Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:CORP:3-PLR-103008-00
Date:
June 7, 2000

US Parent =

Sub =

Foreign Parent =

Foreign Sales Sub =

New Parent =

New Parent Sales =

New Parent Manufacturing =

Foreign Sub 1 =

Foreign Sub 2 =

State Y =

Jurisdiction =

Country A =

Country B =

Country C =

Country D =

Country E =

Country F =

Date 1 =

Date 2 =

Business X =

$$ =

$ =

z =

This letter is in reply to a letter from you dated January 31, 2000, requesting rulings about the federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated April 28, May 11, May 26, and June 5, 2000. The information submitted is summarized below.

US Parent is a domestic corporation and parent of an affiliated group of corporations that files a consolidated income tax return. Included in the group is US Parent's wholly-owned domestic subsidiary, Sub. US Parent also owns Foreign Sales Sub, a foreign sales corporation ("FSC") located in Jurisdiction which has been inactive for the past three years. US Parent has branch sales and distributions centers in Country A, Country B, Country C, and Country D, that are disregarded as separate entities for federal income tax purposes. The Country C entity was a controlled foreign

corporation until Date 1 when a “check the box” election was filed. On Date 2, US Parent acquired Foreign Sub 1, a Country E corporation and its wholly-owned subsidiary, Foreign Sub 2, to provide sales and distribution services. US Parent is wholly owned by Foreign Parent, a Country F corporation. Foreign Parent is not subject to tax in the U.S. and does not have any U.S. operations. US Parent is engaged in Business X.

US Parent proposes to restructure its existing business operations and to adjust its U.S. financial statements to reduce the value of its goodwill from $$ to $ to conform with the findings of a recent extensive valuation. Foreign Parent proposes to devalue its investment in US Parent for Country F financial and income tax purposes to reflect the reduced value of the goodwill. In order to do this an intervening event is required for Country F tax purposes. Accordingly, US Parent has proposed the transaction set forth below:

(i) US Parent will form a new corporation, New Parent, as a State Y corporation. and transfer assets to New Parent in exchange for all of New Parent stock and the assumption of US Parent’s liabilities. US Parent will cease all business activities.

(ii) New Parent will form two wholly owned single member limited liability companies (LLCs) under State Y law: New Parent Sales and New Parent Marketing. The LLCs will perform Business X activities for New Parent. The LLCs will receive assets from New Parent (or Parent may directly transfer assets to the LLCs). New Parent will not make an election under § 301.7701-3 to treat New Parent Sales or New Parent Manufacturing as an association taxable as a corporation.

(iii) US Parent will sell all of the New Parent stock to Foreign Parent for cash equal to the fair market value of the New Parent stock received.

(iv) Within z months of the consummation of step (iii), above, and as part of an overall plan of reorganization, US Parent will liquidate and distribute its remaining assets to Foreign Parent. This step will occur in the same tax year as step (iii), above.

The taxpayer has made the following representations in connection with the proposed transaction:

(a) Foreign Parent is not a passive foreign investment company (“PFIC”) within the meaning of § 1297(a) or regulations to be promulgated thereunder.

(b) No loss of any US Parent branch entity has been utilized to offset the income of any other person in any foreign country either on a current basis or by way of carryback or carryforward.

(c) Foreign Sales Sub is a subsidiary of US Parent that is an FSC as defined in § 922, and it will continue to be a FSC after the proposed transaction.

(d) Neither US Parent nor Sub has been or will be a United States real property holding corporation ("USRPHC"), as defined in § 897(c)(2), at any time during the 5-year period ending on the date of the transaction, and neither US Parent, New Parent nor Sub will be a USRPHC immediately after the transaction.

(e) Foreign Sub 1 and Foreign Sub 2 are controlled foreign subsidiaries ("CFC's") as defined in § 957(a) and they will continue to be CFC's after the transaction. The taxpayer plans to convert both CFC's to branches (check the box disregarded entities) as soon as it can be accomplished pursuant to Country E law.

(f) No foreign tax credit will be available to any entity for U.S. federal income tax purposes in connection with the proposed transaction which would not otherwise have been available to US Parent.

(g) The cash received by Parent from Foreign Parent described in step (iii), above, will not be pledged, used in a trade or business, or earn income from the time it is received by Parent in step (iii), above, to the time Parent is liquidated in step (iv), above.

(h) To the best of US Parent's knowledge and belief, but for the resolution of the requested ruling regarding the significant subissue, below, the transaction will qualify under § 368(a)(1)(F).

Pursuant to § 3.01(27) of Rev. Proc. 2000-3, 2000-1 I.R.B. 103, 107, the Internal Revenue Service will not rule as to whether a proposed transaction qualifies under § 368(a)(1)(F). However, the Service has the discretion to rule on significant subissues that must be resolved to determine whether a transaction qualifies under § 368(a)(1)(F).

Based solely on the information submitted and the representations made, we hold as follows:

(1) For federal income tax purposes, the flow of cash from Foreign Parent to US Parent in step (iii), above, and its return from US Parent to Foreign Parent in

step (iv), above, will be treated as a circular flow of cash disregarded for Federal income tax purposes. The potential time delay of up to z months between step (iii) and (iv) will not effect the tax treatment as a circular flow of cash (*See* Rev. Rul. 83-142, 1983-2 C.B. 68, and Rev. Rul. 78-397, 1978-2 C.B. 150).

(2) The circular flow of cash and delay of z months from the date of US Parent's transfer of its assets to New Parent and US Parent's dissolution, will not disqualify the transaction from qualifying as a reorganization under § 368(a)(1)(F).

(3) The earnings and profits of all CFC's transferred from US Parent to New Parent, to the extent attributable to such stock under § 1.1248-2 or § 1.1248-3 which were accumulated in taxable years of such CFC's beginning after December 31, 1962, during the period US Parent held such foreign corporations (or was considered as holding such stock by application of § 1223) while such corporations were CFC's will be attributable to such stock held by New Parent. § 1.1248-1(a).

Except as specifically ruled above, no opinion is expressed concerning the federal income tax consequences of the transaction described above. Specifically, no opinion is expressed regarding whether the transaction described above qualifies as a reorganization under § 368(a)(1)(F), or whether any or all of the above-referenced foreign corporations are passive foreign investment companies (within the meaning of § 1297(a) and the regulations to be promulgated thereunder). If it is determined that any or all of the above-described foreign corporations are passive foreign corporations, no opinion is expressed with respect to the application of §§ 1291 through 1298 to the proposed transaction. In particular, in a transaction in which gain is not otherwise recognized, regulations under §1291(f) may require gain recognition notwithstanding any other provision of the Code.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling letter have not yet been adopted. Therefore, this ruling letter may be revoked or modified upon the issuance of temporary or final regulations (or a notice with respect to their future issuance).

The rulings contained in this letter are predicated upon the 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 materials submitted in support of the request for a ruling. Verification of the information, representations, and other data may be required as part of the audit process. See § 12.04 of Rev. Proc. 2000-1, 2000-1 I.R.B. 4, 46, which discusses in

greater detail the revocation or modification of ruling letters. However, when the criteria in §12.05 of Rev. Proc. 2000-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

This ruling is directed only to the taxpayers on whose behalf it was requested. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Each affected taxpayer should attach a copy of this letter to its federal income tax return for the taxable year in which the transaction covered by this ruling letter is consummated.

In accordance with the power of attorney on file this office, a copy of this letter is being sent to the taxpayer.

Sincerely yours,

Assistant Chief Counsel (Corporate)

By Victor L. Penico

Victor L. Penico
Chief, Branch 3