

## Internal Revenue Service

## Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:INTL:Br.4-PLR-126808-00

Date:

August 29, 2001

Domestic Parent =

Foreign Parent =

New Parent =

New Foreign Parent =

Acquiring Corporation =

Acquiring Parent =

Sub 1 =

FS1 =

FS2 =

FS3 =

FS4 =

FS5 =

FS6 =

State A =

Country B =

Country C =

Country D =

Country E =

Country F =

Date M =

Date N =

Date P =

Date Q =  
 Date R =  
  
 Year S =  
 Year T =  
 Year U =  
 Year V =  
 Year W =  
 Year X =  
  
 x =

Dear :

This is in response to your letter, dated November 14, 2000, requesting a private letter ruling providing that the failure to file notices of certain transactions under former Temp. Reg. §7.367(b)-1(c), in effect for the years of the transactions, was due to reasonable cause within the meaning of §7.367(b)-1(c)(3). Additional information was provided in a letter dated January 8, 2001.

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.

In Year S, Domestic Parent, a State A corporation, owned all of the stock of FS1, a Country B corporation; FS2, a Country C corporation; FS3, a Country D corporation; and FS4, a Country E corporation. On Date M, Domestic Parent transferred all of the stock of FS1, FS2, FS3, and FS4 to Foreign Parent, a Country F corporation. After the transactions, Foreign Parent owned all of the stock of FS1, FS2, FS3, and FS4, and Domestic Parent owned all of the stock of Foreign Parent.

The taxpayer has represented that the transactions qualified as nonrecognition transactions under section 351 and, with respect to FS2, FS3, and FS4, under section 368(a)(1)(B) of the Internal Revenue Code (the Code). However, in preparing its Year S federal tax return, Domestic Parent reported the nonrecognition transactions solely under section 351 of the Code and filed a gain recognition agreement (GRA) pursuant to Treas. Reg. §1.367(a)-3T(g). For Year S, the transfer by a U.S. person of stock of a controlled foreign corporation in an exchange described in both section 351 and 368(a)(1)(B) is governed by section 367(b) and not section 367(a) and the regulations thereunder. See former §1.367(a)-3T(b)(1) and former §7.367(b)-4(b). Domestic Parent, relying on the advice of a professional international tax accounting firm, did not identify the transactions involving FS2, FS3, and FS4 as reorganizations under section 368(a)(1)(B) and did not file the notice and required information required under the

section 367(b) regulations (see §7.367(b)-1(c)).

On Date N, New Parent acquired all of the outstanding shares of Domestic Parent in a transaction described in section 368 (a)(1)(A) and (a)(2)(E) of the Code. After the transaction, New Parent was the surviving parent and Domestic Parent was a subsidiary of New Parent. On Date Q, Domestic Parent was merged into New Parent in a separate unrelated transaction under section 332 of the Code.

On Date P, FS1 transferred all of its assets to FS5 in a nonrecognition transaction described in section 368(a)(1)(D) of the Code. Prior to Date P Foreign Parent owned 75% of the outstanding shares of FS1 and Sub 1 owned 25% of the outstanding shares of FS1. Foreign Parent exchanged its 75% interest in FS1 for FS5 shares constituting a 75% interest, and Sub 1 exchanged its 25% interest in FS1 for FS5 shares constituting a 25% interest. New Parent provided notice of this transaction in an annual certification attached to its Year T federal income tax return in accordance with section 367(a). Annual certifications were not filed with New Parent's Year U or Year V Federal income tax returns. New Parent did attach the Year U and Year V annual certifications with its timely filed Year W Federal income tax returns. New Parent has obtained relief from the Internal Revenue Service under Treas. Reg. 301.9100-3 with regard to these filings.

In addition to the requirements filing under section 367(a) related to the Year T transaction, the transfer of FS1 assets to FS5 in exchange for SF5 stock is described in section 354 of the Code and is governed by section 367(b) and the regulations thereunder. Pursuant to former Treas. Reg. §7.367(b)-7(b) the Date P transaction qualified for nonrecognition. New Parent was obligated to file the notice and information required under former Temp. Treas. Reg. §7.367(b)-1(c) and comply with the provisions of former Temp. Treas. Reg. §7.367(b)-7(b). New Parent complied with these requirements by attaching the notice and attribution statement to its timely filed Year T federal income tax return. After the merger of Domestic Parent and New Parent, New Parent entered into an amended GRA in Year T with respect to the transfer of the FS1 assets to FS5 in exchange for FS5 stock pursuant to former Treas. Reg. §1.367(a)-3T(g)(7)(ii).

In Year T Foreign Parent changed its name to New Foreign Parent. In Year U, FS3 transferred all of its assets to FS6, another wholly-owned subsidiary of New Foreign Parent in a nonrecognition transaction described in section 368(a)(1)(D) in which New Foreign Parent exchanged its x shares of FS3 for one share of FS6. Pursuant to former Temp. Treas. Reg. §1.367(a)-3T(g)(7), New Parent belatedly provided notice of this transaction in an annual certification for its Year U taxable year, but attached to its timely filed Year W Federal income tax return. New Parent entered into an amended GRA with respect to this transaction pursuant to former Temp. Treas. Reg. §1.367(a)-3T(g)(7)(ii). New Parent also belatedly filed an annual certification for Year V and timely filed an annual certification for Year W with its timely filed Year W Federal income tax return.

For Year U, in addition to the requirements under section 367(a), the transaction involving FS3 and FS6 was governed by section 367(b) and the regulations thereunder. See former Temp. Treas. Reg. §1.367(b)-7(b). New Parent was obligated to file the notice and information required under former Temp. Treas. Reg. §7.367(b)-1(c) and comply with the provisions of former Temp. Treas. Reg. §7.367(b)-7. New Parent belatedly complied by attaching the notice and statement of attribution to its timely filed Year W Federal income tax return.

In Year X, New Parent was merged into Acquiring Corporation, a wholly-owned domestic subsidiary of domestic Acquiring Parent, and the surviving company was renamed New Parent.

The taxpayer recently changed international accounting firms for its outside counsel. The new outside counsel discovered the reporting errors for Year S, Year U, and Year V.

For tax Year S and Year U, a taxpayer that realized gain (whether or not recognized) in an exchange to which section 367(b) applies must file a notice of such exchange on or before the last date (including extensions) for filing a federal income tax return for the person's taxable year in which gain was realized. See § 7.367(b)-1(c)(1). A person that fails to provide, in a timely manner, information sufficient to apprise the Commissioner of the occurrence and nature of a section 367(b) exchange will be considered to have failed to comply with §§ 7.367(b)-1 through 7.367(b)-12 only if the person fails to establish reasonable cause for the failure. See § 7.367(b)-1(c)(3).

Based solely on the information and representations submitted, [and provided that New Parent's request for an extension of time under Treas. Reg. §301.9100-3 to file the annual certifications for Year U and Year V is granted], and also provided that the §7.367(b)-1(c) notice and information requirements are complied with in the manner described below and that any other information reporting requirements under other Code sections in regard to the transactions in Year S and Year U are met, we rule that Domestic Parent/New Parent had reasonable cause for the failures in Year S and Year U to comply with the §7.367(b)-1(c) notice and information reporting requirements.

This holding is based, in part, on the fact that Domestic Parent reasonably relied upon the review of its tax returns by qualified tax professionals when filing its Year S and Year U returns, and the tax professionals failed to advise Domestic Parent to file such notice. New Parent informed the Service and attempted to comply with the reporting requirements as soon as practicable after the omissions were discovered by taxpayer's counsel and before the issue was uncovered by an Internal Revenue Service examination. Finally, the holding is also based on the fact that the Service's interests were not prejudiced by the failure to comply with section 367(b) notice requirements, provided amended returns are filed for Year S and Year U and including a statement which reflects the amount of earnings and profits attributed by reason of § 7.367(b)-7(b) and § 7.367(b)-9 (see § 7.367(b)-1(c)(2)(v)).

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 is expressed about any transaction subsequent to the Year U transaction discussed in this letter.

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

Copies of this letter must be attached to disclosures of the Year S and Year U section 367(b) exchanges that satisfy the § 7.367(b)-1(c) notice and information reporting requirements. The disclosure should be filed as soon as practicable with the Territory Director of the Internal Revenue Service where the taxpayer was originally required to file the § 7.367(b)-1(c) notice and information. In addition New Parent should attach a copy of this letter and the disclosure to its federal income tax return for the taxable year in which it receives this letter.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

Sincerely,  
Charles P. Besecky  
Chief, Branch 4, Office of Associate  
Chief Counsel (International)

cc: