

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

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Refer Reply To:

CC:CORP:B04

PLR-116121-04

Date:

September 27, 2004

Legend

Parent =

Target =

Target 1 =

Target 2 =

Target 3 =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Asset Group =

Date A =

Date B =

Buyer =

Business X =

Business Y =

Country A =

X =

Y =

Z =

W =

A =

B =

a =

b =

c =

d =

e =

Date C Agreement =

Dear _____ :

This letter responds to your March 18, 2004 request for rulings regarding the federal income tax consequences of the transaction described below. The information submitted in that letter and in subsequent correspondence is summarized below.

Summary of Facts

Parent is a widely held domestic corporation and the parent of an affiliated group of corporations that files a federal consolidated income tax return. Parent, directly and through subsidiaries, engages in Business X. Parent directly owns the stock of a number of subsidiaries, including all of the outstanding stock of Target, Sub 1, and Sub 4, all domestic corporations. Target owns all of the outstanding stock of Target 1, a foreign corporation. Target 1 owns all of the outstanding stock of Target 2, a foreign corporation. Target 2 owns X percent of the outstanding stock of Target 3, a foreign corporation. Target and Target 1 respectively own Y percent and Z percent of the outstanding stock of Target 3 (i.e., all of the Target 3 stock not owned by Target 2). Sub 1 owns all of the outstanding stock of Sub 2, a foreign corporation. Sub 2 owns all of the outstanding preferred stock and W percent of the outstanding common stock of Sub 3, a foreign corporation. Sub 4 owns the remaining Sub 3 common stock.

Target, Target 1, and Target 2 are primarily holding companies that own the stock of several subsidiaries as well as some miscellaneous assets.

Target 3 is an operating company with employees and operating assets directly engaged in Business Y. Target 3 also owns most of Asset Group. Target 1 and Target 2 own the portion of Asset Group not owned by Target 3.

Sub 1 and Sub 2 are holding companies that directly and indirectly own interests in numerous foreign and domestic entities. Sub 3 engages in research and development activities in Country A.

The Transaction

For what have been represented to be valid business purposes, Parent has undertaken the following steps (the "Transaction"):

Prior to Date A:

- (i) Target changed its name to A.
- (ii) Target 1 changed its name to B.

On Date A:

- (iii) In exchange for \$a cash, Target 3 transferred to Target 1 its rights, title, and interest in its portion of the assets of Asset Group.
- (iv) Target 3 distributed approximately \$b cash to Target 2.
- (v) In exchange for \$c cash, Target 2 transferred to Target 1 its rights, title, and interest in its portion of the assets of Asset Group.
- (vi) Target 1 licensed to Target 3 certain of the assets included in Asset Group.
- (vii) Target 1 licensed to Parent the Asset Group assets that were not licensed to Target 3 in Step (vi), above.
- (viii) Target, Target 1, and Target 2 each sold all of their Target 3 stock to Sub 3 in exchange for, collectively, \$d cash.

On Date B:

- (ix) Effective Date B (with deemed transactions occurring at the end of Date A), Target 1 made a “check the box” election under § 301.7701-3(a) of the federal income tax regulations to be treated as a disregarded entity for federal income tax purposes.
- (x) To ensure that Target 1 neither held any non-Asset Group assets nor had any liabilities, Target 1 deeded all non-Asset Group assets to Target 2, and Target 2 assumed all of the liabilities of Target 1. No assets were in fact transferred and no liabilities were assumed.
- (xi) Target 2 distributed all of its assets to Target 1 except for \$e cash.
- (xii) Target 1 sold all of the outstanding stock of Target 2 to Sub 3 for \$e cash.
- (xiii) Target 1 distributed all of its assets to Target.
- (xiv) Target distributed all of its assets, except the assets of Asset Group, to Parent (the “Distribution”). In addition, Parent assumed certain liabilities of Target.
- (xv) Parent sold all of its stock of Target to Buyer for \$a cash (the “Sale”).

Representations

The taxpayer has made the following representations regarding the Transaction:

- (a) Buyer neither directly nor indirectly funded the Distribution.
- (b) Potential buyers were not involved in the decision to make the Distribution and Parent marketed Target as a corporation the assets of which consisted of Asset Group.
- (c) Except for the Asset Group assets as described above, Target 3 owns, and is expected to continue to own, its business assets associated with Business Y.
- (d) Buyer is unrelated to Parent and acquired the shares of Target at an arm's length price following a bidding process.
- (e) The Distribution was unrelated to the negotiation of the sales price for the Target shares.
- (f) No entity related to Parent reimbursed Buyer for any portion of the purchase price of the Target shares. Moreover, no entity related to Parent loaned to Buyer any of the funds necessary to acquire the Target shares and no entity related to Parent guaranteed any indebtedness created in connection with the acquisition of such shares.
- (g) Parent did not make a section 338(h)(10) election for the Sale.
- (h) Pursuant to an agreement between Buyer and Parent, Buyer will not dispose of any of the Target shares (through an actual or deemed liquidation or otherwise), and Target will not dispose of Asset Group (except in the very limited instance in which Target transfers Asset Group to a wholly owned entity) for at least two years following the Sale.
- (i) Pursuant to an agreement between Buyer and Parent, Target or Target 1 will operate a business with respect to Asset Group for at least two years following the Sale.
- (j) The adjusted basis of the Target stock in the hands of Parent immediately before the Sale exceeded the amount of cash that Parent received from Buyer in the Sale.

Rulings

Based solely on the information and representations submitted, we rule as follows:

1. The Distribution will be respected as a distribution that is subject to section 301 of the Internal Revenue Code of 1986 (the "Code"), as amended, and will not be treated as additional sales consideration for the Target shares.
2. Any gain or loss recognized by Target, and income to Parent, with respect to the Distribution will be taken into account as provided by §§ 1.1502-13 and 1.1502-32.
3. The Sale will be respected as a sale of stock under section 1001 of the Code, and any loss recognized by Parent will be subject to the limitations, if any, of §§ 1.337(d)-2T(c) and 1.1502-35T.

Caveats

We express no opinion about the tax treatment 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. In particular, no opinion is expressed and none is requested as to whether the Date C Agreement constituted part of the consideration for the Target shares.

Procedural Statements

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

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of this ruling request. Verification of the information, representations, and other data may be required as part of the audit process.

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,

Sean P. Duffley
Assistant to the Chief, Branch 4
(Corporate)

cc: