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Department of the Treasury
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June 30, 2020

LEGEND:

Foreign Partnership	=
Foreign Company	=
US Subsidiary	=
Foreign Subsidiaries	=
Foreign Merger Subsidiary	=
Business A	=
Country X	=
State Z	=
Date	=

Dear :

This letter responds to your request for rulings dated August 21, 2019, regarding certain Federal income tax consequences, under the Internal Revenue Code of 1986, as

amended (the “Code”), and the regulations thereunder, of a proposed transaction. The information provided in that request is summarized below.

The rulings contained in this letter are based on 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 material submitted in support of the ruling request. Verification of the information, representations, and other data may be required as part of the audit process.

FACTS

Foreign Partnership is a Country X limited partnership that directly engages in Business A in Country X and owns and manages a group of domestic and foreign affiliates that engage in Business A worldwide. Foreign Partnership has represented that it is treated as a partnership for U.S. federal income tax purposes. All of the direct and indirect owners of Foreign Partnership are non-U.S. persons (the direct owners, the “Partners,” the indirect owners, the “Indirect Partners”).

US Subsidiary is a State Z corporation that is wholly owned by Foreign Partnership. US Subsidiary is engaged directly and indirectly, through other domestic subsidiaries, in Business A in the United States. As part of its Business A operations, US Subsidiary owns sufficient United States real property interests (“USRPIs”) within the meaning of section 897(c)(1) to be a United States real property holding corporation (“USRPHC”) within the meaning of section 897(c)(2). As such, the stock of US Subsidiary constitutes a USRPI under section 897(c)(1)(A)(ii).

Foreign Partnership also owns Foreign Subsidiaries that are engaged in Business A outside of the United States. Foreign Subsidiaries are not USRPHCs.

Foreign Company is a Country X company that is treated as a corporation for U.S. federal income tax purposes. The Partners and Indirect Partners of Foreign Partnership also own Foreign Company in the same proportions.

Foreign Partnership has represented that, for certain business reasons, it would like to separate its Business A operations in Country X from its worldwide management of Business A operations. To do so, Foreign Partnership has represented that the following transactions have been implemented or will take place:

(1) Foreign Partnership formed Foreign Merger Subsidiary, a Country X company that filed an election to be treated as a disregarded entity for U.S. federal income tax purposes effective as of Date.

(2) Foreign Partnership will contribute stock of US Subsidiary, stock of Foreign Subsidiaries, and the assets and trade liabilities related to the worldwide management

of Business A to Foreign Merger Subsidiary (the “Foreign Merger Subsidiary Assets”). For purposes of Country X law, the contribution will qualify for nonrecognition treatment.

(3) Foreign Merger Subsidiary will merge into Foreign Company, with Foreign Company surviving under Country X law (the “Merger”). For purposes of Country X, the merger will qualify for nonrecognition treatment.

After the transaction, Foreign Company will wholly own US Subsidiary, Foreign Subsidiaries, and the assets and trade liabilities related to the worldwide management of Business A. Partners will own Foreign Partnership and Foreign Company in the same proportions as they owned Foreign Partnership and Foreign Company prior to the transactions.

Foreign Partnership has represented that, for U.S. federal income tax purposes, the Merger will be treated as: (1) a non-liquidating distribution of the Foreign Merger Subsidiary Assets (the “Distribution”), followed by (2) a contribution of the Foreign Merger Subsidiary Assets by Partners to Foreign Company (the “Contribution”).

LAW AND ANALYSIS

Section 897(a) provides that gain or loss of a nonresident alien individual or a foreign corporation from the disposition of a USRPI shall be taken into account as if the taxpayer were engaged in a trade or business within the United States during the taxable year and as if such gain or loss were effectively connected with such trade or business. A USRPI includes an interest in real property (including an interest in a mine, well, or other natural deposit) located in the United States or the Virgin Islands, and any interest (other than an interest solely as a creditor) in any domestic corporation unless the taxpayer establishes (at such time and in such manner as the Secretary by regulations prescribes) that such corporation was at no time a USRPHC during the 5-year period ending on the date of disposition of such interest.

A USRPHC is any corporation if the fair market value of its USRPIs equals or exceeds 50 percent of the fair market value of the following: (i) its USRPI, (ii) its interests in real property located outside the United States, and (iii) any other of its assets which are used or held for use in a trade or business. Section 897(c)(2). For purposes of determining whether a corporation is a USRPHC, assets held by a partnership, trust or estate shall be treated as held proportionately by its partners or beneficiaries. Section 897(c)(4).

Section 897(e)(1) provides that a nonrecognition provision will generally apply to a transaction only in the case of an exchange of a USRPI for an interest the sale of which would be subject to taxation. The term “nonrecognition provision” includes any provision under the Code for not recognizing gain or loss. Section 897(e)(3). Sections 351 and 731 are listed as nonrecognition provisions for purposes of section 897. See section 1.897-6T(a)(2).

Section 1.897-6T addresses the application of any nonrecognition provision to a transfer by a foreign person under section 897(e). Section 1.897-6T(a)(1) states that a nonrecognition provision will apply to a transfer by a foreign person of a USRPI on which gain is realized only to the extent that the transferred interest is exchanged for a USRPI which, immediately following the exchange, would be subject to U.S. taxation upon its disposition, and the transferor complies with the filing requirements of section 1.897-5T(d)(1)(iii); Notice 89-57, 1989-1 C.B. 698 ("Notice 89-57") modified these requirements.

Section 1.897-6T(b)(1) provides an exception to the above rule that a foreign transferor of a USRPI must receive a USRPI to obtain nonrecognition treatment for certain foreign-to-foreign nonrecognition exchanges. For certain forms of exchanges (listed in section 1.897-6T(b)(1)(i)-(iii)) to qualify for the exception, section 1.897-6T(b)(1), as modified by Notice 2006-46, 2006-24 I.R.B. 1044 ("Notice 2006-46"), generally requires: (1) the transferee's subsequent disposition of the transferred USRPI to be subject to U.S. taxation as determined in accordance with the provisions of section 1.897-5T(d)(1); and (2) the filing requirements of section 1.897-5T(d)(1)(iii), as modified by Notice 89-57, to be met.

With respect to an exchange of stock in a USRPHC to a foreign corporation in exchange for stock of a foreign corporation that qualifies under section 351(a), section 1.897-6T(b)(1)(iii), as modified by Notice 2006-46, also requires that: (1) immediately after the exchange, substantially all of the outstanding stock of the transferee corporation be owned by the same nonresident alien individuals and foreign corporations that, immediately before the exchange, owned the stock of the USRPHC; and (2) the nonresident alien individual or foreign corporation which received stock in the exchange does not dispose of any of such foreign stock for one year from the date of its receipt.

Both before and after the Distribution, Partners and Indirect Partners hold USRPIs within the meaning of section 897(a) that would be subject to U.S. taxation on disposition. Specifically, before the Distribution, Partners and Indirect Partners hold interests in US Subsidiary, a USRPHC, through their interests in Foreign Partnership. After the Distribution, Partners and Indirect Partners hold interests in US Subsidiary, a USRPHC, as well as the other Foreign Merger Subsidiary Assets. Foreign Partnership has represented that the Distribution will not result in any gain recognition under the provisions of subchapter K, including section 731. In addition, Foreign Partnership has represented that Foreign Partnership, Partners and Indirect Partners will comply with the filing requirements of section 1.897-5T(d)(1)(iii), as modified by Notice 89-57. Accordingly, the requirements in section 1.897-6T(a)(1) will have been satisfied for the Distribution.

For the Contribution to qualify for nonrecognition treatment, the requirements of section 1.897-6T(b)(1) and, in this case, section 1.897-6T(b)(1)(iii), as modified by Notice 2006-

46, must be satisfied. Foreign Company will be subject to U.S. taxation if it subsequently disposes of stock in US Subsidiary. Foreign Partnership has also represented that Foreign Partnership, Partners and Indirect Partners will comply with all of the filing requirements of section 1.897-5T(d)(1)(iii), as modified by Notice 89-57. In addition, Foreign Partnership has represented that the Contribution will satisfy the requirements of a tax-free contribution under section 351, except to the limited extent section 304 may apply (due to assumption of trade liabilities by Foreign Company). Immediately after the exchange, all of the stock of Foreign Company will be owned by Partners and Indirect Partners, which also owned, in the same proportions, US Subsidiary before the exchange. Foreign Partnership has represented that Partners and Indirect Partners will not dispose of stock in Foreign Company within one year of the transaction. Accordingly, the requirements in section 1.897-6T(b)(1), and, as relevant in this case, the requirements in section 1.897-6T(b)(1)(iii), as modified by Notice 2006-46, will have been satisfied for the Contribution to the extent that no gain or loss is recognized under section 351.

CONCLUSION

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

(1) To the extent that no gain or loss is recognized under subchapter K, including section 731, Partners and Indirect Partners will not recognize gain under section 897(e) and section 1.897-6T(a)(1) as a result of the Distribution.

(2) To the extent that no gain or loss is recognized under section 351, Partners and Indirect Partners will not recognize gain under section 1.897-6T(b)(1) as a result of the Contribution.

No opinion is expressed about the tax treatment of the transactions or items mentioned in this letter under other provisions of the Code or regulations, and no opinion is expressed about the tax treatment of any conditions existing at the time of, or effects resulting from, the foregoing transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding section 1445, or other international tax consequences resulting from the transactions. Furthermore, no opinion is expressed as to: (1) whether gain or loss is not recognized on the Distribution under section subchapter K; (2) whether gain or loss is not recognized on the Contribution under section 351; and (3) the tax treatment of Foreign Company’s assumption of the trade liabilities related to the worldwide management of Business A, which could result in U.S. federal income taxation, including withholding tax.

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

A copy of this ruling letter must be attached to any income tax return to which it is relevant. Alternatively, any taxpayers filing their tax returns electronically may satisfy this requirement by attaching a statement to the returns that provides the date and control number of this letter ruling. This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

/s/ Laura Williams

Laura Williams
Chief, Branch 4
Office of Associate Chief Counsel (International)

cc: