Internal Revenue Service

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Department of the Treasury
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PLR-105302-06
Date:
July 28, 2006

In Re:

Parent =

FS 1 =

FS 2 =

US Parent 1 =

Sub 1 =

Lifeco 1 =

Lifeco 2 =

Lifeco 3 =

US Parent 2 =

Sub 2 =

Lifeco 4 =

Lifeco 5 =

Country X =

Country Y =

Year 1 =

Year 2 =

Year 3 =

Date 1 =

Date 2 =

Date 3 =

First Prior Ruling Letter =

Second Prior

Ruling Letter =

Dear :

This letter replies to your letter dated January 20, 2006 requesting rulings concerning certain federal income tax consequences of a proposed transaction. The following information is provided in that letter and subsequent correspondence.

Summary of Facts

Parent is a Country X corporation that is the parent of a worldwide group of insurance and financial service corporations. FS 1 is a Country X corporation all of whose common stock is held by Parent; preferred stock of FS 1 is held by the public. Although FS 1 formerly operated in the United States through a branch, it terminated that branch and no longer conducts any business in the United States other than through subsidiaries. FS 2, a Country X corporation, is wholly owned by FS 1.

US Parent 1 is a domestic limited liability company that operates as a holding company and has elected under § 301.7701-3(a) of the Income Tax Regulations to be treated as a corporation for federal income tax purposes. US Parent 1 is wholly owned by FS 2. US Parent 1 and its subsidiaries file a consolidated return (the "US Parent 1 Group") that includes both life insurance companies (life companies) and corporations other than life insurance companies (nonlife companies) under § 1504(c) of the Internal Revenue Code and § 1.1502-47. Sub 1, a domestic holding company, is wholly owned by US Parent 1 and a member of the US Parent 1 group.

Lifeco 1 is a domestic life insurance company that is wholly owned by Sub 1. Lifeco 2 and Lifeco 3 are Country Y reinsurance companies that have elected under section 953(d) to be taxed as domestic corporations. Lifeco 2 is wholly owned by Sub 1. Lifeco 3 is wholly owned by Lifeco 2. Lifeco, Lifeco 2, and Lifeco 3 are members of the US Parent 1 group.

US Parent 2 is a domestic limited liability company that has elected to be treated under § 301.7701-3(a) as a corporation for federal income tax purposes. US Parent 2 is wholly owned by Parent. US Parent 2 and its subsidiaries file a consolidated return (the "US Parent 2 Group") that includes both life companies and nonlife companies. Sub 2, a domestic holding company, is wholly owned by US Parent 2 and a member of the US Parent 2 group. Parent acquired all of the stock of Sub 2 in Year 3 and transferred all of that stock to US Parent 2 in Year 3 in exchange for all of the equity interests in US Parent 2.

Lifeco 4 is a domestic life insurance company that is wholly owned by Sub 2. Lifeco 5 is a Country Y reinsurance company that has elected under § 953(d) to be taxed as a domestic corporation. Lifeco 5 is wholly owned by Sub 2. Lifeco 4 and Lifeco 5 are members of the US Parent 2 group.

Lifeco 2 reinsures life insurance businesses from affiliated and unrelated insurers and reinsurers. Lifeco 3 and Lifeco 5 reinsure life insurance business from affiliates. The reinsured business is written under a variety of reinsurance treaties, including yearly renewable term, coinsurance (including stop loss reinsurance), modified coinsurance ("modco"), coinsurance with funds withheld, and combination coinsurance/modco. In the case of the modco (and its variants), the underlying reinsurance treaties provide for experience refunds and positive and negative modco reserve adjustments. Lifeco 3 has retroceded some of the reinsured business to an affiliate. Lifeco 2 and Lifeco 3 have agreed to amend their reinsurance treaties that relate to closed blocks of business to permit reinsurance of new policies thereunder only after doing an actuarial review of the new policies and determining that amending the treaties is in their respective best interests, and Lifeco 5 will follow the same procedures following the proposed reorganization. Lifeco 2, Lifeco 3, and Lifeco 5 conduct no other business activities.

Between Year 1 and Year 2, members of the US Parent 1 Group sold or distributed property (including the stock of group members) to other members of that group. As a result of these transactions, gains recognized by Lifeco 1 (and its predecessors) and Lifeco 2 were deferred pursuant to § 1.1502-13. An appropriate amount of the parties' "intercompany items" and "corresponding items" from those transactions (the "US Parent 1 DITs") would be taken into account (absent an applicable exception) pursuant to § 1.1502-13(d) upon Sub 1, Lifeco 1, Lifeco 2, or Lifeco 3 (as the case may be) ceasing to be a member of the US Parent 1 Group.

Between Date 1 and Date 2, FS 1 restructured its United States operations through a number of transactions that qualified for nonrecognition treatment under § 351 (the "Pre-Year 1 Restructuring"). The Pre-Year-1 Restructuring resulted in the transfer of FS 1's United States operations from a branch to wholly owned domestic subsidiaries. In that restructuring, Sub 1 obtained certain assets from FS 1 that would have resulted in a branch profits tax liability to FS 1 under § 884 in the absence of a ruling from the Internal Revenue Service (IRS) pursuant to § 1.884-2T(d)(5)(ii) of the Temporary Income Tax Regulations. As a condition for obtaining the First Prior Letter Ruling from the IRS that FS 1 would not be subject to any branch profits tax as a result of the Pre-Year 1 Restructuring, FS 1 agreed to include certain amounts in income for United States federal income tax purposes on the disposition of the Sub 1 stock.

On Date 3, FS 1 further restructured its United States operations (the "Year 2 Restructuring"). Specifically, FS 1 formed FS 2 and transferred all of the stock of Sub 1 in exchange for FS 2 Class A common stock. Immediately thereafter, FS 2 transferred

the stock of Sub 1 to U.S. Parent 1 in exchange for all the equity interests of US Parent 1. The two transfers described above qualified for nonrecognition treatment under § 351.

As a result of the Year 2 Restructuring, FS 1 would have had a branch profits tax liability under § 884 under the terms of the First Prior Letter Ruling in the absence of a new ruling from the IRS. The Second Prior Letter Ruling provided that the transfer of the stock of Sub 1 from FS 1 to FS 2 and from FS 2 to US Parent 1 would not constitute a "disposition" of the Sub 1 stock for branch profits tax purposes, provided that certain agreements were entered into. Specifically, FS 2 was required to execute a statement under § 1.884-2T(d)(5) pursuant to which it agreed to treat as a dividend equivalent amount upon the disposition of the equity interests in US Parent 1 an amount equal to the lesser of (a) the amount realized on such disposition or (b) the total amount of the effectively connected earnings and profits ("ECE&P") and non-previously taxed accumulated ECE&P that was allocated (or was previously treated as allocated) from FS 1 to Sub 1, except to the extent that amount was previously taken into account by FS 1 or FS 2 as dividends or dividend equivalent amounts for tax or branch profits tax purposes.

Proposed Transaction

Parent now has two separate chains of United States subsidiaries, resulting in inefficiencies and added expenses. To resolve this problem, Parent proposes to combine the US Parent 1 and US Parent 2 consolidated groups into one consolidated group under US Parent 2. The following transactions will precede the combination of the US Parent 1 and US Parent 2 Groups:

(i) FS 1 will distribute all the stock of FS 2 to Parent.

(ii) Parent will contribute some or all of its interests in US Parent 2 to FS 2. After this step, FS 2 will own equity interests in both US Parent 1 and US Parent 2.

Parent then proposes to combine the US Parent 1 and US Parent 2 Groups through the following transactions, all of which will occur at approximately the same time and pursuant to a single plan of reorganization (the "Proposed Reorganization").

(iii) US Parent 1 will merge into US Parent 2 in a statutory merger that will not be a "reverse acquisition" of US Parent 2 under § 1.1502-75(d)(3) (the "Parent Merger"). In the Parent Merger, FS 2 will receive an appropriate number of additional equity interests in US Parent 2 equal to the value of FS 2's equity interests in US Parent 1 (the "Parent Merger Equity") before the merger.

(iv) Sub 1 will merge into Sub 2 in a statutory merger. Sub 2 will issue one additional share of its stock to US Parent 2 in the merger

(v) Lifeco 1 will merge into Lifeco 4 in a statutory merger. Lifeco 4 will issue one additional share of its stock to Sub 2 in the merger.

(vi) Lifeco 3 will transfer all of its assets (other than a nominal amount of capital) to Lifeco 5, which will assume all of the liabilities of Lifeco 3. With respect to the reinsurance treaties in which Lifeco 3 is a party, Lifeco 5 will assume all of the rights and obligations of Lifeco 3 under the treaties and the ceding companies will consent to that assumption. After this transfer and assumption, Lifeco 3 will be liquidated pursuant to Country Y law.

(vii) Lifeco 2 will transfer all of its assets (other than a nominal amount of capital and the stock of "shell" Lifeco 3) to Lifeco 5, which will assume all of the liabilities of Lifeco 2. With respect to the reinsurance treaties in which Lifeco 2 is a party, Lifeco 5 will assume all of the rights and obligations of Lifeco 2 under the treaties and the ceding companies will consent to that assumption. After this transfer and assumption, Lifeco 2 will be liquidated pursuant to Country Y law.

(viii) After the liquidations, the nominal amounts of capital retained in the asset transfers by Lifeco 2 and Lifeco 3 will be transferred by Sub 2 (as the survivor of the merger of Sub 1 into Sub 2) to Lifeco 5. After this step, Lifeco 5 will hold all of the assets and liabilities held by Lifeco 2 and Lifeco 3 before the transactions.

The transfers of the assets of each of Lifeco 2 and Lifeco 3 to Lifeco 5 will constitute "special acquisitions" by Lifeco 5 within the meaning of § 1.1502-47(d)(12)(viii).

Representations

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

(a) US Parent 1 and US Parent 2 are each treated as a corporation for United States federal tax purposes.

(b) The statutory mergers in the Proposed Reorganization will each constitute a reorganization under § 368(a)(1)(A). The transfers of the assets of Lifeco 2 and Lifeco 3 to Lifeco 5, the assumption by Lifeco 5 of the liabilities of each of Lifeco 2 and Lifeco 3, and the related actions described in steps (vi), (vii), and (viii) of the Proposed Reorganization will constitute reorganizations of Lifeco 2 and Lifeco 3 under § 368(a)(1). Accordingly, each such transaction will constitute a transaction to which § 381(a)(2) will apply.

(c) The merger of US Parent 1 into US Parent 2 will not constitute a "reverse acquisition" of US Parent 2 within the meaning of § 1.1502-75(d)(3).

(d) After the Proposed Reorganization, US Parent 2 will continue as the parent of the US Parent 2 group.

(e) Lifeco 5 has been in existence and engaged in the active conduct of a reinsurance business since Year 1.

(f) US Parent 1, Sub 1, Lifeco 1, Lifeco 2, and Lifeco 3 are "eligible members" (within the meaning of § 1.1502-47) of the US Parent 1 Group, and US Parent 2, Sub 2, Lifeco 4, and Lifeco 5 are "eligible members" of the US Parent 2 Group.

(g) After the Proposed Reorganization, each of US Parent 2, Sub 2, Lifeco 4, and Lifeco 5 will meet the requirements provided in subparagraphs (A), (B), and (C) of § 1.1502-47(d)(12)(i)) with regard to the US Parent 2 group, and, subject to the receipt of rulings (2), (3), (4), (5), (6), (7), and (8), below, will meet the requirements of subparagraph (D) of § 1.1502-47(d)(12)(i).

(h) All reinsurance agreements entered into by Lifeco 2, Lifeco 3, and Lifeco 5 (the "Reinsurance Agreements") were entered into in the ordinary course of business of each of those corporations.

(i) To the extent that a reinsurance agreement was entered into by Lifeco 2, Lifeco 3, or Lifeco 5 with a person owned or controlled directly or indirectly by the same interests (within the meaning of § 482) as Lifeco 2, Lifeco 3, or Lifeco 5 (as the case may be), the terms of such agreements satisfied the "arms-length" standard of § 482.

(j) FS 2 is a "qualified resident" of Country X under § 1.884-5 and is, and at the time of the Proposed Reorganization will be, a "qualifying person" for purposes of the income tax treaty between the United States and Country X.

Rulings

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

(1) Following the Proposed Reorganization, the US Parent 2 Group will be treated as the terminating US Parent 1 Group under § 1.1502-13(j)(5), and the successors to US Parent 1, Sub 1, Lifeco 1, Lifeco 2, and Lifeco 3 will be treated as includible members of the US Parent 2 Group "immediately after" the Proposed Reorganization. Accordingly, the US Parent 1 DITs will continue to be deferred following the Proposed Reorganization.

(2) For purposes of applying § 1.1502-47(d)(12)(viii)(A) and (C) to Lifeco 5 following the transfers of the assets and liabilities of Lifeco 2 and Lifeco 3 to Lifeco 5, the amount of the insurance reserves and premiums of Lifeco 5 attributable to the "special acquisitions" by Lifeco 5 of the assets and liabilities of Lifeco 2 and Lifeco 3 will be determined by reference to the insurance reserves and premiums attributable to the reinsurance treaties entered into by Lifeco 2 and Lifeco 3 before the transfers, in effect at the time of the transfers, and continuing in effect during the relevant measurement period or the relevant measurement date.

(3) For purposes of applying § 1.1502-47(d)(12)(viii)(A) and (C) to Lifeco 5 following the Proposed Reorganization, the term "premiums" used in connection with any reinsurance treaty to which it is (or any predecessor was) a party will mean (a) the "gross amount of premiums and other consideration" as defined in § 803(b)(1), including any negative modco reserve adjustment, less (b) the sum of (i) any return premiums, including any experience refund, positive modco reserve adjustment, and other policyholder dividend or reimbursement of any policyholder dividend (in each case attributable to any indemnity reinsurance) and (ii) any consideration payable pursuant to any indemnity reinsurance agreement.

(4) In the event that any reinsurance treaty to which Lifeco 2 or Lifeco 3 is a party is assumed by Lifeco 5 in the Proposed Reorganization and, in the ordinary course of Lifeco 5's business, is later amended or modified by Lifeco 5 to permit the reinsurance of additional insurance contracts issued by the relevant ceding company, the amount of insurance reserves and premiums attributable to these additional insurance contracts will not be considered to relate to a "special acquisition" by Lifeco 5 within the meaning of § 1.1502-47(d)(12)(viii).

(5) For purposes of applying § 1.1502-47(d)(12)(viii)(B) to Lifeco 5 following the transfer of the assets of Lifeco 2 and Lifeco 3 to Lifeco 5, the amount of assets of Lifeco 5 attributable to the "special acquisitions" by Lifeco 5 of the assets and liabilities of Lifeco 2 and Lifeco 3 will be determined by reference to the assets held by Lifeco 2 and Lifeco 3 before the transfers, transferred to Lifeco 5 in those transactions, and held by Lifeco 5 during the relevant measurement period or the relevant measurement date, provided that any asset acquired by Lifeco 5 following the special acquisition not in the ordinary course of its business and attributable or related to an asset previously held by Lifeco 2 or Lifeco 3 will be considered an asset previously held by Lifeco 2 or Lifeco 3 to the extent of its value at the time of disposal of the asset.

(6) For purposes of applying the "premiums" factor of § 1.1502-47(d)(12)(viii)(C) to Lifeco 5 following the transfers of the assets and liabilities of Lifeco 2 and Lifeco 3 to Lifeco 5, the term "last taxable year of the base period" means the taxable year immediately preceding the group's taxable year for which the consolidated return and the determination of eligibility for Lifeco 5 is made.

(7) For purposes of § 1.1502-47(d)(12)(viii)(A), the term “insurance reserves” means “total reserves” as defined in § 816(c).

(8) For purposes of § 1.1502-47(d)(12)(viii), determinations of disproportionate asset acquisitions are made by taking into account only those factors that are attributable to “special acquisitions” occurring during the relevant base period.

Caveats

We express no opinion concerning the federal tax consequences of the proposed transactions under any other provision of the Code or regulations, or concerning any conditions existing at the time of, or effects resulting from, the proposed transactions that are not specifically covered by the above rulings. In particular, we express no opinion as to (a) whether any transactions described above are reorganizations within the meaning of § 368, and (b) the consequences of the merger of US Parent 1 into US Parent 2 for purposes of computing the branch profits tax liability of FS 2 or any other entity under § 884. The treatment of that transaction under § 884 will be the subject of a separate ruling letter issued by the Office of the Associate Chief Counsel (International).

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Each taxpayer involved in the transaction should attach a copy of this ruling letter to the taxpayer's federal income tax return for the taxable year in which the transaction covered by this letter is completed. 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 this ruling letter.

Pursuant to a power of attorney on file with this office, a copy of this letter will be sent to your authorized representative.

Sincerely yours,

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Michael J. Wilder
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel
(Corporate)

cc: