Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:INTL:B04 – PLR-159262-03

Date:
March 25, 2004

In Re:

Parent =

Acquired =

Target 1 =

Target 2 =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Acquired-US =

Business B =

State C =

Date D =

Date E =

Date F =

Dear :

This is in response to a letter dated October 7, 2003, submitted on your behalf by your authorized representative, requesting a ruling regarding the application of section 367(b) of the Internal Revenue Code with respect to a proposed transaction. Additional information was submitted in letters dated November 19, December 8, December 12, and December 23, 2003, and in letters dated January 14, January 15, and February 3, 2004.

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.

Parent is a domestic corporation engaged in Business B. Parent currently owns all of the outstanding stock of Acquired, a foreign corporation. Acquired currently owns all of the stock of Sub 1, a domestic corporation, and all of the stock of several foreign corporations.

Prior to Date D, Parent did not own any stock of Acquired, an unrelated corporation. After the Date D transactions, Parent owned 45 percent of the stock of Acquired. There was and continues to be only one class of Acquired stock issued and outstanding.

DATE D AND LATER TRANSACTIONS

On Date D, Acquired contributed Acquired stock to Sub 1. Target 1 and Target 2 were domestic corporations owned by Parent. Target 1 and Target 2, each, transferred substantially all of their assets and liabilities to Sub 1 in exchange for the common stock of Acquired, which was then distributed in dissolution to Parent. Each of the transactions was treated as a tax-free forward triangular merger under sections 368(a)(1)(A) and 368 (a)(2)(D) of the Code. Parent received a “substituted” basis under section 358 of the Code, and a “substituted” holding period in these specific shares of Acquired under section 1223 (1) of the Code. The substituted holding period includes the period during which Parent held the stock of Target 1 and Target 2.

On Date D, Parent also transferred the stock of Sub 4, a domestic corporation, and the stock of Sub 5, Sub 6, Sub 7, Sub 8, Sub 9, Sub 10, and Sub 11, all foreign corporations, to Acquired in exchange for Acquired shares and other property. These exchanges were treated as taxable exchanges under section 1001 of the Code and Parent recharacterized its gain as a deemed dividend to the extent of earnings and profits, if any, under section 1248 of the Code.

Parent continued to acquire additional shares of Acquired through taxable transactions so that by Date E, a later date, Parent owned more than 50 percent of Acquired and Acquired had become a controlled foreign corporation ("CFC") as defined in section 957(a) of the Code. On Date F, Parent purchased the remaining Acquired shares for cash and thereby increased its ownership of Acquired to 100 percent.

PROPOSED TRANSACTION

For represented business reasons, Acquired will reorganize into Acquired-US, a newly-created State C corporation. The reorganization is expected to reduce foreign taxes on distributions to Acquired from certain subsidiaries including Sub 2 and Sub 3. The taxpayer has not requested a ruling with respect to this proposed transaction under section 368(a)(1)(F).

REPRESENTATIONS

The taxpayer has provided the following representations with regard to this request for a private letter ruling:

1. Each of the Date D acquisitions by Sub 1 of substantially all of the assets of Target 1 and Target 2, solely in exchange for common stock of Acquired, qualified as a reorganization under sections 368(a)(1)(A) and 368 (a)(2)(D) of the Code.

2. The transfers by Parent of the stock of Target 1 and Target 2 solely in exchange for common stock of Acquired qualified, in each instance, as a tax-free section 354 exchange.

3. The reorganization of Acquired into Acquired-US was undertaken to save foreign taxes by gaining application of the United States Income Tax Conventions.

4. The reorganization of Acquired into Acquired-US qualifies as a reorganization under section 368(a)(1)(F) of the Code.

Treas. Reg. § 1.367(b)-3 applies to the reorganization of Acquired into Acquired-US. Under Treas. Reg. §1.367(b)-3(b)(3)(i) a "United States shareholder" as defined in Treas. Reg. § 1.367(b)-3(b)(2) must include in income as a deemed dividend the "all earnings and profits amount" with respect to its stock in the foreign acquired corporation. Treas. Reg. § 1.367(b)-2(d) provides that the all earnings and profits amount is the net positive earnings and profits (if any) determined as provided in paragraph 2(d)(2) and attributable to such stock as provided in paragraph 2(d)(3). Under that paragraph, the "all earnings and profits" amount is determined according to the principles of section 1248. It is noted that prior to Date D, Parent did not own any Acquired stock, and that on Date D, the stock of the foreign corporations was transferred to Acquired in taxable exchanges under section 1001. Prior to Date D, Acquired was an unrelated foreign corporation.

Based solely on the information submitted and on the representations set forth above, it is held as follows:

> None of the earnings and profits of Acquired before Date D are included in Parent's "all earnings and profits" amount under Treas. Reg. §1.367(b)-3(b)(3)(i). Appropriate portions of the earnings and profits of Acquired after Date D are included in Parent's "all earnings and profits" amount according to the attribution principles of section 1248. See Treas. Reg. §1.367(b)-2(d).

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 particular, no opinion was requested and none is expressed as to whether the Date D acquisitions qualified, in each instance, as a reorganization within the meaning of section 368(a)(1) of the Code, and as to whether the proposed reorganization of Acquired into Acquired-US will qualify as a reorganization within the meaning of section 368(a)(1)(F) of the Code.

A copy of this letter must be attached to the taxpayer's federal income tax return for the year in which the transaction is consummated.

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

In accordance with a Power of Attorney on file with this office, a copy of this letter is being sent to each of your authorized representatives.

Sincerely,

/s/ Charles P. Besecky
Charles P. Besecky
Chief, Branch 4,
Office of the Associate Chief Counsel,
(International)