Internal Revenue Service

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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:CORP:BO3
PLR-125004-08
Date:
July 18, 2008

In Re:

Foreign Corporation =

Parent =

Sub1 =

Sub2 =

Merger Sub =

Target =

Agreement =

Date 1 =

Date 2 =

Business A =

b =

Country X =

State Y =

State Z =

Dear :

We respond to your May 28, 2008, request for rulings on certain Federal income tax consequences of a proposed transaction. The material information submitted in that letter and in subsequent correspondence is summarized below.

Foreign Corporation, a Country X corporation and holding company, owns all the stock of Parent. Parent, a State Y corporation and holding company, owns all the stock of Sub1. Sub1, a State Y corporation and holding company, owns all the stock of Sub2. Sub2 is a domestic corporation engaged in Business A. Parent is the common parent of an affiliated group of corporations filing a consolidated Federal income tax return.

Target, a State Z corporation, is also engaged in Business A and was not related to Foreign Corporation, Parent, Sub1, or Sub2.

In the last several years, Foreign Corporation embarked on a growth strategy that involved expanding into other geographic areas. As part of this strategy, Foreign Corporation entered into an Agreement with Target on Date 1 to acquire Target in a transaction that was intended to qualify as a reorganization under sections 368(a)(1)(A) and 368(a)(2)(D) of the Internal Revenue Code. To effectuate the acquisition, Foreign Corporation formed Merger Sub, a domestic corporation. On Date 2, Target merged with and into Merger Sub with Merger Sub surviving. In the merger, Target shareholders exchanged their Target stock solely for Foreign Corporation stock. On Date 2, Foreign Corporation contributed Merger Sub to Parent and Parent, in turn, contributed Merger Sub to Sub1.

After Date 2, there were unforeseeable significant changes in the economic and business climate that adversely affected Business A. To enable Merger Sub to keep its business operations viable and due to regulatory, business, and economic constraints, taxpayer proposes to merge Merger Sub into Sub2 under section 368(a)(1)(A).

The following representations have been made regarding the initial transaction and the proposed transaction:

(a) The merger of Target with and into Merger Sub qualified as a reorganization under sections 368(a)(1)(A) and 368(a)(2)(D). This structure for the transaction was chosen to avoid duplicative regulatory requirements.

(b) Prior to and on Date 2, neither Foreign Corporation nor any affiliate of Foreign Corporation had a plan or intention to merge Merger Sub into Sub2 or out of legal existence. The need to merge Merger Sub into Sub2 has arisen due to unexpected non-tax business reasons, and resolution of these issues cannot be effectively accomplished by merging Sub2 into Merger Sub.

(c) Merger Sub and Sub2 will qualify as domestic corporations for Federal income tax purposes on the date of the proposed transaction.

(d) The fair market value of the Sub2 stock and other consideration received by Sub1 will be approximately equal to the fair market value of the Merger Sub stock surrendered in exchange therefor.

(e) At least b percent of the proprietary interest in Merger Sub will be exchanged for Sub2 common stock and will be preserved (within the meaning of §1.368-1(e) of the Income Tax Regulations). For purposes of this representation, stock is not treated as a proprietary interest to the extent that no consideration is exchanged for it.

(f) Neither Sub2 nor any person related to Sub2 (within the meaning of §1.368-1(e)(3)) has any plan or intention to reacquire any of the Sub2 stock issued in the proposed merger.

(g) Sub2 has no plan or intention to sell or otherwise dispose of any of the assets of Merger Sub acquired in the transaction, except for dispositions made in the ordinary course of business or transfers described in section 386(a)(2)(C).

(h) The liabilities of Merger Sub assumed by Sub2 and the liabilities to which the transferred assets of Merger Sub are subject were incurred by Merger Sub in the ordinary course of its business.

(i) Following the transaction, Sub2 will continue the historic business of Merger Sub or use a significant portion of Merger Sub's historic business assets in a business.

(j) Sub1, Sub2, and Merger Sub will pay their respective expenses, if any, incurred in connection with the transaction.

(k) There is no intercorporate indebtedness existing between Merger Sub and Sub2 that was issued, acquired, or will be settled at a discount.

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

(m) Merger Sub is not under the jurisdiction of a court in a title 11 or similar case within the meaning of section 368(a)(3)(A).

(n) The fair market value of the assets of Merger Sub transferred to Sub2 will equal or exceed the sum of the liabilities assumed by Sub2 plus the amount of liabilities, if any, to which the transferred assets are subject.

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the proposed transaction:

(1) Provided that the proposed merger of Merger Sub with and into Sub2 qualifies as a statutory merger in accordance with applicable state law, the transfer of all of Merger Sub assets to Sub2 in exchange for Sub2 stock and the assumption by Sub2 of Merger Sub liabilities, followed by the distribution of Sub2 stock to Sub1 in complete liquidation of Merger Sub, will constitute a reorganization under section 368(a)(1)(A). Merger Sub and Sub2 each will be "a party to the reorganization" within the meaning of section 368(b).

(2) Merger Sub will not recognize any gain or loss on the transfer of its assets to Sub2 in exchange for Sub2 stock and the assumption of its liabilities by Sub2 (sections 361(a) and 357(a)).

(3) Sub2 will not recognize any gain or loss upon receipt of the Merger Sub assets in exchange for Sub2 stock and the assumption of the liabilities of Merger Sub (section 1032(a)).

(4) Sub2's basis in the assets received from Merger Sub will equal the basis of such assets in the hands of Merger Sub immediately before their transfer to Sub2 (section 362(b)).

(5) Sub2's holding period in the assets received from Merger Sub will include the period during which Merger Sub held the assets (section 1223(2)).

(6) Merger Sub will not recognize any gain or loss on its distribution of the Sub2 stock to Sub1 (section 361(c)(1)).

(7) Sub1 will not recognize any gain or loss upon the exchange of its Merger Sub stock for Sub2 stock pursuant to the merger (section 354(a)(1)).

(8) Sub1's basis in Sub2 stock received in the merger will equal the basis of the Merger Sub stock exchanged therefor (section 358(a)).

(9) Sub1's holding period in the Sub2 stock received in the proposed merger will include the holding period of the Merger Sub stock surrendered in the exchange provided that Sub1 held such stock as a capital asset on the date of the merger (section 1223(1)).

(10) Although the proposed transaction is not described in §1.368-2(k), the initial acquisition of Target and the proposed merger of Merger Sub into Sub2 will not be treated as a single transaction under the step transaction doctrine because the taxpayer has provided sufficient information to demonstrate that the two steps are not integrated parts of a single plan. Thus, If the merger of Target with and into Merger Sub qualified as a reorganization under sections 368(a)(1)(A) and 368(a)(2)(D), the proposed merger of Merger Sub into Sub2 will not affect that qualification.

No opinion is expressed about the tax treatment of the proposed transaction under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction that are not specifically covered by the above rulings. Furthermore, no opinion is expressed about whether the initial acquisition of Target qualified as a reorganization under sections 368(a)(1)(A) and 368(a)(2)(D).

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. Verification of the information, representations, or other data may be required as part of the audit process.

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

A copy of this letter must be attached to any Federal income tax return to which it is relevant. 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.

Under a power of attorney on file in this Office, copies of the letter are being sent to your authorized representatives.

Sincerely,

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Filiz A. Serbes
Chief, Branch 3
Office of Associate Chief Counsel
(Corporate)