007
Index Number: 368.01-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:CORP:BO1
PLR-101889-07

In Re:

Date:
May 15, 2007

Parent =

Subsidiary 1 =

Subsidiary 2 =

Business A =

Country X =

Country Y =

Country Y Regulator =

a =

Year 1 =

Date B =

Date C =

Date D =

Date E =

Dear

This letter replies to your letter dated January 4, 2007 requesting rulings concerning certain federal income tax consequences of a proposed transaction. The following information is provided in that letter and subsequent correspondence.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings.

Section 3.01(33) of Rev. Proc. 2007-3, 2007-1 I.R.B. 108, provides that the Service will not rule on the qualification of a transaction as a reorganization under § 368(a)(1)(A) of the Internal Revenue Code unless the Service determines that there is a significant issue that is not clearly and adequately addressed by published authority. The taxpayer has submitted information indicating that a significant issue exists with respect to the § 368(a)(1)(A) transaction described below.

Summary of Facts

Parent, a Country X corporation, is the parent company of a worldwide group engaged in Business A.

In Year 1, Parent acquired, solely for cash, approximately a percent of the shares of Subsidiary 1, a Country Y corporation engaged in Business A, between Date B and Date C (the "Acquisition"). Although the Acquisition was a qualified stock purchase within the meaning of § 338(d)(3), Parent has not made, and does not intend to make, an election under § 338(g) with respect to the Acquisition. Under Country Y law, the Acquisition was required to be, and was, approved by the Country Y Regulator. Parent represented to the Country Y Regulator that it would continue to conduct Subsidiary 1's Business A operations in Country Y in a separate corporation.

Both Parent and Subsidiary 1 operate U.S. branches and have historically filed United States income tax returns as foreign corporations engaged in a U.S. trade or business. Subsidiary 1's U.S. branch has an effectively connected net operating loss carryforward, a portion of which is subject to limitation under § 382. Parent believes that the fair market value of one or more of Subsidiary 1's U.S. branch assets may exceed Subsidiary 1's basis therein at this time.

Parent now desires to simplify its organizational structure and to integrate Subsidiary 1's operations into the Parent worldwide group. In addition, Parent desires

to eliminate the minority ownership of Subsidiary 1 (which is less than 5 percent). The proposed restructuring described below (the "Restructuring") will allow the integration of Subsidiary 1's non-Country Y operations (including its U.S. branch) with their Parent counterparts and will eliminate the minority shareholders of Subsidiary 1.

The Restructuring requires the approval of the Country Y Regulator and cannot be undertaken in a manner that results in Parent's direct ownership of Subsidiary 1's Business A operations in Country Y even as an interim step in an overall transaction providing for such operations to be conducted by a Parent subsidiary.

Proposed Transaction

For the above reasons, Parent proposes to undertake the Restructuring, pursuant to one overall plan, through the following steps (some of which have been consummated and all of which have occurred or will occur after Year 1):

(i) On Date D, Subsidiary 1 established Subsidiary 2 as a wholly owned Country Y subsidiary with a contribution of cash.

(ii) On Date E, Parent and Subsidiary 1 entered into an agreement under which Parent will acquire all of Subsidiary 1's assets and assume all of its liabilities (other than those transferred to Subsidiary 2 in Step (iii), below) through the merger of Subsidiary 1 with and into Parent (the Merger).

(iii) Pursuant to the Merger agreement, Subsidiary 1 will transfer Subsidiary 1's Business A operations in Country Y to Subsidiary 2 solely in exchange for Subsidiary 2's issuance of stock to Subsidiary 1 and Subsidiary 2's assumption of liabilities related to such operations (the "Contribution"). Subsidiary 2 will change its name after the Contribution.

(iv) Subsidiary 1 will merge with and into Parent in the Merger. Parent's shares in Subsidiary 1 will be cancelled and the minority shareholders of Subsidiary 1 will exchange their Subsidiary 1 shares solely for Parent shares. Fractional shares will not be issued by Parent. Instead, any fractional shares of Parent that any shareholders of Subsidiary 1 would otherwise receive in the Merger will be aggregated and the shares sold. The cash proceeds from the sale of those shares will be distributed to the shareholders who would otherwise receive fractional shares.

Following these steps, Parent may transfer certain assets acquired in the Merger to related parties (other than Subsidiary 2) for purposes of (i) facilitating integration of Subsidiary 1's operations with operations of Parent or other related entities or (ii) achieving other efficiencies. However, the bulk of the U.S. assets acquired in the Merger will not be transferred.

Representations

The taxpayer has provided the following representations in connection with the transactions described above:

(a) Pursuant to the Merger, as a result of the operation of law, the following will occur simultaneously: (i) all of the assets and liabilities of Subsidiary 1 will become assets and liabilities of Parent, and (ii) Subsidiary 1 will cease its separate legal existence.

(b) The fair market value of the Parent stock and other consideration received by each Subsidiary 1 shareholder will be approximately equal to the fair market value of the Subsidiary 1 stock surrendered in the exchange.

(c) The payment of cash to shareholders that would otherwise receive fractional shares of Parent stock is solely for the purpose of avoiding the expense and inconvenience to Parent of issuing fractional shares and does not represent separately bargained-for consideration. The total cash consideration that will be paid in the transaction to the Subsidiary 1 shareholders instead of issuing fractional shares of Parent stock will not exceed 1% of the total consideration that will be issued in the transaction to the Subsidiary 1 shareholders in exchange for their shares of Subsidiary 1 stock. The fractional share interests of each Subsidiary 1 shareholder will be aggregated, and no Subsidiary 1 shareholder will receive cash in an amount equal to or greater than the value of one Parent share.

(d) Parent has no plan or intention to reacquire any of its stock issued in the transaction, except pursuant to forward purchase agreements applicable to Parent shares issued to minority shareholders in exchange for Subsidiary 1 shares currently subject to such agreements.

(e) Parent has no plan or intention to sell or otherwise dispose of any of the assets of Subsidiary 1 acquired in the transaction, except for dispositions made in the ordinary course of business or transfers described above in the “Proposed Transaction” section of this letter.

(f) The liabilities of Subsidiary 1 assumed by Parent and the liabilities to which the transferred assets of Subsidiary 1 are subject were incurred by Subsidiary 1 in the ordinary course of its business.

(g) Following the Merger, Parent will continue the historic business of Subsidiary 1 or use a significant portion of Subsidiary 1’s historic business assets in a business, either directly or indirectly through Subsidiary 2.

(h) Parent, Subsidiary 1, and the shareholders of Subsidiary 1 will pay their respective expenses, if any, incurred in connection with the transaction.

(i) At the time of the Merger, there will be no intercorporate debt existing

between Parent and Subsidiary 1 other than intercorporate accounts arising in the normal course of business, and no such intercorporate debt will have been issued, acquired, or settled at a discount.

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

(k) Subsidiary 1 is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

(l) The fair market value of the assets of Subsidiary 1 transferred to Parent will equal or exceed the sum of the liabilities assumed by Parent (within the meaning of § 357(d)).

(m) Parent and Subsidiary 1 will adopt a plan of merger, and the Merger will occur pursuant to such plan.

(n) At the time of the Acquisition, Parent had no plan or intention to merge Subsidiary 1 with and into Parent or liquidate Subsidiary 1 into Parent.

(o) Since the Acquisition, no distribution will have been made with respect to stock of Subsidiary 1 other than regular, normal distributions made pursuant to historic dividend-paying practice of Subsidiary 1, either directly or through any transaction, agreement, or arrangement with any other person.

(p) To the best of the knowledge of Parent, Subsidiary 1, and Subsidiary 2, the Contribution will have no present or anticipated federal income tax consequences.

(q) There is no plan or intention for Subsidiary 2 to become a domestic corporation (within the meaning of § 7701(a)(4)), a controlled foreign corporation (within the meaning of § 957(a)), or a passive foreign investment company (within the meaning of § 1297(a)).

Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows:

(1) The Contribution will be treated for federal income tax purposes in accordance with its form as occurring prior to the Merger.

(2) Provided the Merger of Subsidiary 1 with and into Parent qualifies as a statutory merger under applicable law, the Merger will be a reorganization within the meaning of § 368(a)(1)(A), and Subsidiary 1 and Parent will each be “a party to a reorganization” within the meaning of § 368(b).

(3) Subsidiary 1 will recognize no gain or loss on the transfer of its assets to Parent and the assumption by Parent of Subsidiary 1's liabilities (§§ 361(a) and 357(a)).

(4) The basis of Subsidiary 1's assets in the hands of Parent will be the same as the basis of such assets in the hands of Subsidiary 1 immediately before the Merger (§ 362(b)).

(5) The holding period of Subsidiary 1's assets in the hands of Parent will include the period during which the assets were held by Subsidiary 1 (§ 1223(2)).

(6) Pursuant to § 381(a) and §1.381(a)-1, Parent will succeed to and take into account as of the close of the date of the Merger Subsidiary 1's items described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383, and 384 and the regulations thereunder.

(7) Each Subsidiary 1 shareholder will recognize no gain or loss on the receipt of Parent stock in exchange for Subsidiary 1 stock (§ 354(a)(1)).

(8) Any Subsidiary 1 shareholder who receives cash pursuant to the fractional share procedure will recognize gain or loss measured by the difference between the amount of cash received and the basis allocated to the share(s) sold. Any gain or loss will be treated as capital gain or loss, provided each such share is held as a capital asset on the date of the Merger (§§ 1221 and 1222).

(9) Each Subsidiary 1 shareholder's basis in the Parent stock received will be the same as the basis of the share or shares (or allocable portions thereof) of Subsidiary 1 stock exchanged therefor, allocated in the manner described in § 1.358-2.

(10) Each Subsidiary 1 shareholder's holding period in the Parent stock received in the Merger will include the holding period in the Subsidiary 1 shares exchanged therefor, provided the Subsidiary 1 stock is held as a capital asset on the date of the Merger (§ 1223).

Closing Agreement

In connection with the issuance of this ruling letter, a closing agreement is being entered into between the Internal Revenue Service, on the one hand, and Parent and Subsidiary 2, on the other hand, which will provide, among other things, that the Contribution is an exchange under § 351(a) and that the basis of the assets received by Subsidary 2 in the Contribution will be determined under § 362(a). This private letter ruling will become effective upon the execution of the closing agreements.

Caveats

No opinion is expressed about the tax treatment of the proposed transaction

under other provisions of the Code and regulations which may also be applicable thereto, or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions that are not specifically covered by the above rulings.

Procedural Statements

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

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

In accordance with the power of attorney on file in this office, a copy of this ruling letter will be sent to your authorized representatives.

Sincerely,

_____

Michael J. Wilder
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel
(Corporate)