Internal Revenue Service

Department of the Treasury

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Corp 1 =

Corp 2 =

Sub 1 =

Sub 2 =

Country 1 =

Country 2 =

Country 3 =

Date 1 =

Date 2 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

Class 1 =

Class 2 =

Class 3 =

Class 4 =

Dear

This letter responds to the December 10, 2002 request for rulings on certain federal income tax consequences of a proposed transaction. Additional information was submitted on January 30, February 4, and March 11, 2003. The information submitted with regard to this ruling request is summarized below.

Summary of Facts

Corp 1 is a Country 1 corporation that is not engaged in a U.S. trade or business. Corp 2 is a Country 2 corporation that is not engaged in a U.S. trade or business. Corp 1 and Corp 2 are the shareholders of Sub 1. Corp 1 owns a percent of Sub 1 and Corp 2 owns b percent of Sub 1.

Sub 2 is the principal holding company for Sub 1 operations in Country 3. Corp 1 owns all of Sub 2's Class 1 shares (old Class 1 shares). The c $d par value old Class 1 shares are voting common shares holding e percent of the vote of Sub 2. Corp 2 owns all of Sub 2's Class 2 shares (old Class 2 shares). The f $d par value old Class 2 shares are voting common shares holding g percent of the vote of Sub 2. Sub 1 owns all of Sub 2's Class 3 and Class 4 shares, which are voting common shares that each carry h percent of the vote of Sub 2.

Proposed Transaction

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

(i) Corp 1 and Corp 2 will amend Sub 2's Certificate of Incorporation to decrease the voting power of the old Class 1 shares from e percent to i percent (new Class 1 shares), to increase the voting power of the old Class 2 shares from g percent to j percent (new Class 2 shares), and to permit the contribution described below (the Recapitalization); and

(ii) Corp 1 and Corp 2 will contribute all of their new Class 1 shares and new Class 2 shares, respectively, to Sub 1 in exchange for shares in Sub 1 (the Contribution).

Representations

Corp 1 and Corp 2 have made the following representations concerning the Recapitalization:

(a) The fair market value of the new Class 1 shares and new Class 2 shares held by Corp 1 and Corp 2, respectively, immediately following the Recapitalization will be equal to the fair market value of the old Class 1 shares and old Class 2 shares held by Corp 1 and Corp 2, respectively, immediately before the Recapitalization.

(b) Sub 2, Corp 1 and Corp 2 will each pay their own expenses, if any, incurred in connection with the Recapitalization.

(c) Sub 2 has no plan or intention to redeem or otherwise reacquire any of the stock to be issued in the Recapitalization.

(d) At the time of the Recapitalization, Sub 2 will not have outstanding any stock options, warrants, convertible securities or any other right that is convertible into any class of stock or securities of Sub 2.

(e) Sub 2 is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A) of the Internal Revenue Code.

(f) None of the outstanding Sub 2 stock is section 306 stock.

Corp 1 and Corp 2 have made the following additional representations:

(g) For valid business purposes, Corp 1 will contribute all of its new Class 1 shares to Sub 1 and Corp 2 will contribute all of its new Class 2 shares to Sub 1, in each case for Sub 1 stock in a share for share exchange.

(h) The Contribution will qualify as a transfer within the meaning of section 351(a).

(i) Sub 2 is a "United States real property holding corporation" within the meaning of section 897(c)(2) and the new Class 1 shares and new Class 2 shares are "United States real property interests" within the meaning of section 897(c)(1).

(j) Sub 1 is a "qualified resident" of Country 1 as defined in section 884(e) and the regulations thereunder.

(k) Corp 1 and Corp 2 will comply with the filing requirements of section 1.897-5T(d)(1)(iii) of the Temporary Regulations, as modified by Notice 89-57, 1989-1 C.B. 698.

(l) Corp 1 and Corp 2 have no intention of disposing of any shares of Sub 1 received in the Contribution for a period of three years from the date of receipt of such Sub 1 shares.

(m) Neither Corp 1 nor Corp 2 will obtain greater tax benefits under either the Country 3/Country 1 income tax treaty or the Country 3/Country 2 income tax treaty as a result of this transaction.

Law and Analysis

Corp 1 and Corp 2 have represented that Sub 2 is a United States real property holding corporation and that each of their interests in Sub 2 constitutes a United States real property interest (USRPI). Pursuant to Temp. Treas. Reg. § 1.897-6T(a), a "nonrecognition provision" shall apply to a transfer by a foreign person of a USRPI only to the extent it is exchanged for another USRPI which would be subject to U.S. tax on its disposition. A recapitalization under section 368(a)(1)(E) is a nonrecognition provision as defined in Temp. Treas. Reg. § 1.897-6T(a)(2). Further, Corp 1 and Corp 2 have represented that Corp 1's transfer of the new Class 1 stock and Corp 2's transfer of the new Class 2 shares to Sub 1 are transfers of property under section 351(a) and are transfers to which section 897(e) applies. Accordingly, to obtain nonrecognition treatment for the transfers, Corp 1 and Corp 2 must meet the requirements set forth in Temp. Treas. Reg. § 1.897-6T(b). After Corp 1's and Corp 2's transfers to Sub 1, a foreign corporation, Sub 1 will hold an interest that will be subject to taxation under Temp. Treas. Reg. § 1.897-5T(d)(1). Corp 1 and Corp 2 have represented that Sub 1 is a qualified resident as defined in section 884(e) and any regulations thereunder of a foreign country in which it is incorporated. Finally, Corp 1 and Corp 2 have represented that the filing requirements of Temp. Treas. Reg. § 1.897-5T(d)(1)(iii), as modified by Notice 89-57, will be complied with, and that Corp 1's and Corp 2's interests in Sub 1 before and after the proposed transfer will be identical.

Rulings

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

(1) The amendment to Sub 2's Certificate of Incorporation will be treated as a deemed exchange by Corp 1 and Corp 2 of old Class 1 shares and old Class 2 shares, respectively, for new Class 1 shares and new Class 2 shares. The deemed exchange will qualify as a recapitalization and therefore a reorganization within the meaning of section 368(a)(1)(E). Sub 2 will be "a party to a reorganization" within the meaning of section 368(b).

(2) No gain or loss will be recognized by Sub 2 upon the deemed receipt of old Class 1 shares and old Class 2 shares for new Class 1 shares and new Class 2 shares, as described above (section 1032(a)).

(3) Corp 1 and Corp 2 will not recognize gain or loss upon the deemed exchange of old Class 1 shares and old Class 2 shares for new Class 1 shares and new Class 2 shares, as described above (section 354(a)(1)).

(4) The basis of the new Class 1 shares and new Class 2 shares to be received by Corp 1 and Corp 2, as described above, will be same as the basis of the old Class 1 shares and old Class 2 shares surrendered in exchange therefor (section 358(a)(1)).

(5) The holding period of the new Class 1 shares and new Class 2 shares to be received by Corp 1 and Corp 2, in each instance, will include the period during which the old Class 1 shares and old Class 2 shares surrendered in exchange therefor provided the old Class 1 shares and old Class 2 shares surrendered were held as a capital asset on the date of the exchange (section 1223(1)).

Based solely on the information submitted and the representations made, and provided that (1) the exchange by Corp 1 and Corp 2, in each instance, of new Class 1 shares and new Class 2 shares for Sub 1 stock, as described above, qualifies as an exchange under section 351(a), and (2) the filing requirements of Temp. Treas. Reg. § 1.897-5T(d)(1)(iii), as modified by Notice 89-57, are met, we also rule as follows:

(6) Corp 1 and Corp 2 will not recognize gain with respect to the Recapitalization under section 897(e) (Temp. Treas. Reg. § 1.897-6T(a)(1)).

(7) Corp 1 and Corp 2 will not recognize gain on the exchange of new Class 1 and new Class 2 shares for Sub 1 shares under section 897(e) (Temp. Treas. Reg. § 1.897-6T(b)(1) and (2)).

Caveats

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In addition, see section 1445 and the regulations thereunder for the withholding responsibilities of Corp 1 and Corp 2.

Procedural Statements

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

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 letter must be attached to any income tax return to which it is relevant.

Sincerely,

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Lewis K Brickates
Acting Chief, Branch 4
Office of Associate Chief Counsel
(Corporate)