Internal Revenue Service

Department of the Treasury

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Date:
March 14, 2001

In re:

TSub 1 =

TSub 2 =

TSub 3 =

Parent =

Acquisition Sub =

ASub 1 =

ASub 2 =

ASub 3 =

ASub 4 =

ASub 5 =

B =

Business A =

X Asset =

Y Asset =

Government Agency =

Country X =

State A =

Date A =

Class X Shares =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

o =

p =

q =

r =

s =

This letter is in reply to your letter dated October 12, 2000 requesting rulings about the federal income tax consequences of a proposed transaction. The information submitted is summarized below.

On Date A, Acquisition Sub, a State A corporation, and its parent corporation, Parent, entered into agreements and plans of merger with each of TSub 1, TSub 2, and TSub 3, pursuant to which TSub 1, TSub 2 and TSub 3 would merge with and into Acquisition Sub in three successive mergers. Each merger is intended to qualify as a reorganization within the meaning of §§ 368(a)(1)(A) and 368(a)(2)(D). Following the mergers, virtually all of the target corporations' operating assets and liabilities would be transferred, held, and managed in the manner set forth below, in order to comply with the requirements of Government Agency.

TSub 1, a State A corporation, is the common parent of an affiliated group of corporations filing a consolidated Federal income tax return. TSub 1 has three classes of stock outstanding: two classes of common stock and convertible preferred stock. One class of common and the preferred stock are publicly traded. The principal business of TSub 1 and its subsidiaries is Business A. TSub 2, a State A corporation, is a member of the affiliated group whose parent is TSub 1. TSub 2 has two classes of voting common stock outstanding, which are identical in all respects except voting power. TSub 1 owns an amount of TSub 2 stock constituting a percent of the value and approximately b percent of the voting power of TSub 2. The remainder of TSub 2's stock is publicly traded.

TSub 3, a State A corporation, is the common parent of an affiliated group filing a consolidated Federal income tax return. TSub 3 has only one class of stock outstanding, which is voting common stock, of which TSub 2 owns approximately c percent. The remainder of TSub 3's common stock is widely held and publicly traded. The principal business of TSub 3 and its wholly owned subsidiaries is also Business A.

Parent, a Country X corporation, is a holding company that conducts all of its activities through subsidiaries and affiliates. Acquisition Sub has only common stock outstanding, which is voting common stock. Parent owns approximately d percent of such common stock, and three subsidiaries of Parent own the remainder. Through subsidiaries, Acquisition Sub engages in all of Parent's businesses conducted in the United States, including Business A.

ASub 1 is a member of the affiliated group whose parent is Acquisition Sub. ASub 1 has two classes of stock outstanding: voting common stock and non-voting

preferred stock. Acquisition Sub owns approximately e percent of the voting common stock and approximately f percent of the preferred stock. ASub 1 owns l percent of the outstanding stock of ASub 2, a member of the affiliated group whose parent is Acquisition Sub.

ASub 3 is a member of the affiliated group whose parent is Acquisition Sub. ASub 3 has two classes of stock outstanding, which are both voting common stock (Class A and Class B). Each share of Class A stock has q vote, and each share of Class B stock has r votes. An indirect subsidiary of Acquisition Sub, ASub 2, owns approximately g percent of the outstanding shares of Class A stock and all of the shares of Class B stock, resulting in an ownership of approximately h percent of the voting power and approximately i percent of the value of the Class A stock and the Class B stock in the aggregate. Shares of Class A stock which currently represent j percent of the total voting power and k percent of the value are widely held and publicly traded.

ASub 4 is the common parent corporation of an affiliated group filing a consolidated Federal income tax return. ASub 4 has two classes of stock outstanding: voting common and super-voting preferred. B, a United States citizen, owns l percent of the super-voting preferred, constituting m percent of the voting power and s of the value of ASub 4. ASub 3 owns all of the common stock of ASub4. ASub 4, through its subsidiaries, engages in Business A.

The parties intend to undertake the following transactions:

(i) Pursuant to an agreement and plan of merger among TSub 1, Parent, Acquisition Sub, and ASub 4, dated as of Date A (the "TSub 1 Merger Agreement"), TSub 1 will merge with and into Acquisition Sub, and all of the capital stock of TSub 1 will be converted into the right to receive a combination of cash and American Depositary Shares of Parent (the "TSub 1 Merger"). Each American Depositary Share of Parent (a "Parent Share") represents n Class X Shares of Parent.

(ii) Pursuant to an agreement and plan of merger among TSub 2, Parent, Acquisition Sub, and ASub 4, dated as of Date A (the "TSub 2 Merger Agreement"), TSub 2 will merge with and into Acquisition Sub, and all of the capital stock of TSub 2 (other than TSub 2 stock acquired by Acquisition Sub as a result of the TSub 1 Merger) will be converted into the right to receive a combination of cash and Parent Shares (the "TSub 2 Merger").

(iii) Pursuant to an agreement and plan of merger among TSub 3, Parent, Acquisition Sub, and ASub 4, dated as of Date A (the "TSub 3 Merger Agreement"), TSub 3 will merge with and into Acquisition Sub, and all of the capital stock of TSub 3 (other than TSub 3 stock acquired by Acquisition Sub as a result of the TSub 2 Merger) will be converted into the right to receive a combination of cash and Parent Shares (the "TSub 3 Merger").

(iv) Immediately after the closing of the TSub 1 Merger, the TSub 2 Merger, and the TSub 3 Merger, Acquisition Sub and its subsidiaries will undertake the following transactions in order to comply with Government Agency requirements.

(v) Acquisition Sub will contribute to the capital of ASub 1, the assets and liabilities acquired in the TSub 1 Merger, the TSub 2 Merger and the TSub 3 Merger that relate to Business A (including stock of subsidiaries) (the "Business A Assets") in exchange for additional shares of ASub 1 voting common stock that have a fair market value approximately equal to the fair market value of the Business A Assets.

(vi) ASub 1 will contribute the Business A Assets to the capital of ASub 2.

(vii) ASub 2 will contribute the Business A Assets to the capital of ASub 3 in exchange for additional shares of ASub 3 Class A voting common stock.

(viii) ASub 3 will contribute the Business A Assets to the capital of a newly formed, direct wholly owned subsidiary ("Newco").

(ix) Newco will, and will cause its subsidiaries to, transfer title to the X Assets (the “X Assets Transfer”) to ASub 5, a wholly owned subsidiary of ASub 4, in exchange for a nominal amount of cash. In addition, Newco and ASub 5 will enter into the Y Assets Operating Agreement. The parties intend to treat the X Assets Transfer and the Y Assets Operating Agreement as giving rise to a partnership for Federal income tax purposes.

The Y Assets Operating Agreement will include the following provisions:

- ASub 5 will have control over the management and operations of the Y Assets, including the determination of operating decisions, active control over finances and budgets, and selection of management-level personnel.

- Except for two employees (one of whom shall be a management-level employee) who shall be selected and employed by ASub 5, and certain employees in markets where ASub 5 holds more than one X Asset whose employement may be shared, all employees of each Y Asset shall be employed by Newco. Subject to the rights and powers of ASub 5 over the management and operations of the Y Assets, Newco employees will perform the day-to-day activities incident to running the Y Assets, including the preparation of initial budget presentations for ASub 5's review and approval, purchasing equipment consistent with the budgets, entering into and administering contracts, and employment of personnel. The general manager of each Y Asset (who will be employed by Newco) will report directly to the management of ASub 5. In addition to reporting to the general manager of each Y Asset, the principal department heads of each Y Asset shall also report to the respective ASub 5 division head.

- Net income and net losses from the Business A operations will be allocated approximately o percent to ASub 5 and approximately p percent to Newco, and ASub 5 and Newco will allocate items of income and loss between them in compliance with the capital account maintenance rules of § 704(b) of the Internal Revenue Code and the regulations issued thereunder.

- The costs and expenses of the Y Assets will be borne by ASub 5 and Newco, based on their respective percentage interests in the net income and net losses of Business A.

- Neither party will indemnify the other party for causes of action that might arise as a result of the operation of the Y Assets, except for causes of action arising due to willful misconduct or gross negligence.

- The X Assets and the other operating assets of the Y Assets will not be permitted to be sold separately.

- The Y Assets Operating Agreement will have a term of 20 years and cannot be terminated earlier by either party.

- ASub 5 will have the power to cause the sale of the X Assets and the sale of the assets comprising one or more Y Asset provided that any such sale is negotiated at arm's length for fair market value.

- Upon termination of the Y Assets Operating Agreement, and upon any disposition of any of the X Assets, ASub 5 will generally receive a payment equal to o percent of the excess of the sale price upon a sale (or the fair market value in the case of a dissolution) over the fair market value of the Y Assets at the time that the Y Assets Operating Agreement becomes effective plus the nominal amount paid for the X Assets, subject to the requirements of § 704(b).

- ASub 5 will use the X Assets solely in connection with the business activities governed by the Y Assets Operating Agreement.

- The parties will treat the arrangement set forth in the Y Assets Operating Agreement as a partnership for Federal income tax purposes and will file Federal income tax returns (including partnership tax returns) consistent with such treatment.

In connection with the proposed transaction, the taxpayers make the following representations:

(a) To the best knowledge and belief of the management of TSub 1 and Acquisition Sub, the TSub 1 Merger will qualify as a reorganization under § 368(a)(1)(A) by reason of the application of § 368(a)(2)(D), if the Service rules as requested in this ruling request.

(b) To the best knowledge and belief of the management of TSub 2 and Acquisition Sub, the TSub 2 Merger will qualify as a reorganization under § 368(a)(1)(A) by reason of the application of § 368(a)(2)(D), if the Service rules as requested in this ruling request.

(c) To the best knowledge and belief of the management of TSub 3 and Acquisition Sub, the TSub 3 Merger will qualify as a reorganization under § 368(a)(1)(A) by reason of the application of Section 368(a)(2)(D), if the Service rules as requested in this ruling request.

(d) It is intended that the X Assets Transfer and the provisions of the Y Assets Operating Agreement constitute a partnership between ASub 5 and Newco for Federal income tax purposes, and ASub 5 and Newco will allocate net income and net losses of the venture in accordance with § 704 and will file all tax returns consistent with such treatment.

Pursuant to Section 3.01(23) of Rev. Proc. 2001-3, 2000-1 I.R.B. 103, 105, the Internal Revenue Service will not rule as to whether a proposed transaction qualifies under § 368(a)(1)(A). 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)(A).

Accordingly, based solely on the information submitted and on the representations set forth above, and provided that the taxpayers enter into a closing agreement with the Service on or before the date of the Mergers agreeing, among other things, that Parent, in determining its basis in the stock of Acquisition Sub under § 1.358-6(c)(1) of the Income Tax Regulations, will not treat the stock of TSub 2 held by TSub 1 or the stock of TSub 3 held by TSub 2 as an asset acquired in the Mergers, we rule as follows:

1. Assuming that the TSub 1 Merger will otherwise qualify as a reorganization under § 368(a)(1)(A) by reason of the application of § 368(a)(2)(D), and taking into account the X Assets Transfer and the Y Assets Operating Agreement, the continuity of business enterprise requirement will be satisfied with respect to the TSub 1 Merger.

2. Assuming that the TSub 2 Merger will otherwise qualify as a reorganization under § 368(a)(1)(A) by reason of the application of § 368(a)(2)(D), and taking into account the X Assets Transfer and the Y Assets Operating Agreement, the continuity of business enterprise

requirement will be satisfied with respect to the TSub 2 Merger.

3. Assuming that the TSub 3 Merger will otherwise qualify as a reorganization under § 368(a)(1)(A) by reason of the application of § 368(a)(2)(D), and taking into account the X Assets Transfer and the Y Assets Operating Agreement, the continuity of business enterprise requirement will be satisfied with respect to the TSub 3 Merger.

4. By reason of the X Assets Transfer and the Y Assets Operating Agreement, for Federal income tax purposes, ASub 5 and Newco will have formed an unincorporated association to conduct Business A, and such entity shall be entitled to be treated as a partnership or an association taxable as a corporation pursuant to the rules set forth in § 301.7701-3 of the Income Tax Regulations.

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. Specifically, we express no opinion whether the TSub 1 Merger, the TSub 2 Merger, or the TSub 3 Merger otherwise qualifies as a reorganization under § 368(a)(1)(A) by reason of the application of § 368(a)(2)(D), not taking into account the X Assets Transfer and the Y Assets Operating Agreement. In addition, we express no opinion with respect to the application of § 367(a) to the transaction. But see § 1.367(a)-3(c).

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.

We have sent copies to the taxpayers' representatives as designated on the powers of attorney on file in this office.

Sincerely yours,
Associate Chief Counsel (Corporate)
By Charles Whedbee
Senior Technical Reviewer, Branch 5