Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:CORP:B05-PLR-117287-01
Date:
May 3, 2001

Re:

Foreign Parent	=
Sub 1	=
Sub 2	=
Target	=
Target Sub	=
Country X	=
State A	=
State B	=
Exchange B	=
Business C	=
Date 1	=
Date 2	=
n	=

This letter responds to your March 19, 2001 request for rulings on certain federal income tax consequences of a proposed transaction. The information submitted in this request and in subsequent correspondence is summarized below.

Foreign Parent is a publicly traded corporation whose common stock is listed on several exchanges, including Exchange B. Foreign Parent is engaged in Business C.

Foreign Parent has an existing stock repurchase plan which was not modified or established in connection with the proposed transaction as described below. During the period commencing on Date 1 and ending on Date 2, Foreign Parent may purchase for cancellation up to n shares of its common stock. Foreign Parent will pay the market price for the shares at the time of acquisition. Any stock repurchases that occur following the proposed transaction will be made on the open market through a broker for the prevailing market price. Because of the mechanics of an open market purchase, Foreign Parent does not know the identity of a seller of Foreign Parent shares, nor does a former shareholder of Target (described below) know whether Foreign Parent is the buyer. Foreign Parent's intention to repurchase shares was announced prior to the proposed transaction, and was not a matter that Foreign Parent negotiated with the Target shareholders. Without regard to the repurchase program, a market exists for the Foreign Parent shares that will be issued in the proposed transaction. During the time Foreign Parent undertakes its repurchase program, there will be sales of Foreign Parent stock on the open market, which may include sales of Foreign Parent shares by former Target shareholders.

Foreign Parent owns directly all of the issued and outstanding stock of Sub 1, a State A holding company. Sub 1 is the parent of an affiliated group of corporations whose includible members file a consolidated return for federal income tax purposes. Sub 1 owns all of the stock of Sub 2, also a State A holding company.

Target is a publicly traded, State B holding company whose subsidiary corporation, Target Sub, is engaged in Business C.

The Proposed Transaction

For what have been represented to be valid business reasons, Foreign Parent proposes the following transaction:

(i) Foreign Parent will incorporate a new corporation ("Merger Sub") under the laws of State A as part of an overall plan to acquire the assets of Target.

(ii) Prior to completion of the transaction, a Target shareholder will elect, with respect to such shareholder's Target common stock, to receive: (i) solely Foreign Parent stock; (ii) solely cash; or (iii) a combination of cash and Foreign Parent stock. In the aggregate, the fair market value of Foreign Parent stock issued in the transaction will equal or exceed 50 percent of the total consideration issued in the transaction. No fractional shares will be issued by Foreign Parent in the transaction. All fractional shares of Foreign Parent will be aggregated and sold, and fractional shareholders will receive cash in lieu thereof.

(iii) Target will merge with and into Merger Sub in accordance with applicable State A and State B state law ("the Merger"). As the surviving corporation, Merger Sub will thereupon become the owner of all the assets, rights, privileges, powers and

franchises, and be subject to all the liabilities and obligations of Target.

(iv) Following the Merger, Foreign Parent will contribute the stock of Merger Sub to Sub 1 ("Contribution 1"), and Sub 1 will contribute the stock of Merger Sub to Sub 2 ("Contribution 2") in exchange for additional stock of Sub 1 and Sub 2, respectively.

The Representations

In connection with this transaction, the following representations are made:

The Merger

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

(b) During the 5-year period beginning on the date of the proposed transaction, there is no plan or intention for Foreign Parent or Merger Sub, or any person related (as defined in § 1.368-1(e)(3)) to Foreign Parent or Merger Sub, to acquire, with consideration other than Foreign Parent stock, Foreign Parent stock furnished in exchange for a proprietary interest in Target in the proposed transaction, either directly or through any transaction, agreement, or arrangement with any other person, except for cash in lieu of fractional shares distributed to Target shareholders in the Merger, and during the 5-year period ending on the date of the proposed transaction, no distributions will have been made with respect to Target stock (other than ordinary, normal, regular, dividend distributions made pursuant to Target's historic dividend paying practice), either directly or through any transaction, agreement, or arrangement with any other person.

(c) Merger Sub 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 Target immediately prior to the transaction. For purposes of this representation, amounts paid by Target to dissenters, amounts paid by Target to shareholders who receive cash or other property, Target assets used to pay its reorganization expenses, and all redemptions and distributions (except for regular, normal dividends) made by Target immediately preceding the transfer, will be included as assets of Target held immediately prior to the transaction.

(d) Prior to the transaction, Foreign Parent will be in control of Merger Sub within the meaning of § 368(c) of the Internal Revenue Code.

(e) Following the transaction, Merger Sub will not issue additional shares of its stock that would result in Foreign Parent losing control of Merger Sub within the meaning of § 368(c).

(f) Except as described above in step (iv) of the proposed transaction, Foreign Parent has no plan or intention to liquidate Merger Sub; to merge Merger Sub with and into another corporation; to sell or otherwise dispose of the stock of Merger Sub; or to cause Merger Sub to sell or otherwise dispose of any of the assets of Target acquired in the transaction, except for dispositions made in the ordinary course of business or transfers described in § 368(a)(2)(C).

(g) The liabilities of Target assumed by Merger Sub and the liabilities to which the transferred assets of Target are subject were incurred by Target in the ordinary course of its business.

(h) Following the transaction, Foreign Parent will continue the historic business of Target or will use a significant portion of Target's historic business assets in a business.

(i) Foreign parent, Merger Sub, Target, and the shareholders of Target will pay their respective expenses, if any, incurred in connection with the Merger.

(j) There is no intercorporate indebtedness existing between Foreign Parent and Target or between Merger Sub and Target that was issued, acquired, or will be settled at a discount.

(k) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(l) Target is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

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

(n) No shares of Merger Sub will be issued as consideration in the Merger.

(o) The payment of cash in lieu of fractional shares of Foreign Parent stock is solely for the purpose of avoiding the expense and inconvenience to Foreign Parent of issuing fractional shares and does not represent separately bargained-for consideration. The total cash consideration that

will be paid in the transaction to the Target shareholders in place of using fractional shares of Foreign Parent will not exceed 1 percent of the total consideration that will be issued in the transaction to the Target shareholders in exchange for their shares of Target stock. The fractional share interests of each Target shareholder will be aggregated, and no Target shareholder will receive an amount equal to or greater than the value of one full share of Foreign Parent stock.

(p) None of the compensation received by any shareholder-employee or director of Target will be separate consideration for, or allocable to, any of such person's shares of Target stock; none of the shares of Foreign Parent stock received by any shareholder-employee or director will be separate consideration for, or allocable to, any employment agreement; and the compensation paid to any shareholder-employee or director will be for services actually rendered and will be commensurate with amounts paid to third parties bargaining at arm's length for similar services.

(q) In the Merger, 50 percent or less of both the total voting power and the total value of the outstanding stock of Foreign Parent will be received, in the aggregate, by Target shareholders who are United States persons within the meaning of § 1.367(a)-3(c)(5)(iv).

(r) Immediately after the Merger, 50 percent or less of each of the total voting power and the total value of the stock of Foreign Parent will be owned, in the aggregate, by United States persons who were either officers, directors, or "five-percent target shareholders" (as defined in § 1.367(a)-3(c)(5)(iii)) of Target. For purposes of this representation, any stock of Foreign Parent owned by United States persons immediately after the transfer is taken into account, whether or not it was received in exchange for stock of Target.

(s) No former shareholder of Target is a "five-percent transferee shareholder" as defined in § 1.367(a)-3(c)(5)(ii).

(t) Foreign Parent was engaged in an active trade or business outside the United States within the meaning of § 1.367(a)-3(c)(3) for the entire 36-month period immediately before the Merger.

(u) At the time of the Merger, the fair market value of Foreign Parent will at least equal the fair market value of Target.

(v) At the time the Merger, Foreign Parent had no plan or intention to substantially dispose of or discontinue its active trade or business.

(w) The reporting requirements of § 1.367(a)-3(c)(6) will be met by Target with respect to the Merger.

(x) Merger Sub was not a United States Real Property Holding Corporation ("USRPHC"), as defined in § 897(c)(2), at any time during the five year period ending on the date of the Merger, and will not be a USRPHC immediately after the Merger.

(y) Foreign Parent was not a passive foreign investment company ("PFIC"), within the meaning of § 1297(a), at any time during the five year period ending on the date of the Merger and will not be a PFIC immediately after the Merger.

(z) No party to this transaction (including Foreign Parent, Sub 1, Sub 2, Target and Merger Sub) is incorporated both in the United States and in Country X.

Contribution 1 and Contribution 2

To the best of the knowledge and belief of Foreign Parent, Contribution 1 and Contribution 2 each will qualify for nonrecognition treatment under § 351(a). See Rev. Rul. 77- 449, 1977-2 C.B. 110.

Rulings

Section 3 of Rev. Proc. 2001-3, 2001-1 I.R.B. 111 (Jan. 2, 2001), lists areas in which the Service will not issue ruling letters. Section 3.01(29) of that revenue procedure provides that the Service will not rule on whether a transaction constitutes a reorganization within the meaning of § 368(a)(1)(A) by reason of § 368(a)(2)(D), unless the IRS determines that there is a "significant issue" that must be resolved in order to decide such matter. If the Service determines that a transaction raises a significant issue, the revenue procedure provides that the Service may issue rulings resolving the significant issue, and also may issue rulings concerning whether the transaction satisfies the requirements of a reorganization.

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

1. Provided the Merger of Target into Merger Sub qualifies under the laws of State A and State B, the Merger will qualify as a reorganization under § 368(a)(1)(A) by reason of § 368(a)(2)(D). Target, Foreign Parent, and Merger Sub will each be a party to a reorganization within the meaning of § 368(b).

2. No gain or loss will be recognized by Target upon the transfer of substantially all of its assets to Merger Sub in exchange for Foreign Parent's common stock, cash, and the assumption of Target's liabilities by Merger Sub (§§ 361(a), 361(b), and 357(a)).

3. No gain or loss will be recognized by Target on the distribution of Foreign Parent stock and cash to its shareholders in pursuance of the plan of reorganization (§ 361(c)(1)).

4. No gain or loss will be recognized by either Foreign Parent or Merger Sub upon the acquisition by Merger Sub of substantially all of the assets of Target in exchange for Foreign Parent stock (§ 1.1032-2).

5. The basis of the assets of Target received by Merger Sub will be the same in the hands of Merger Sub as the basis of each asset in the hands of Target immediately prior to the exchange (§ 362(b)).

6. The basis of Merger Sub stock in the hands of Foreign Parent will be equal to the basis Target had in its assets prior to the Merger decreased, but not below zero, by the amount of liabilities assumed (within the meaning of § 357(d)) by Merger Sub (§ 1.358-6(c)(1)).

7. The holding period of each asset of Target received by Merger Sub will include the period for which such asset was held by Target (§ 1223(2)).

8. No gain or loss will be recognized by the shareholders of Target who receive solely Foreign Parent stock in exchange for their Target stock (§ 354(a)(1)). Gain will be recognized by those Target shareholders who receive cash and other property in addition to Foreign Parent stock, but not in excess of the amount of cash and other property received (§ 356(a)(1)). If the exchange has the effect of the distribution of a dividend, then the amount of the gain recognized that is not in excess of the shareholder's ratable share of undistributed earnings and profits will be treated as a dividend (§ 356(a)(2)). No loss will be recognized on the exchange (§ 356(c)).

9. The basis of Foreign Parent stock received by a shareholder of Target (including fractional shares to which the shareholder may be entitled) will be the same as the basis of Target stock exchanged therefor, decreased by the amount of any money and the fair market value of any other property received by the Target shareholder, and increased by the sum of the amount treated as a dividend (if any) and the amount of gain recognized on the exchange by such Target shareholder that is recognized in the exchange (not including any portion of such gain that was treated as a dividend) (§ 358(a)(1)).

10. The holding period of Foreign Parent stock received by a shareholder of Target (including fractional shares to which such shareholder may be entitled) will include the period during which the Target stock surrendered in exchange therefor was held, provided the Target stock was a capital

asset in the hands of the shareholder of Target on the date of the exchange (§ 1223(1)).

11. The payment of cash in lieu of fractional shares of Foreign Parent stock will be treated as if the fractional shares were distributed as part of the exchange and then redeemed by Foreign Parent. These cash payments will be treated as having been received as distributions in full payment in exchange for the stock redeemed, as provided in § 302(a) (Rev. Rul. 66-365, 1966-2 C.B. 116 and Rev. Proc. 77-41, 1977-2 C.B. 574).

12. Pursuant to § 381(a) and § 1.381(a)-1, Merger Sub will succeed to and take into account the items of Target described in § 381(c), subject to the conditions and limitations specified in §§ 381(b), 381(c), 382, 383 and 384 and the regulations thereunder.

13. Neither Contribution 1 nor Contribution 2 will prevent the parties to the Merger from relying upon ruling (1), above, because notwithstanding Contribution 1 and Contribution 2, the Merger will qualify as a reorganization under § 368(a)(1)(A) by reason of § 368(a)(2)(D).

Caveats

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. See the rules in § 1.367(a)-3(c) in regard to the transfer by a U.S. transferor of the stock of a domestic corporation to a foreign corporation in an exchange subject to § 367(a).

This ruling is directed only to the taxpayer 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 taxpayer's representatives as designated on the power of attorney on file in this office.

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