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Date:
July 14, 2011

Legend

UST =

FC =

Holdco =

Merger Sub =

Business A =

Business B =

Date C =

Amount D =

Date E =

f =

g =

h =

Year I =

Country J =

k =

Month L =

n =

Amount O =

Country P =

q =

r =

s =

t =

Date U =

Amount V =

Date W =

Dear :

This is in reply to your letter dated April 11, 2011, requesting a ruling under § 1.367(a)-3(c)(9) of the Income Tax Regulations that the exchange of shares in a domestic corporation by U.S. persons described below will qualify for an exception to the general rule of § 367(a)(1) of the Internal Revenue Code (the "Code"). Supplemental information was provided in letters dated April 26, May 13, May 20, June 14, June 15 and June 17, 2011.

The rulings contained in this letter are predicated upon facts and representations submitted by the taxpayers and accompanied by penalty of perjury statements executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the factual information, representations, and other data may be required as part of the audit process.

Facts

UST is a domestic corporation, and is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. UST common stock is publicly traded. UST and its subsidiaries are engaged in Business A. As of Date C, the market capitalization of UST was approximately Amount D. As of Date E, employees and directors of UST held (i) options to acquire approximately f UST shares, and (ii) approximately g restricted stock units denominated in UST shares (of which approximately h units were granted in Year I). Prior to the closing of the Merger, UST may issue additional equity awards to service providers (employees, directors and officers) in the ordinary course of business, consistent with past issuance practices, and subject to the limitations imposed by the business combination agreement. There are no other authorized, issued or outstanding options, warrants, conversion rights, arrangements, calls, or rights of any kind that obligate UST to issue or sell any shares of capital stock or other securities of UST or give any person a right to acquire any shares of capital stock or other securities of UST.

FC is a corporation organized under the laws of Country J. The United States has a comprehensive income tax treaty with Country J. FC stock is publicly traded. The authorized share capital of FC consists of k shares, all of which are issued and outstanding for purposes of Country J law. FC believes, based on information available to it in Month L, that its largest shareholder at that time owned less than 6% of its shares. Employees and directors of FC hold options to acquire FC shares. As of Date E, there were approximately n FC shares underlying options to acquire such shares. Prior to the closing of the Merger, FC may issue additional equity awards to service providers (employees, directors and officers) in the ordinary course of business, consistent with past issuance practices, and subject to the limitations imposed by the business combination agreement. As of Date C, the market capitalization of FC was approximately Amount O. FC, along with its subsidiaries, is engaged in Business B.

UST's Business A and FC's Business B are of the same industry type.

Holdco is a newly formed Country P corporation which will be used to combine UST and FC in the transactions described below. The United States has a comprehensive income tax treaty with Country P. Merger Sub is a newly formed domestic corporation which is wholly owned by Holdco. The following transfers are proposed:

(i) Holdco will launch a public exchange offer (the "Offer") to acquire all of the issued and outstanding FC shares. Pursuant to the Offer, each FC share tendered and accepted for exchange will be exchanged for q Holdco share(s). The closing of the Offer is subject to a number of conditions, including the adoption of a business combination agreement by the holders of a majority of the issued and outstanding UST shares and the satisfaction of a minimum tender condition for the Offer (the "Minimum Condition"). The Minimum Condition requires that there be validly tendered and not withdrawn, at the expiration of the Offer, a number of FC shares that represents at least r% (less than 80%) of the outstanding FC shares on a fully diluted basis (*i.e.*, taking into account all FC shares issuable upon the exercise of any options, warrants or rights to purchase or subscribe for FC shares). Regardless of the number of FC shares acquired pursuant to the Offer, it is the intention of Holdco to ultimately acquire all of the FC shares.

(ii) Immediately after the closing of the Offer, Merger Sub will merge with and into UST (the "Merger"), with UST surviving as a direct wholly owned subsidiary of Holdco. In the Merger, each UST share will be converted into the right to receive s Holdco share(s). The exchange of UST shares for Holdco shares will be executed by an agent on behalf of the UST shareholders for purposes of accomplishing the transfer under Country P law. Immediately after the closing of the Merger, Holdco will own all of the outstanding UST shares and all of the FC shares acquired in the Offer. In the Merger, options to acquire UST shares will be converted into options to acquire Holdco shares on substantially the same terms, and restricted stock units (other than restricted stock units granted in Year I, which will be cashed out) will vest upon completion of the transaction.

(iii) The business combination agreement contemplates that, as soon as practicable after the Merger, the parties will effect a post-closing reorganization intended to cause FC to become a wholly owned subsidiary of Holdco.

(a) If t% or more of the outstanding FC shares are acquired in the Offer, Holdco intends to effect a "squeeze-out" transaction as a result of which all FC shares not tendered in the Offer would be transferred to Holdco by operation of law.

(b) If less than t% of the outstanding FC shares are acquired in the Offer, Holdco plans that, following the Merger, it will acquire additional shares of FC stock through open market and private purchases, and procedures under Country J law that will encourage non-tendering shareholders to exchange their FC shares.

Based on the advice of Country J legal counsel, the taxpayers believe it is very likely that Holdco will, pursuant to the same overall plan that includes the Offer and the Merger, acquire at least 80% (by vote and value) of the outstanding FC shares as a result of the Offer and any subsequent acquisitions of FC shares within 36 months from the date of the Merger.

(iv) UST and FC announced on Date U that they had recommended to the board of directors of Holdco that Holdco pay a one-time special dividend ("Special Dividend") of Amount V per Holdco share shortly after completion of the Merger.

Law and Analysis

The exchange of UST stock by U.S. persons is subject to § 367(a) of the Code, which provides that the transfer of appreciated property (including stock) by a U.S. person to a foreign corporation in a transaction that would otherwise qualify as a nonrecognition exchange, is treated as a taxable transfer, unless an exception applies. In the case of a § 367(a)(1) transaction in which a U.S. person transfers domestic stock to a foreign corporation, the U.S. transferor will qualify for nonrecognition treatment if the requirements of Treas. Reg. § 1.367(a)-3(c)(1) are satisfied.

The requirements of § 1.367(a)-3(c)(1) are as follows:

(i) U.S. persons transferring U.S. target stock must receive, in the aggregate, 50% or less of both the total voting power and total value of the stock in the transferee foreign corporation.

(ii) U.S. persons who are officers or directors of the U.S. target corporation, or who are 5% shareholders of the U.S. target corporation, will own, in the aggregate, 50% or less of each of the total voting power and the total value of the stock of the transferee foreign corporation, immediately after the exchange of the U.S. target stock.

(iii) The active trade or business test of Treas. Reg. § 1.367(a)-3(c)(3) must be satisfied. The three elements of the active trade or business test are described below:

(a) The transferee foreign corporation (or any qualified subsidiary or qualified partnership as defined under § 1.367(a)-3(c)(5)(vii) and (viii)) must have been engaged in the active conduct of a trade or business outside the United States, within the meaning of §§ 1.367(a)-2T(b)(2) and (3), for the entire 36-month period immediately preceding the exchange of U.S. target stock.

(b) At the time of the exchange, neither the transferors nor the transferee foreign corporation (or any qualified subsidiary or qualified partnership engaged in the active trade or business) will have the intention to substantially dispose of or discontinue such trade or business.

(c) The substantiality test as defined in Treas. Reg. § 1.367(a)-3(c)(3)(iii) must be satisfied.

Among the requirements of § 1.367(a)-3(c)(5)(vii) for a subsidiary of the transferee foreign corporation to be treated as a qualified subsidiary, the subsidiary must be 80% owned (by total voting power and total value) by the transferee foreign corporation.

With respect to clause (a), Holdco, the transferee foreign corporation, will not have been engaged in an active trade or business for the entire 36-month period prior to the exchange, nor will it have owned any qualified subsidiaries or partnerships so engaged. A transferee foreign corporation may satisfy the test, however, by acquiring at the time of, or prior to, the exchange a trade or business that has been active for the preceding 36 months. This rule does not apply to the acquisition of a trade or business of a U.S. target corporation. See Treas. Reg. § 1.367(a)-3(c)(3)(ii)(A).

The taxpayers represent that FC or one or more of FC's qualified subsidiaries or qualified partnerships will have been engaged in the active conduct of a trade or business outside the United States, within the meaning of §§ 1.367(a)-2T(b)(2) and (3), for the entire 36-month period immediately preceding the exchange of UST shares for Holdco shares. Under § 1.367(a)-3(c)(3), in order for Holdco to rely on the active trade or business of FC for this purpose, however, it must own at least 80% of the vote and value of FC at the time of the Merger.

Under the substantiality test, the fair market value of the transferee foreign corporation must equal or exceed the fair market value of the U.S. target corporation at the time of the exchange of U.S. target stock (see § 1.367(a)-3(c)(3)(iii)(A)). For this purpose, the fair market value of the transferee foreign corporation must be reduced by the value of certain prohibited assets (§ 1.367(a)-3(c)(3)(iii)(B)). Specifically, the fair market value of the transferee foreign corporation must be reduced by the value of any asset that it acquired outside the ordinary course of business during the 36-month period preceding the exchange to the extent that: (1) the asset produces or is held for the production of

passive income at the time of the exchange; or (2) the asset was acquired for the principal purpose of satisfying the substantiality test (§ 1.367(a)-3(c)(3)(iii)(B)(1)(i)). The value of the transferee foreign corporation is further reduced by the value of any assets that it received within the 36-month period preceding the exchange if those assets were owned by the U.S. target corporation or an affiliate (§ 1.367(a)-3(c)(3)(iii)(B)(3)). After these adjustments, if the fair market value of the transferee foreign corporation continues to equal or exceed the fair market value of the U.S. target, then generally the substantiality test will be satisfied (§ 1.367(a)-3(c)(3)(iii)(A)).

In addition, § 1.367(a)-3(c)(1) requires that the U.S. target corporation satisfy the reporting requirements of Treas. Reg. § 1.367(a)-3(c)(6), and that each U.S. transferor who is a 5% shareholder of the transferee foreign corporation immediately after the exchange of target stock enter into a 5-year gain recognition agreement as provided in § 1.367(a)-8. By entering into a gain recognition agreement, the U.S. transferor agrees to recognize gain, with certain exceptions, in the event that the transferee foreign corporation disposes of all or part of the transferred stock or securities, the corporation the stock of which was transferred disposes of substantially all of its assets, or if certain other triggering events occur within the 5-year term of the agreement (see § 1.367(a)-8(j)). In some cases where a disposition qualifies as a nonrecognition transaction, and the U.S. transferor retains a direct or indirect interest in the transferred stock or securities, or in the assets of the transferred corporation, the disposition does not constitute a triggering event if a new gain recognition agreement with respect to the initial transfer is entered into immediately after the disposition (see § 1.367(a)-8(k)).

Representations

(a) The Merger will qualify as a reorganization within the meaning of § 368(a) of the Code and/or the Merger and the Offer, taken together, will qualify as a transaction described in § 351(a) of the Code.

(b) UST will satisfy the reporting requirements of Treas. Reg. § 1.367(a)-3(c)(6).

(c) U.S. persons transferring UST stock pursuant to the Merger will receive, in the aggregate, 50% or less of both the total voting power and the total value of the stock of Holdco (taking into account the attribution rules of § 318, as modified by § 958(b)) in exchange for UST stock.

(d) U.S. persons who are officers, directors, or 5% target shareholders (as defined in Treas. Reg. § 1.367(a)-3(c)(5)(iii)) of UST will own, in the aggregate, immediately after the Merger, 50% or less of each of the total voting power and value of the stock of Holdco (taking into account the attribution rules of § 318, as modified by § 958(b)).

(e) FC or one or more of its "qualified subsidiaries" (as defined in Treas. Reg. § 1.367(a)-3(c)(5)(vii)) or "qualified partnerships" (as defined in Treas. Reg. § 1.367(a)-3(c)(5)(viii)) will have been engaged in the active conduct of a trade or business outside the United States, within the meaning of Treas. Reg. § 1.367(a)-2T(b)(2) and (3), for the entire 36-month period preceding the Merger.

(f) At the time of the Merger, neither Holdco, FC (or any qualified subsidiary of FC), nor, to the knowledge of UST or FC, stockholders of UST, will have an intention to substantially dispose of or discontinue such active trade or business.

(g) The fair market value of FC (as measured by its market capitalization) exceeded the fair market value of UST (as measured by its market capitalization) on the date the business combination agreement was entered into (and over the preceding three-year period). In addition, as of Date W, the fair market value of FC (as measured by its market capitalization) exceeded the fair market value of UST (as measured by its market capitalization) by an amount that would be expected to cause the fair market value of Holdco, immediately after the closing of the Offer, to exceed the fair market value of UST even if (i) no FC shares in excess of r% were tendered in the Offer, and (ii) the fair market value of FC were reduced by the portion of the Special Dividend, if any, that may be paid by Holdco shortly following the closing of the Merger that is funded or sourced (other than by way of intercompany loans), directly or indirectly, from FC. For purposes of this determination, the fair market value of FC (including the value of stock in any qualified subsidiary or an interest in any qualified partnership) will include assets producing, or held for the production of, passive income as defined in § 1297(b) which assets were acquired outside the ordinary course of business within the 36-month period preceding the acquisition of the UST stock only to the extent such assets were acquired in a transaction which was not undertaken for a principal purpose of satisfying the substantiality test. The value of FC will be further reduced by the value of any assets that it received within the 36-month period preceding the exchange if those assets were owned by UST or an affiliate of UST (§1.367(a)-3(c)(3)(iii)(B)(3)).

Under Treas. Reg. § 1.367(a)-3(c)(9), the Service may, in limited circumstances, issue a private letter ruling to permit the taxpayer to qualify for an exception to § 367(a)(1) if the taxpayer is unable to satisfy all of the requirements of the active trade or business test but is in substantial compliance with such test and meets all of the other requirements of § 1.367(a)-3(c)(1). The taxpayers request a ruling that there will be substantial compliance with the active trade or business test, notwithstanding that less than 80% of the outstanding FC shares may be acquired by Holdco in the Offer.

Conclusion

Based solely on the information submitted and on the representations set forth above **and provided that Holdco acquires at least 80% (by vote and value) of the outstanding FC shares as a result of the Offer and any subsequent acquisitions of FC shares within 36 months from the date of the Merger,** it is held as follows:

(1) The transfer pursuant to the Merger of UST shares by U.S. persons in exchange for shares of Holdco will qualify for an exception to the general rule of § 367(a)(1) (Treas. Reg. §§ 1.367(a)-3(c)(1) and § 1.367(a)-3(c)(9)(i)).

(2) Any U.S. person who is a 5% transferee shareholder will qualify for this exception only upon entering into a gain recognition agreement (Treas. Reg. § 1.367(a)-3(c)(1)(iii)(B)). The gain recognition agreement must conform to the requirements set forth in Treas. Reg. § 1.367(a)-8.

No opinion is expressed as to the tax treatment of the transactions under other provisions of the Code and regulations, and no opinion is expressed about the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions that are not specifically covered by this ruling.

In particular, no opinion was requested and no opinion is provided as to (i) whether the Merger qualifies as a reorganization within the meaning of § 368(a) of the Code and/or whether the Merger and the Offer, taken together, will be treated as a transaction described in § 351(a) of the Code, or (ii) the federal income tax treatment of the Special Dividend. In addition, no opinion is expressed as to the reporting requirements of U.S. persons exchanging UST stock under § 6038B and the regulations thereunder.

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

A copy of this letter must be attached to any 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 the letter ruling.

Pursuant to the power of attorney on file in this office, a copy of this letter is being addressed to the taxpayer's authorized representatives.

Sincerely,

Charles P. Besecky
Branch Chief, Branch 4
(International)