

Internal Revenue Service

Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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PLR-137917-12

Date:
February 14, 2013

Legend

Parent =

Sub =

New Parent =

Country A =

State B =

State C =

Business D =

Year 1 =

Year 2 =

Year 3 =

Market E =

Market F =

Dear :

This letter responds to your request for rulings dated August 31, 2012 (together with supplemental information provided on October 2, 16, and December 5, 2012), regarding certain Federal income tax consequences, under the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations thereunder, of a proposed transaction. The information provided in that request 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 a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the ruling request. Verification of the information, representations, and other data may be required as part of the audit process.

SUMMARY OF FACTS

Parent is a publicly traded Country A corporation whose sole asset is all the common stock of Sub. The principal office of Parent is located in State B. All of Parent's employees and a majority of its directors are U.S. citizens or residents.

Sub is a domestic corporation that conducts Business D solely in the United States. As part of its Business D operations, Sub owns significant United States real property interests within the meaning of section 897(c)(1) ("USRPIs") and is therefore a United States real property holding corporation under section 897(c)(2) ("USRPHC"). As such, the stock of Sub held by Parent constitutes a USRPI under section 897(c)(1)(A)(ii).

Beginning in Year 1 shares of Parent were traded on Market E. Market E is established in Country A. Shares of Parent have also been traded in the United States on Market F since Year 2, and in Year 3 Parent delisted its shares from Market E. Years 1, 2, and 3 are not consecutive.

PROPOSED TRANSACTION

Parent has represented that, for valid business reasons, it would like to reincorporate into the United States. Parent will file a certificate of domestication and a certificate of incorporation, as provided under the general corporation laws of State C, establishing Parent as a State C corporation (New Parent). Parent intends that the domestication will qualify as a reorganization under section 368(a)(1)(F).

REPRESENTATIONS

The following representations have been made with respect to the proposed transaction:

- (a) The domestication will, to the best of Parent's knowledge and belief, qualify as a reorganization under section 368(a)(1)(F) in which no gain or loss is recognized to Parent on the constructive transfer of USRPIs to New Parent pursuant to section 897(e) (the "Reorganization").
- (b) Any shareholder of Parent that is a United States person will be required, to the extent provided by Treas. Reg. § 1.367(b)-3, to include in its income as a deemed dividend the all earnings and profits amount (within the meaning of Treas. Reg. § 1.367(b)-2(d)), if any, with respect to its stock in Parent, or recognize gain with respect to its stock in Parent under Treas. Reg. § 1.367(b)-3(c)(2), in connection with the Reorganization.
- (c) The New Parent stock constructively received by Parent in connection with the Reorganization will be stock of a domestic corporation that is a USRPHC and a USRPI.
- (d) Parent has not made an election to be treated as a domestic corporation under section 897(i).
- (e) The conditions of Treas. Reg. § 1.897-5T(c)(4)(ii)(A) will be satisfied with respect to any foreign shareholders of Parent who receive shares of New Parent in the Reorganization, other than those shareholders with respect to whom the shares would have qualified for the regularly traded exception of section 897(c)(3) if Parent had been a domestic corporation.
- (f) The conditions of Treas. Reg. § 1.897-5T(c)(4)(ii)(C), including by reference the filing requirements of Treas. Reg. § 1.897-5T(d)(1)(iii) (as modified by Notice 89-57, 1989-1 C.B. 698), will be satisfied.
- (g) Parent will pay an amount equal to any taxes that section 897 would have imposed upon all persons who had disposed of interests in Parent (or a corporation from which such assets were acquired in a transaction described in section 381), as if it were a domestic corporation on the date of each such disposition, during the period beginning on the date that is 10 years prior to the date of the Reorganization and ending on the date of the Reorganization. This amount will include any interest, as determined under section 6621, that would have accrued had tax actually been due with respect to the disposition.

LAW

Section 897(d)(1) and Treas. Reg. § 1.897-5T(c)(1) generally require that, if a foreign corporation makes a distribution (including a distribution in liquidation or redemption) of a USRPI to a shareholder, then the foreign corporation must recognize any gain (but not loss) on the distribution. The gain recognized is the excess of the fair market value of the USRPI at the time of the distribution over its adjusted basis. Treasury Regulation section 1.897-5T(c)(4) generally provides that a foreign corporation must recognize gain upon a distribution of stock of a USRPHC to its shareholders in connection with a reorganization. Pursuant to the exception provided in section 897(d)(2)(A), gain is not required to be recognized by the foreign corporation if the requirements of Treas. Reg. § 1.897-5T(c)(4)(ii)(A) through (C) are satisfied.

Pursuant to Notice 89-85, 1989-2 C.B. 403, a foreign corporation will not be required to recognize gain on the distribution of the stock of a USRPHC under Treas. Reg. § 1.897-5T(c)(4)(i) if the foreign corporation pays an amount equal to any taxes that section 897 would have imposed on all persons who had disposed of interests in the foreign corporation (or a corporation from which such assets were acquired in a transaction described in section 381) after June 18, 1980, as if it were a domestic corporation on the date of each of such dispositions (the “toll charge”), and if the conditions of current Treas. Reg. § 1.897-5T(c)(4)(ii)(A) and (C) are met. Notice 2006-46, 2006-1 C.B. 1044, amended this requirement to generally provide a 10-year look back period for computing the toll charge.

RULINGS

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

- (1) Parent will recognize no gain or loss on the transfer of the Sub stock to New Parent in exchange for New Parent stock under sections 361(a) and 897(e) and Treas. Reg. § 1.897-6T(a)(1)).
- (2) Parent will recognize no gain or loss on the distribution of the New Parent stock to its shareholders under sections 361(c) and 897(d)(1) and Treas. Reg. § 1.897-5T(c)(4)(i), by reason of satisfying the exception provided in Notice 89-85 (as modified by Notice 2006-46).
- (3) Parent will be considered to have met the requirement of Treas. Reg. § 1.897-5T(c)(4)(ii)(A) on the distribution of the New Parent stock to a foreign shareholder under section 897(d) if the shares of Parent stock held by the foreign shareholder immediately before the reorganization would have qualified for the regularly traded exception of section 897(c)(3) if

Parent had been a domestic corporation and the New Parent shares of the foreign shareholder will qualify for the exception after the reorganization.

- (4) The requirement of Treas. Reg. § 1.897-9T(d)(3) does not apply to Parent for purposes of computing the toll charge.

CAVEATS

Except as expressly provided herein, no opinion is expressed about the tax treatment of the Reorganization or any other transaction or item mentioned in this letter under other provisions of the Code or regulations, or about the tax treatment of any conditions existing at the time of, or effects resulting from, the foregoing that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

- (i) Whether the Reorganization qualifies as a reorganization within the meaning of section 368(a)(1)(F) of the Code.
- (ii) Whether Parent has properly computed the toll charge as required under Notice 89-85 and Notice 2006-46, including whether it has correctly determined the extent to which foreign persons disposing of interests in Parent during the 10-year look back period provided under Notice 2006-46 would not have been subject to tax under section 897 by reason of the stock of Parent being regularly traded on an established securities market during this period under section 897(c)(3), Treas. Reg. § 1.897-1(c)(2)(iii), Treas. Reg. § 1.897-1(m), and Treas. Reg. § 1.897-9T(d).
- (iii) Whether Parent is a PFIC within the meaning of section 1297(a). If it is determined that Parent is a PFIC, no opinion is expressed with respect to the application of sections 1291 through 1298 to the Reorganization. In particular, in a transaction in which gain is not otherwise recognized, regulations under section 1291(f) may require gain recognition notwithstanding any other provisions of the Code.
- (iv) The withholding responsibilities of Parent under section 1445 and the regulations thereunder.
- (v) To the extent not otherwise specifically ruled upon above, any other consequence under section 367 on any transaction in this letter ruling.

PROCEDURAL STATEMENTS

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.

A copy of this ruling letter must be attached to any income tax return to which it is relevant. Alternatively, any taxpayers filing their tax returns electronically may satisfy this requirement by attaching a statement to the returns that provides the date and control number of this letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

David B. Bailey,
Senior Technical Reviewer, Branch 4
Office of Associate Chief Counsel
(International)

Enclosure:
Copy for 6110 purposes