Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:CORP:B05 - PLR-112546-00
Date:
October 26, 2000

In Re:

LEGEND:

Holding =

DSub 1 =

DSub 2 =

DSub 3 =

FSub 1 =

FSub 2 =

FSub 3 =

Business A =

State A =

State B =

Country X =

Date A =

Date B =

Association =

This letter responds to your letter dated June 21, 2000, in which rulings were requested as to the federal income tax consequences of a proposed transaction. The information submitted in that request and in subsequent correspondence is substantially as set forth below.

Holding is a State A holding company that is primarily engaged in Business A in the United States and abroad through its subsidiaries. Holding wholly owns DSub 1, a State B corporation, DSub 2, a State A corporation and FSub 1, a Country X corporation. DSub 1 wholly owns DSub 3, a State B corporation, and DSub 3 wholly owns FSub 2, a Country X corporation. FSub1 wholly owns FSub 3, a Country X corporation. FSub 1 has one class of voting common outstanding. Neither FSub 2 nor FSub 3 are subsidiaries to which § 1504(d) of the Internal Revenue Code applies.

In Date A, the Association, a professional association governing corporations engaged in Business A, established a new accounting rule. The Association rules, effective Date B, will significantly impair the ability of DSub 3 and DSub 1 to engage in Business A practices so long as either company owns FSub 2. Accordingly, the following transaction is proposed:

(i) Holding will contribute 100 percent of the stock of DSub1 to DSub 2 (the “First Contribution”).

(ii) Holding will contribute 100 percent of the stock of FSub 1 to DSub 2 (the “Second Contribution”).

(iii) DSub 3 will distribute 100 percent of the stock FSub 2 to DSub 1 (the “First Spin”).

(iv) DSub 1 will distribute 100 percent of the stock of FSub 2 received in the First Spin to DSub 2 (the “Second Spin”).

(v) DSub 2 will contribute 100 percent of the stock of FSub 2 received in the Second Spin to FSub 1 (the “Third Contribution”).

(vi) FSub 2 will be combined with FSub 3 under Country X law (the "Amalgamation").

Financial information has been received which indicates that DSub 3 and FSub 2 have each had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past 5 years.

The following representations are made in connection with the First Spin:

(a) Any indebtedness owed by FSub 2 to DSub 3 after the distribution of FSub 2 stock will not constitute stock or securities.

(b) No part of the consideration to be distributed by DSub 3 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of DSub 3.

(c) The 5 years of financial information submitted on behalf of DSub 3 is representative of DSub 3's present operation, and with regard to such corporation there have been no substantial operational changes since the date of the last financial statements submitted.

(d) The 5 years of financial information submitted on behalf of FSub 2 is representative of FSub 2's present operation, and with regard to FSub 2, there have been no substantial operational changes since the date of the last financial statements submitted.

(e) Following the first spin, DSub 3 and FSub 2 will each continue the active conduct of its business, independently and with its respective separate employees.

(f) The distribution of the stock of FSub 2 is carried out, and is motivated, in whole or substantial part, to mitigate the adverse effect of a new Association accounting rule.

(g) There is no plan or intention by the shareholder or security holders of DSub 3 to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, either DSub 3 or FSub 2 after the transaction, except as described above in step (iv) (the Second Spin).

(h) There is no plan or intention by either DSub 3 or FSub 2, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the transaction, other than through stock purchases meeting the requirements of section 4.05(1)(b) of Rev. Proc. 96-30.

(i) There is no plan or intention to liquidate FSub2 or DSub 3, or to merge FSub 2 or DSub 3 with other corporations, or to sell or otherwise dispose of the assets of FSub2 or DSub 3 after the distribution described above, except in the ordinary course of business and in step (vi) (the Amalgamation).

(j) Immediately after the First Spin, no person will hold disqualified stock (within the meaning of § 355(d) in DSub 3 or FSub 2 possessing 50 percent or more of the total combined voting power of all classes of stock of either DSub 3 or FSub 2 or stock possessing 50 percent or more of the total value of all classes of stock of either DSub 3 or FSub 2.

(k) No intercorporate debt will exist between DSub 3 and FSub 2 at the time of, or subsequent to, the distribution of the FSub 2 stock other than for intercompany payables and receivables between DSub 3 and FSub 2 related to the provision of intercompany services.

(l) Immediately before the distribution, items of income, gain, loss, deduction and credit will be taken into account as required by the applicable intercompany transaction regulations to the extent they apply. (See § 1.1502-13 and of the Income Tax Regulations and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597).

(m) Payments made in connection with all continuing transactions, if any, between DSub 3 and FSub 2, will be fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(n) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(o) The First Spin will not be part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire directly or indirectly stock possessing 50 percent or more of the total combined voting power of all classes of stock of either DSub 3 or FSub 2, or stock possessing 50 percent or more of the total value of all classes of stock of either DSub 3 or FSub 2.

The following representations are made in connection with the Second Spin:

(p) No part of the consideration to be distributed by DSub 1 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of DSub 1.

(q) The 5 years of financial information submitted on behalf of DSub 1 is representative of DSub 1's present operation, and with regard to such corporation there have been no substantial operational changes since the date of the last financial statements submitted.

(r) The 5 years of financial information submitted on behalf of FSub 2 is representative of FSub 2's present operation, and with regard to FSub 2, there have been no substantial operational changes since the date of the last financial statements submitted.

(s) Immediately after the Second Spin, at least 90 percent of the fair market value of the gross assets of DSub 1 will consist of the stock and securities of controlled corporations that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(t) Following the Second Spin, DSub 1 (indirectly through DSub 3) and FSub 2 will each continue the active conduct of its business, independently and with its respective separate employees.

(u) The distribution of the stock of FSub 2 is carried out, and is motivated, in whole or substantial part, to mitigate the adverse effect of a new Association accounting rule.

(v) There is no plan or intention by the shareholder or security holders of DSub 1 to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, either DSub 1 or FSub 2 after the transaction, except as described above in step (v) (the Third Contribution).

(w) There is no plan or intention by either DSub 1 or FSub 2, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the transaction, other than through stock purchases meeting the requirements of section 4.05(1)(b) of Rev. Proc. 96-30.

(x) There is no plan or intention to liquidate DSub 1, or to merge DSub 1 with other corporations, or to sell or otherwise dispose of the assets of DSub 1 after the distribution described above, except in the ordinary course of business and in the Contribution and the Amalgamation.

(y) Immediately after the Second Spin, no person will hold disqualified stock (within the meaning of § 355(d)) in DSub 1 or FSub 2 possessing 50 percent or more of the total combined voting power of all classes of stock of either DSub 1 or FSub 2, or stock possessing 50 percent or more of the total value of all classes of stock of either DSub 1 or FSub 2.

(z) No intercorporate debt will exist between DSub 1 and FSub 2 at the time of, or subsequent to, the distribution of the FSub 2 stock.

(aa) Immediately before the distribution, items of income, gain, loss, deduction and credit will be taken into account as required by the applicable intercompany transaction regulations to the extent they apply. (See § 1.1502-13 and of the Income Tax Regulations and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597).

(bb) Payments made in connection with all continuing transactions, if any, between DSub 1 and FSub 2, will be fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(cc) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(dd) The Second Spin will not be part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire directly or indirectly stock possessing 50 percent or more of the total combined voting power of all classes of stock of either DSub 1 or FSub 2, or stock possessing 50 percent or more of the total value of all classes of stock of either DSub 1 or FSub 2.

The following representations are made with respect to international aspects of the federal income tax consequences of the proposed transaction:

(ee) With regard to the Second Contribution, FSub 1 will be controlled foreign corporation ("CFC"), within the meaning of § 957(a), at all times during the five-year period ending on the date of the Second Contribution, and FSub 1 will be a CFC immediately thereafter.

(ff) With regard to the First Spin, FSub 2 will be a CFC at all times during the five-year period immediately preceding the date of the First Spin and FSub 2 will be a CFC immediately thereafter.

(gg) With regard to the First Spin, with respect to FSub 2, each of DSub 3 and DSub 1 will be a Section 1248 shareholder, within the meaning of § 1.367-2(b), on the date immediately preceding the First Spin, and DSub 1 will be a Section 1248 shareholder immediately thereafter.

(hh) With regard to the First Spin, FSub 2 will not be a passive foreign investment corporation ("PFIC"), within the meaning of § 1297(a), on the date immediately preceding the First Spin, and FSub 2 will not be a PFIC

immediately thereafter.

(ii) With regard to the Second Spin, FSub 2 will be a CFC at all times during the five-year period immediately preceding the date of the Second Spin and FSub 2 will be a CFC immediately thereafter.

(jj) With regard to the Second Spin, with respect to FSub 2, each of DSub 1 and DSub 2 will be a Section 1248 shareholder on the date immediately preceding the Second Spin, and DSub 2 will be a Section 1248 shareholder immediately thereafter.

(kk) With regard to the Second Spin, FSub 2 will not be a PFIC on the date immediately preceding the Second Spin, and FSub 2 will not be a PFIC immediately thereafter.

(ll) In connection with the First and Second Spin, there will be no transfers of property under § 367(a).

(mm) In connection with both distributions, there will be no transfers of intangible property under § 367(d).

(nn) There will be no entities involved in either distribution that will be treated as disregarded entities for U.S. federal income tax purposes or were treated as “hybrids” or “reverse hybrids” for U.S. federal income tax and Country X income tax purposes.

(oo) Each of DSub 3 and DSub 1 will comply with the identification and certification provisions under § 1.367(e)-1(d)(2) in order to establish that DSub 1 and DSub 2, respectively, are qualifying U.S. persons for purposes of applying § 1.367(e)-1.

(pp) Each of DSub 3 and DSub 1 will comply with the reporting procedures established under § 1.367(b)-5(b)(3) in order to establish that DSub 1 and DSub 2, respectively, are corporations for purposes of applying § 1.367(b)-5(b)(1)(i).

(qq) DSub 2 will comply with the notice requirements of § 1.367(b)-1(c) with respect to the Third Contribution and the Amalgamation.

(rr) DSub 2 will enter into a gain recognition agreement (the “GRA”) pursuant to § 1.367(a)-8 with respect to the Third Contribution and the Amalgamation. The GRA will take into account the Amalgamation so that, pursuant to § 1.367(a)-8(g)(2)(iii), DSub 2 will agree to recognize gain attributable to the Third Contribution if FSub 1 disposes (directly or

indirectly) of its interest in FSub 3 before the end of the fifth full taxable year following the date of the Third Contribution.

Based solely on the information submitted and on the representations set forth above, it is held as follows:

(1) The earnings and profits of FSub 1, to the extent attributable to such stock under §§ 1.1248-2 or 1.1248-3 (whichever is applicable), which were accumulated in taxable years of such corporation beginning after December 31, 1962 and during the period in which FSub 1 was a controlled foreign corporation, shall be attributable to such stock held by DSub 2 (§ 1.1248-1(a)(1)).

(2) No gain or loss will be recognized by DSub 3 on the distribution of its stock in FSub 2 (§ 355(c); § 1.367(b)-5(b)(1)(i)).

(3) No gain or loss will be recognized by (and no amount shall be included in the income of) DSub 1 upon the receipt of the FSub 2 stock (§ 355(a)(1)).

(4) The basis of the FSub 2 stock in the hands of DSub 1 immediately after the First Spin shall be the lesser of the adjusted basis of that stock in the hands of DSub 3 or the substituted basis allocated to FSub 2's stock in accordance with § 1.358-2(a)(2) (§ 1248(f)(2); Notice 87-64, 1987-2 C.B. 375).

(5) The holding period of the FSub 2 stock received by DSub 1 shall be the greater of the holding period of the FSub 2 stock in the hands of DSub 3 or the holding period of the DSub 3 stock in the hands of DSub 1 (§ 1248(f)(2); Notice 87-64, 1987-2 C.B. 375).

(6) Section 1248(f)(1) shall not be applicable to the distribution by DSub 3 of the FSub 2 stock to DSub 1 (§ 1248(f)(2); Notice 87-64, 1987-2 C.B. 375).

(7) As provided in § 312(h), proper allocation of earnings and profits between DSub 3 and FSub 2 will be made under § 1.312-10(b).

(8) The Second Spin, the Third Contribution, and the Amalgamation will not affect the validity of rulings 2 through 7.

(9) No gain or loss will be recognized by DSub 1 on the distribution of all of its stock in FSub 2 (§ 355(c); § 1.367(b)-5(b)(1)(i)).

(10) No gain or loss will be recognized by (and no amount shall be included in the income of) DSub 2 upon the receipt of the FSub 2 stock (§ 355(a)(1)).

(11) The basis of the FSub 2 stock in the hands of DSub 2 immediately after the Second Spin shall be the lesser of the adjusted basis of that stock in the hands of DSub 1 or the substituted basis allocated to FSub 2's stock in accordance with § 1.358-2(a)(2) (§ 1248(f)(2); Notice 87-64, 1987-2 C.B. 375).

(12) The holding period of the FSub 2 stock received by DSub 2 will be the greater of the holding period of the FSub 2 stock in the hands of DSub 1 or the holding period of the DSub 1 stock in the hands of DSub 2 (§ 1248(f)(2); Notice 87-64, 1987-2 C.B 375).

(13) Section 1248(f)(1) will not be applicable to the distribution by DSub 1 of the FSub 2 stock to DSub 2 (§ 1248(f)(2); Notice 87-64, 1987-2 C.B. 375).

(14) As provided in § 312(h), proper allocation of earnings and profits between DSub 1 and FSub 2 will be made under § 1.312-10(b).

(15) The Third Contribution and Amalgamation will not affect the validity of rulings 9 through 14.

We express no opinion about the tax treatment of the proposed transaction under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction that are not specifically covered by the above rulings. In particular, we express no opinion regarding the income tax consequences of the First Contribution. In addition, no opinion is expressed regarding the extent to which § 367(a) and (b) applies to the Third Contribution followed by the Amalgamation. Finally, no opinion is expressed whether any or all of the above-referenced foreign corporations are PFIC. If it is determined that any or all of the above-described foreign corporations are PFIC, no opinion is expressed with respect to the application of §§ 1291 through 1298 to the proposed transactions. 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 (including regulations under § 358(g)) have not yet been adopted. Therefore, this ruling will be modified or revoked if adopted temporary or final regulations are inconsistent with any conclusions in the ruling. See section 12.04 of Rev. Proc. 2000-1, 2000-1 I.R.B. 46. However, when the criteria in section 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 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 should be attached to the federal income tax return or the taxpayers involved for the taxable year in which the transaction covered by this ruling letter is consummated.

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 yours,
Associate Chief Counsel (Corporate)

By: Debra Carlisle
Debra Carlisle
Chief, Branch 5