Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Date:
July 27, 2000

In re:

P	=
Sub 1	=
Sub 2	=
T1	=
T2	=
Country X	=
Business A	=
Business B	=
Business C	=
r	=
s	=

This is in response to your letter dated March 27, 2000, in which rulings are requested as to the federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated June 29, and July 17, 2000. The facts submitted for consideration are substantially as set forth below.

P is a widely held and publicly traded domestic corporation and is the common parent of a group of corporations.

Sub 1 is a wholly-owned domestic subsidiary of P and is engaged in Business A. Sub 1 has outstanding solely common stock.

Sub 2 is a wholly-owned domestic subsidiary of Sub 1 and engaged in Business B. Sub 2 has outstanding solely common stock.

T1 is a wholly-owned Country X corporation of P and is engaged in Business C.

T2 is a Country X corporation, the stock of which is owned r percent by Sub 2 and s percent by T1. T2 is engaged in Business B.

For what have been represented to be valid business reasons, the following transaction is proposed:

(i) P will contribute all of the outstanding stock in T1 to Sub 1.

(ii) Sub 1 will contribute all of the outstanding stock in T1 to Sub 2.

(iii) T1 and T2 ("Targets") will be amalgamated under the provisions of the relevant County X corporate law. The amalgamation will result in the combination of T1 and T2 into one Country X corporation ("Newco") that will be a continuation of the former corporations such that:

(a) all of the property (except amounts receivable from the other former corporation or shares of the capital stock of the other former corporation) of the former corporation immediately before the amalgamation will become property of Newco by virtue of the amalgamation;

(b) all of the liabilities (except amounts payable to the other former corporation) of the former corporations immediately before the amalgamation will become liabilities of Newco by virtue of the amalgamation;

(c) the shares of the capital stock of T2 owned by T1 will be canceled;

(d) the shares of the capital stock of T2 and of T1 owned by Sub 2 will be converted into shares of stock of Newco.

In connection with the proposed transfers set forth in steps (i) and (ii), taxpayer represents as follows:

(a) No stock or securities will be issued for services rendered to or for the benefit of Sub 1 or Sub 2 in the transfers, and no stock or securities will

be issued for indebtedness of Sub 1 or Sub 2.

(b) The transfers were not the result of the solicitation by a promoter, broker, or investment house.

(c) P and Sub 1 will not retain any rights in the T1 stock.

(d) No liabilities of P or Sub1 will be assumed by Sub 1 and Sub 2 in the transaction.

(e) Except for indebtedness arising in the ordinary course of business and not amounting to a security, there is no indebtedness between Sub 1 and P or between Sub 1 and Sub 2, and no indebtedness will be created in favor of either of the transferors as a result of the transfers.

(f) The transfers will occur under a plan agreed upon before the transfers in which the rights of the parties are defined.

(g) There is no plan or intention on the part of Sub 1 or Sub 2 to redeem or otherwise reacquire any stock or indebtedness issued in the exchanges.

(h) Taking into account any issuance of additional shares of Sub 1 or Sub 2 stock; any issuance of stock for services; the exercise of any Sub 1 or Sub 2 stock rights, warrants, or subscriptions; public offering of Sub 1 or Sub 2 stock; and the sale, exchange, transfer by gift, or other disposition of any stock received in the exchange, P will be in “control” of Sub 1; and Sub 1 will be in “control” of Sub 2 within the meaning of § 368(c)of the Internal Revenue Code, immediately after the transaction.

(i) Sub 1 and Sub 2 will remain in existence and use the property transferred as described above.

(j) There is no plan or intention by Sub 1 or Sub 2 to dispose of the transferred property other than in the normal course of business operations, except as described above.

(k) Each of the parties to the exchanges will pay its own expenses, if any, incurred in the exchanges.

(l) Neither Sub 1 nor Sub 2 will be an investment company within the meaning of § 351(e) and § 1.351-1(c)(1)(ii) of the Income Tax Regulations.

(m) Neither P nor Sub 1 is under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the stock or

securities received in the exchanges were not used to satisfy the indebtedness of such debtor.

(n) Neither Sub 1 nor Sub 2 will be a “personal service corporation” within the meaning of § 269A.

In connection with the proposed transaction set forth in step (iii), the taxpayer represents as follows:

(a) The fair market value of the Newco stock and other consideration received by each Target shareholder will be approximately equal to the fair market value of the Target stock surrendered in the exchange.

(b) There is no plan or intention for Sub 2 to sell or otherwise dispose of any of the shares of Newco.

(c) Newco will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by each Target immediately prior to the transaction. For purposes of this representation, amount paid by a Target to dissenters, amounts paid by a Target to shareholders who receive cash or other property, amounts used by a Target to pay its reorganization expenses, and all redemptions and distributions (except for regular, normal dividends) made by a Target immediately preceding the transfer will be included as assets of the Target held immediately prior to the transaction.

(d) After the transaction, Sub 2 will be in control of Newco within the meaning of § 368(a)(2)(H).

(e) Newco has no plan or intention to reacquire any of its stock issued in the transaction.

(f) Newco has no plan or intention to sell or otherwise dispose of any of the assets of a Target acquired in the transaction, except for dispositions made in the ordinary course of business.

(g) The liabilities of a Target assumed by Newco plus the liabilities, if any, to which the transferred assets are subject were incurred by the Target in the ordinary course of business and are associated with the assets transferred.

(h) Following the transaction, Newco will continue the historic business of the Targets or use a significant portion of the Target’s historic business assets in a business.

(i) At the time of the transaction, Newco will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Newco that, if exercised or converted, would affect Sub 2's acquisition or retention of control of Newco, as defined in § 368(a)(2)(H).

(j) Newco, Target, and Sub 2 will pay their respective expenses, if any, incurred in connection with the transaction

(k) There is no intercorporate indebtedness existing between Newco and the Targets or between the Targets that was issued, acquired, or will be settled at a discount.

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

(m) The fair market value of the assets of Target transferred to Newco will equal or exceed the sum of the liabilities assumed by Newco, plus the amount of liabilities, if any, to which the transferred assets are subject.

(n) The total adjusted basis of the assets of Target transferred to Newco will equal or exceed the sum of the liabilities to be assumed by Newco, plus the amount of liabilities, if any, to which the transferred assets are subject, in each instance.

(o) Neither Target is under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

Additional representations have been made by the taxpayer with respect to the proposed transaction, as follows:

(a) T1 and T2 are corporations within the meaning of § 7701(a)(3).

(b) T1 and T2 will each be a controlled foreign corporation ("CFC"), within the meaning of § 957(a), before and immediately after the proposed transaction.

(c) In connection with the transaction contemplated in the ruling request, neither P, Sub 1, nor Sub 2 will transfer property, directly or indirectly, to a foreign corporation in an exchange described in § 367(a).

(d) In connection with the transaction contemplated in the ruling request, neither P, Sub 1, nor Sub 2 will transfer property, directly or indirectly, to a foreign corporation in an exchange described in § 367(d).

(e) Neither P, Sub 1 or Sub 2 will be a United States real property holding

corporation ("USRPHC") as defined in § 897(c)(2) at any time during the 5-year period ending on the date of the transaction, and none of them will be a USRPHC immediately after the transaction.

(f) Neither T1 nor T2 is a passive foreign investment company ("PFIC") as defined in § 1297.

(g) The notice requirements of § 1.367(b)-1(c)(1) will be met with respect to the proposed transaction.

(h) P will comply with the § 1.367(b)-2(j) change in functional currency of a qualified business unit rules.

(i) P will comply with the § 1.367(b)-4(d) rules for subsequent exchanges when and where applicable.

(j) There are no dual resident corporations within the meaning of § 1.1503-2(c)(2) involved in the transaction.

Based solely on the information submitted and on the representations set forth above, and provided that T1 and T2 are each a corporation within the meaning of § 7701(a)(3) and the notice requirements of § 1.367(b)-1(c) are met, we rule as follows:

(1) For Federal income tax purposes, the transfer of the T1 stock by P to Sub 1 will be treated as if P had transferred the T1 stock to Sub 1 in exchange for an amount of the outstanding shares of common stock equal in value to that of the property transferred (Rev. Rul. 64-155, 1964-1 C.B. 138).

(2) No gain or loss will be recognized by P on the transfer of T1 to Sub 1 solely in exchange for Sub 1 stock (§ 351(a); § 1.1248-1(a)).

(3) No gain or loss will be recognized by Sub 1 upon the receipt of T 1 stock § 1032(a)).

(4) The basis of the T1 stock to be received by Sub 1 will be the same as the basis of such stock in the hands of P immediately prior to the above transfer (§ 362(a)).

(5) The basis of the Sub 1 stock received by P will be the same as the basis of the T1stock immediately before the transfer (§ 358(a)(1)).

(6) The holding period of the T1 stock to be received by Sub 1 from P will include the period during which P held such stock (§ 1223(2)).

(7) For Federal income tax purposes, the transfer of the T1 stock by Sub1 to Sub2 will be treated as if Sub1 had transferred the T1 stock to Sub2 in

exchange for an amount of the outstanding shares of Sub 2 common stock equal in value to that of the property transferred. (Rev. Rul. 64-155, 1964-1C.B. 138).

(8) No gain or loss will be recognized by Sub 1 on the transfer of T1 to Sub 2 solely in exchange for Sub 2 stock (§ 351(a); § 1.1248-1(a)(1)).

(9) No gain or loss will be recognized by Sub 2 upon the above receipt of T1 stock (§ 1032(a)).

(10) The basis of the T1 stock to be received by Sub 2 will be the same as the basis of such stock in the hands of Sub 1 immediately prior to the above transfer (§ 362(a)).

(11) The basis of the Sub 2 stock received by Sub 1 will be the same as the basis of the T1 stock immediately before the transfer (§ 358(a)(1).

(12) The holding period of the T1 stock to be received by Sub 2 from Sub 1 will include the period during which Sub 1 held such stock (§ 1223(2)).

(13) For Federal income tax purposes, the amalgamation transaction described in step (iii), above, will be treated as (A) a transfer by T1 and T2 of their assets and liabilities to Newco in exchange for stock of Newco, and (B) the distribution by T1 and T2 of all of the Newco stock to Sub 2 in exchange for all Sub 2's T1 and T2 stock.

(14) The transfer by T1 and T 2 of substantially all of their assets to Newco in exchange for Newco stock and the assumption by Newco of the liabilities, if any, of T1 and T2, followed by the distribution by T1 and T2 of the Newco stock to Sub 2 in complete liquidation of T1 and T2 will constitute a reorganization within the meaning of § 368(a)(1)(D). Newco, T1 and T2 will each be “a party to a reorganization” within the meaning of § 368(b). For purposes of this ruling, “substantially all” means at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by T1 and T2 immediately prior to the transactions.

(15) No gain or loss will be recognized by T1 and T2 upon the transfer of substantially all of their assets to Newco in exchange for Newco stock and the assumption by Newco of the T1 and T2 liabilities, if any (§§ 361(a) and 357(a)).

(16) No gain of loss will be recognized by T1 or T2 upon the distribution of Newco stock to Sub 2 in exchange for T1 and T2 stock (§ 361(c)(1)).

(17) No gain of loss will be recognized by Newco upon the receipt of the assets

of T1 and T2 in exchange for Newco stock (§ 1032(a)).

(18) The basis of the assets of T1 and T2 in the hands of Newco will be the same as the basis of those assets in the hands of T1 and T2 immediately prior to the transfer (§ 362(b)).

(19) The holding period of the assets of T1 and T2 acquired by Newco will include the period during which those assets were held by T1 and T2 (§ 1223(2)).

(20) No gain or loss will be recognized by Sub 2 upon the receipt of the Newco stock in exchange for its T1 and T2 stock (§ 354(a)(1).

(21) The basis of the shares of Newco common stock received by Sub 2 will be the same as the basis of the T1 and T2 stock surrendered in exchange therefor (§ 358(a)(1)).

(22) The holding period of the Newco stock to be received by Sub 2 will include the period during which Sub2 held the T1 and T2 stock surrendered in exchange therefor, provided the T1 and T2 stock was held as a capital asset on the date of the exchange (§ 1223(1)).

(23) The earnings and profits of T1 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 foreign corporation after December 31, 1962, during the period P held the T1 stock, or was considered as holding it by reason of the application of § 1223, while T1 was a CFC will be attributable to the T1 stock held by Sub 1.

(24) The earnings and profits of T1 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 foreign corporation after December 31, 1962, during the period Sub 1 held the T1 stock, or was considered as holding it by reason of the application of § 1223, while T1 was a CFC will be attributable to the T1 stock held by Sub 2.

(25) No gain or loss will be recognized under § 367(b) on the amalgamation of T1 and T2 (§ 1.367(b)-4).

(26) For purposes of applying § 367(b) or § 1248 to subsequent exchanges the determination of the earnings and profits attributable to an exchanging shareholder’s stock in Newco shall be computed in accordance with § 1.367(b)-4(d).

No opinion is expressed regarding whether any or all of the above-referenced foreign corporations are PFICs (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 PFICs, 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 required gain recognition notwithstanding any other provision of the Code.

We express no opinion about the tax statement of the 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 transaction that are not specifically covered by the above rulings.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) 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 of the taxpayers involved for the taxable year in which the transaction covered by this letter is consummated.

Pursuant to a power of attorney on file in this office, we have sent a copy of this letter to your authorized representative.

Sincerely yours,
Associate Chief Counsel (Corporate)
By Debra Carlisle
Chief, Branch 5