

Internal Revenue Service

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Person to Contact:

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Foreign Parent =

F Sub 1 =

F Sub 2 =

Sub 1 =

Sub 2 =

Country A =

Country B =

Treaty =

a =

b =

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c =

d = —

z =

Date A =

Date B =

X =

This is in reply to your letter dated August 13, 1999 requesting that we rule on certain federal income tax consequences of a proposed transaction. The information submitted in that request and in subsequent correspondence is substantially as set forth below.

On Date A, Foreign Parent, a Country A corporation, acquired a percent of F Sub 1, a Country B corporation. On Date B, Foreign Parent acquired an additional b percent of F Sub 1. Unrelated minority shareholders own the remaining c percent of F Sub 1. Foreign Parent also owns all of the outstanding stock of Sub 1, a U.S. corporation.

F Sub 1 owns all of the outstanding stock of Sub 2, a U.S. corporation. Sub 2 is the common parent of a group of affiliated corporations that files a U.S. federal consolidated return.

The following steps are proposed to combine the U.S. operations of Foreign Parent and F Sub 1.

(i) Foreign Parent will create F Sub 2, organized under the laws of Country A, and will own all of F Sub 2's outstanding equity interests. As the sole owner of F Sub 2, Foreign Parent will have limited liability under the laws of Country A with respect to claims against F Sub 2. F Sub 2 will also limit Foreign Parent's exposure to non-tax claims filed under U.S. law. Foreign Parent will make an election under § 301.7701-3(c) of the Income Tax Regulations within 75 days of F Sub 2's formation to treat F Sub 2 as a disregarded entity for U.S. tax purposes, effective as of the date of its formation.

(ii) F Sub 2 will form Newco, a Delaware limited liability company.

(iii) Foreign Parent will contribute U.S. dollars or zs to F Sub 2 to finance the acquisition of Sub 1 and Sub 2.

(iv) F Sub 2 will use a portion of the U.S. dollar or zs to purchase Sub 1 from Foreign Parent for an amount equal to its appraised value. F Sub 2 will contribute Sub

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1 and the remainder of the U.S. dollars or zs to Newco

(v) Newco will use the cash it receives from F Sub 2 to purchase all the outstanding stock of Sub 2 from F Sub 1 for an amount equal to the stock's appraised value.

(vi) After Newco purchases the Sub 2 shares from F Sub 1, Newco will contribute all of the shares of Sub 2 to Sub 1 in exchange for Sub 1 common stock.

The business purpose of the restructuring transactions is to consolidate the U.S. business operations of Foreign Parent and F Sub 1. Foreign Parent wishes to have F Sub 1 sell its Sub 2 stock (1) to eliminate the net d percent Country B income tax that F Sub 1 bears on dividends received from Sub 2, (2) to avoid problems associated with cross-ownership of the combined Sub 2 and Sub 1 Groups following the restructuring transactions, and (3) before the possible imposition of a capital gains tax by Country B.

If Foreign Parent were to acquire the Sub 2 stock directly from F Sub 1, F Sub 1's capital gain on the sale would be taxed in Country A. By using Newco to make the acquisition, Foreign Parent will avoid current Country A taxation of the built-in gain in the Sub 2 stock but will not eliminate the potential for future Country A taxation of the built-in gain.

If Sub 1 dividends do not qualify for reduced withholding under the Treaty between the United States and Country A or are subject to double taxation by Country A, Foreign Parent may at some future time change the ownership structure of Sub 1 by merging Newco into Sub 1 or by causing Newco to elect under § 301.7701-3(a) and (c) to be taxed as a corporation. Foreign Parent will not, however, make any such change in ownership structure for a period of at least 2 years following the consummation of the restructuring transactions.

Foreign Parent, F Sub 1, and Sub 2 make the following representations with respect to the restructuring transactions:

- (a) The Sub 1 and Sub 2 stock will not be subject to any liabilities and Newco will not assume any liabilities in connection with its acquisition of the Sub 1 and Sub 2 stock.
- (b) The amount Newco pays F Sub 1 for the Sub 2 stock will equal its fair market value as determined pursuant to an appraisal by X.
- (c) The Sub 2 stock will not be subject to any liabilities and Sub 1 will not assume any liabilities in connection with its acquisition of the Sub 2 stock.
- (d) Sub 1 will not distribute any cash, notes, or preferred stock to Newco in

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connection with its receipt of the Sub 2 stock.

- (e) Newco's contribution of the Sub 2 stock to Sub 1 will qualify under § 351 of the Internal Revenue Code.
- (f) Sub 2 has current and accumulated earnings and profits.
- (g) Sub 2 will not make any adjustments to earnings and profits as a result of the restructuring transactions.
- (h) Foreign Parent will own all of the equity interests in F Sub 2 and F Sub 2 will own all of the equity interests in Newco.
- (i) F Sub 2 is eligible to elect to be treated as a disregarded entity pursuant to § 301.7701-3(c) and Foreign Parent will take the necessary steps to elect disregarded entity status for F Sub 2 pursuant to § 301.7701-3.
- (j) Foreign Parent will not elect to change Newco's status as a disregarded entity pursuant to § 301.7701-3(c) or merge Newco into Sub 1 for at least 2 years following the consummation of the restructuring transactions.
- (k) As a single member limited liability company formed under U.S. law, Newco will be eligible for treatment as a disregarded entity for U.S. tax purposes pursuant to § 301.7701-3(b)(1)(ii).
- (l) Sub2 has not been a United States real property holding corporation ("USRPHC") during the five year period ending on the consummation of the restructuring transactions and will not be a USRPHC immediately thereafter.

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

Foreign Parent's purchase of the Sub 2 stock (through its disregarded entities F Sub 2 and Newco) will not constitute an acquisition of stock by a related corporation within the meaning of § 304(a)(1) and, accordingly, Sub 2 will not be deemed to have made a distribution to F Sub 1 from its earnings and profits within the meaning of §§ 302 and 301.

We express no opinion about the tax treatment of the transactions 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 transactions that are not specifically covered by the above ruling. Specifically, no opinion is expressed regarding whether F Sub2 and/or Newco are "fiscally transparent" entities for purposes of § 894 and the

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Treaty and whether Sub1 is entitled to the benefits of a reduced rate of withholding tax on future dividend distributions under § 1442.

Moreover, we express no opinion 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 investment companies, 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.

The rulings contained in this letter are based on the facts and representations submitted under penalties of perjury in support of the request for rulings. Verification of this information may be required as part of the audit process.

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

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

Pursuant to a power of attorney on file in this office, we have sent a copy of this letter to the taxpayer's representative.

Sincerely yours,

Assistant Chief Counsel (Corporate)

By: *Charles Whedbee*

Senior Technical Reviewer, Branch 5