Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201208034**
Release Date: 2/24/2012

Index Number: 1502.13-00, 1502.14-00 R 1995, 1502.93-00, 1502.94-00

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:CORP:B04
PLR-134023-10
Date:
November 17, 2011

Legend:

Parent =

Domestic Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

a =

b =

c =

d =

Country A =

Country B =

State A =

Dear :

This letter responds to your August 18, 2010, letter requesting rulings on certain federal income tax consequences of a series of proposed and completed transactions. The information submitted in that letter and in later correspondence is summarized below.

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

Summary of the Facts

Parent is a publicly traded Country A corporation that owns all of the stock of Domestic Parent, the common parent of an affiliated group of corporations (the "Group") that files a consolidated federal income tax return.

On Date 1, the relevant ownership structure was as follows: Parent owned all of the stock of Sub 1. Sub 1 owned all of the stock of Sub 2. Sub 2 owned all of the stock of Sub 4. Sub 4 owned all of the stock of Sub 5. Sub 5 owned all of the stock of Sub 6. Sub 6 owned all of the stock of Sub 3, then a Country B corporation. Sub 1 was the common parent of the Group, which on Date 1 included Sub 2, Sub 4, Sub 5, and Sub 6.

On Date 1, Sub 6 transferred all of the stock of Sub 3 to Sub 1 in exchange for a note having a principal amount that was less than the fair market value of the Sub 3 stock. Sub 6 recognized gain (the "Deferred Gain") in an amount equal to the excess of the fair market value of the Sub 3 stock over its adjusted basis in the hands of Sub 6 immediately before the transfer. The gain recognized by Sub 6 on the transfer of its Sub 3 stock to Sub 1 was deferred under Treas. Reg. § 1.1502-13 and Treas. Reg. § 1.1502-14T as in effect for the taxable year that included the date of the transfer (i.e., Date 1). (These regulations are hereinafter referred to as "Former Treas. Reg. § 1.1502-13" and "Former Treas. Reg. § 1.1502-14T.")

On Date 2, Parent incorporated Domestic Parent, and Domestic Parent acquired from Parent the stock of Sub 1, and other subsidiaries of Parent, solely in exchange for all of the stock of Domestic Parent. As a result of those transfers, Domestic Parent became the new common parent of the Group. The Group did not terminate for federal income tax purposes as a result of the acquisition because the transfers qualified as a reverse acquisition within the meaning of Treas. Reg. § 1.1502-75(d)(3).

Effective Date 4, Sub 3 became a State A corporation and, in connection therewith, Sub 3 terminated its Country B corporate charter (the "Domestication"). In addition, the a outstanding shares of Sub 3 common stock were cancelled and b shares of new common stock were issued ("Exchange 1"). At the time of the Domestication, Sub 1 held a debenture of Sub 3 (the "Hybrid"), which was (and continues to be) treated as debt for Country B legal and tax purposes, and as nonvoting stock for U.S. federal tax purposes.

On Date 3, the Commissioner and Domestic Parent entered into a closing agreement providing that, if certain conditions were satisfied, (i) the Domestication qualified as a reorganization within the meaning of section 368(a)(1)(F); (ii) the Deferred Gain was not required to be taken into account under Former Treas. Reg. § 1.1502-13 and Former Treas. Reg. § 1.1502-14T as a result of the Domestication; (iii) the Deferred Gain was subject to the rules regarding the restoration of deferred gain under Former Treas. Reg. § 1.1502-13 and Former Treas. Reg. § 1.1502-14T; and (iv) for purposes of applying the gain restoration rules under Former Treas. Reg. § 1.1502-13 to the Deferred Gain, the stock of Sub 3 owned by Sub 1 immediately following the Domestication was treated as the property that was transferred by Sub 6 to Sub 1 on Date 1.

Effective Date 5, Sub 4 merged into Sub 5, with Sub 5 surviving.

Effective Date 6, the b shares of outstanding Sub 3 common stock were cancelled and a shares of Sub 3 common stock were issued ("Exchange 2").

Proposed Transaction

For what are represented to be valid business reasons, Domestic Parent proposes to undergo the following steps:

(i) Sub 2 will merge into Sub 3 with Sub 3 surviving (the "Merger"). No stock of Sub 3 will be issued in the Merger.

(ii) Sub 3 will change its name to Sub 2 (the "Name Change") (for periods after the date of the Name Change, Sub 3 will be referred to as "New Sub 2").

(iii) Sub 1 will surrender the Hybrid to New Sub 2 no later than Date 7; New Sub 2 will not furnish any consideration for the Hybrid (the "Surrender").

(iv) Following the Surrender, but no later than Date 8, the a outstanding shares of New Sub 2 common stock will be cancelled, and b shares of new common stock will be issued (the "Recapitalization").

Representations

Domestic Parent has provided the following representations in connection with the transactions described above:

(a) The Hybrid constitutes stock of Sub 3 under general principles of U.S. tax law.

(b) Exchange 1 and Exchange 2 each qualified as a tax-free recapitalization under section 368(a)(1)(E).

(c) The fair market value of all of the stock of Sub 2 immediately before the Merger will be more than d times the fair market value of all of the stock of Sub 3 immediately before the Merger.

(d) The Merger will qualify as a tax-free reorganization under section 368(a)(1)(A) and/or (a)(1)(D).

(e) The Recapitalization will qualify as a tax-free reorganization under section 368(a)(1)(E).

Rulings

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

(1) The Deferred Gain is not required to be taken into account under Former Treas. Reg. § 1.1502-13 and Former Treas. Reg. § 1.1502-14T as a result of Exchange 1, Exchange 2, the Merger, the Name Change, the Surrender, or the Recapitalization.

(2) Sub 1's basis in the Sub 3 common stock immediately before the Merger will be reflected in specific shares of New Sub 2 common stock owned by Sub 1 immediately after the Merger and the Name Change (the "New Sub 2 common stock Deferred Gain Shares"). Treas. Reg. § 1.358-2(a)(2)(iii).

(3) For purposes of applying the gain restoration rules under Former Treas. Reg. § 1.1502-13 and Former Treas. Reg. § 1.1502-14T to the Deferred Gain following the Merger and the Name Change, the Hybrid and the New Sub 2 common stock Deferred Gain Shares owned by Sub 1 that reflect Sub 1's basis in Sub 3 immediately before the Merger (under Treas. Reg. § 1.358-2(a)(2)(iii)) will be treated as the property that was transferred by Sub 6 to Sub 1 on Date 1. Former Treas. Reg. § 1.1502-13 and Former Treas. Reg. § 1.1502-14T.

(4) Sub 1's basis in the Sub 3 common stock immediately before the Merger and its basis in the Hybrid will be reflected in c share of New Sub 2 common stock owned by Sub 1 immediately after the Recapitalization. Treas. Reg. § 1.358-2(a)(2)(iii).

(5) For purposes of applying the gain restoration rules under Former Treas. Reg. § 1.1502-13 and Former Treas. Reg. § 1.1502-14T to the Deferred Gain following the Merger, the Name Change, the Surrender, and the Recapitalization, the c share of common stock of New Sub 2 owned by Sub 1 that reflects Sub 1's basis in Sub 3 immediately before the Merger (under Treas. Reg. § 1.358-2(a)(2)(iii)) and its basis in the Hybrid will be treated as the property that was transferred by Sub 6 to Sub 1 on Date 1. Former Treas. Reg. § 1.1502-13 and Former Treas. Reg. § 1.1502-14T.

Closing Agreement

We have, accordingly, approved a closing agreement with the taxpayer with respect to those issues affecting its tax liability on the basis set forth above. In pursuance of our practice with respect to such agreements, the agreement contains a stipulation to the effect that any change or modification of applicable statutes enacted subsequent to the date of this agreement and made applicable to the taxable period involved will render the agreement ineffective to the extent that it is dependent upon such statutes.

The closing agreement to be entered into between the Internal Revenue Service, on the one hand, and the Domestic Parent, on the other hand, will provide, among other things:

(a) The Deferred Gain is not taken into account under Former Treas. Reg. § 1.1502-13 and Former Treas. Reg. § 1.1502-14T as a result of Exchange 1, Exchange 2, the Merger, the Name Change, the Surrender, or the Recapitalization;

(b) The Deferred Gain remains subject to the rules regarding the restoration of deferred gain under Former Treas. Reg. § 1.1502-13 and Former Treas. Reg. § 1.1502-14T;

(c) For purposes of applying the gain restoration rules under Former Treas. Reg. § 1.1502-13 and Former Treas. Reg. § 1.1502-14T to the Deferred Gain following the Merger and the Name Change, the Hybrid and the New Sub 2 common stock Deferred Gain shares owned by Sub 1 that reflect Sub 1's basis in Sub 3 immediately before the Merger (under Treas. Reg. § 1.358-2(a)(2)(iii)) are treated as the property that was transferred by Sub 6 to Sub 1 on Date 1;

(d) Sub 1's basis in the Sub 3 common stock immediately before the Merger and its basis in the Hybrid will be reflected in c share of New Sub 2 common stock owned by Sub 1 immediately after the Recapitalization under Treas. Reg. § 1.358-2(a)(2)(iii); and

(e) For purposes of applying the gain restoration rules under Former Treas. Reg. § 1.1502-13 and Former Treas. Reg. § 1.1502-14T to the Deferred Gain following

the Merger, the Name Change, the Surrender, and the Recapitalization, the c share of common stock of New Sub 2 owned by Sub 1 that reflects Sub 1's basis in Sub 3 immediately before the Merger (under Treas. Reg. § 1.358-2(a)(2)(iii)) and its basis in the Hybrid will be treated as the property that was transferred by Sub 6 to Sub 1 on Date 1.

Caveats

No opinion is expressed about the tax treatment of the proposed transactions 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. The taxpayer should attach a copy of this ruling letter to the taxpayer's federal income tax return for the taxable year in which the transactions covered by this letter are 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,

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Marie C. Milnes-Vasquez
Senior Technician Reviewer, Branch 4
Associate Chief Counsel (Corporate)

cc: