

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

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Refer Reply To:  
CC:CORP:4  
PLR-122149-18  
Date: June 5, 2019

Legend

Parent =

LLC 1 =

LLC 2 =

Sub 1 =

Sub 2 =

FSub 1 =

FSub 2 =

Controlled =

State A =

State B =

Country A =

Country B =

Year =

Date 1 =

Date 2 =

Intangible Property =

Dear :

This letter ruling responds to your authorized representative's letter dated July 11, 2018 and supplemental dated May 6, 2019, requesting rulings under Section 1504 and Treas. Reg. § 1.1502-13. The material information submitted in the request is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

## **FACTS**

Parent, a State A corporation, is the parent of a worldwide group of corporations and the common parent of a consolidated group (within the meaning of Treas. Reg. § 1.1502-1(h)) (the "Parent Group"). Parent owns all the interests in LLC 1, a State B limited

liability company treated as a disregarded entity, and all of the common stock of Sub 1, a State A corporation. Sub 1 owns all of the stock of Sub 2, a State B corporation. Sub 2 owns, through two Country A entities treated as disregarded entities, all of the stock of FSub 1, a Country A entity treated as a corporation. FSub 1 owns, indirectly through a Country A entity treated as a disregarded entity, all the stock of FSub 2, a Country B corporation. FSub 2 owns all of the interests in LLC 2, a State B limited liability company treated as a disregarded entity. On Date 1, FSub 2 formed Controlled, a State B corporation.

Pursuant to a prior restructuring following an acquisition of an unrelated public company in Year, Parent caused LLC 2, which held the rights to the Intangible Property, to be transferred to FSub 2 in a transaction that was intended to qualify as a § 368(a)(1)(D) reorganization (the "Outbound Transfer"). Section 367(d) applied to the Outbound Transfer of the Intangible Property and resulted in a stream of deemed annual payments by FSub 2 to Parent (the "Deemed Royalty").

### **PROPOSED TRANSACTION**

Parent proposes to engage in the following Proposed Transactions in Date 2:

- (i) FSub 2, through LLC 2, will transfer the Intangible Property to Controlled (the "Contribution").
- (ii) Parent will transfer all of its interests in LLC 1 to Controlled in exchange for Controlled voting stock representing 20% or less of the total combined voting power of all Controlled voting stock.
- (iii) FSub 2 will distribute all of its Controlled stock (representing at least 80% of the total combined voting power of all Controlled voting stock) up the ownership chain to FSub 1 (the "First Distribution").
- (iv) FSub 1 will distribute all of its Controlled stock (representing at least 80% of the total combined voting power of all Controlled voting stock) up the ownership chain to Sub 2 (the "Second Distribution").
- (v) Parent will transfer all of its Controlled stock to Sub 1 in exchange for additional Sub 1 stock.
- (vi) Sub 1 will contribute all of its Controlled stock to Sub 2.

After Step (vi), the Intangible Property will be held by Controlled as a member of Parent's U.S. consolidated group.

## STATEMENT OF LAW

Section 1.367(d)-1T(c)(2) provides that when the recipient of a deemed payment under § 367(d) includes the deemed payment into income, the payor reduces its earnings and profits by the amount of the deemed payment. However, the payor is allowed no other adjustments to its earnings and profits, basis, or gross income.

Section 1.1502-13(c)(6) provides that under § 1.1502-13(c)(1)(i), S's intercompany item might be redetermined to be excluded from gross income or treated as a noncapital, nondeductible amount. However, S's intercompany income or gain is redetermined to be excluded from gross income only to the extent §§ 1.1502-13(c)(6)(ii)(A), (B), (C), or (D) applies.

Section 1.1502-13(c)(6)(ii)(D) provides that, under certain circumstances, the Commissioner may determine that treating S's intercompany item as excluded from gross income is consistent with the purposes of § 1.1502-13 and other applicable provisions of the Internal Revenue Code, regulations, and published guidance. One such circumstance may occur if the corresponding item relevant to that intercompany item of income is permanently disallowed.

## REPRESENTATIONS

Parent has made the following representations with respect to this letter ruling:

- (a) Following the proposed transactions, Controlled will join Parent's U.S. consolidated group and will join in the filing of the Parent Group's consolidated tax return.
- (b) The Contribution together with the First Distribution is intended to qualify under § 368(a)(1)(D) and § 355.
- (c) The Second Distribution is intended to qualify under § 355.

## RULINGS

Based solely on the information and representations made, and conditioned upon the execution of a closing agreement, we rule as follows:

- (1) The Deemed Royalty is redetermined to be excluded from gross income under Treas. Reg. § 1.1502-13(c)(6)(ii)(D). Accordingly, the Deemed Royalty is redetermined to be excluded from Parent's gross income for each of the Parent

Group's consolidated return years for the remaining useful life of the Intangible Property.

- (2) For purposes of determining the effect of the Deemed Royalty, under Treas. Reg. § 1.1502-13(c)(1):
- a. Parent's intercompany item from the deemed receipt of the Deemed Royalty will not be: (i) taxable income, (ii) tax exempt income, or (iii) a distribution with respect to stock, within the meaning of Treas. Reg. § 1.1502-32(b)(2); or taken into account for purposes of earnings and profits under Treas. Reg. § 1.1502-33;
  - b. Controlled's corresponding item from the deemed payment of the Deemed Royalty will not be: a non-capital, non-deductible amount, within the meaning of Treas. Reg. § 1.1502-32(b)(2); or taken into account for purposes of earnings and profits under Treas. Reg. § 1.1502-33; and
  - c. The Deemed Royalty will not be subject to Treas. Reg. § 1.367(d)-1T(g)(1).
- (3) Section 1504(a)(3) will not prevent Controlled from being eligible to be included in the Parent Group's consolidated U.S. federal income tax return immediately on completion of Step (iv) of the Proposed Transactions.

### **CLOSING AGREEMENT**

We will, accordingly, approve a closing agreement with the taxpayer with respect to those issues affecting its tax liability on the basis set forth above. The necessary closing agreement for Parent has been prepared in triplicate and is enclosed. 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.

### **CAVEATS**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the proposed transaction under any provision of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the proposed transaction that is not specifically covered by the above rulings. Specifically, we express no opinion on whether the Proposed Transaction qualifies under §§ 368(a)(1)(D) and 355. In addition, we express no opinion with

respect to the application of § 1.1502-13(c)(6)(ii)(D) to items subject to any other provision of the Code and regulations.

### **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 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.

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,

William W. Burhop  
Senior Technician Reviewer, Branch 5  
Office of Associate Chief Counsel  
(Corporate)