

**INTERNAL REVENUE SERVICE**

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**CC:CORP:4 PLR-166869-03**

Date:

**December 30, 2003**

Acquiror =

Acquiror Sub =

Target =

S1 =

S2 =

S3 =

S4 =

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S5 =

S6 =

U1 =

Country A =

Country B =

Exchange A =

Exchange B =

Exchange C =

a =

b =

c =

d =

e =

f =

g =

Dear

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This letter responds to your November 18, 2003 request for a ruling on certain federal income tax consequences of a proposed transaction. The information submitted in that request and in later correspondence is summarized below.

The ruling contained in this letter is based on facts 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 requested ruling, it is subject to verification on examination.

### **Summary of Facts**

Publicly traded Acquiror is the common parent of an affiliated group of corporations that files a consolidated return (collectively, the "Acquiror Group"). Acquiror owns a% of the voting common stock and b% of the Class D voting preferred stock of S1. The S1 stock owned by Acquiror possesses more than 80% of the total combined voting power of all classes of S1 stock entitled to vote. S1 has no non-voting stock issued and outstanding. S2, a wholly owned indirect subsidiary of Acquiror, owns the remaining c% of the voting common stock of S1. S3, a wholly owned indirect subsidiary of Acquiror, owns all of the Class A and Class B voting preferred stock of S1. S4 owns all of the Class C and the remaining Class D voting preferred stock of S1.

S1 owns all of the common stock of S4. Third parties unrelated to the Acquiror Group own all of the non-voting preferred stock of S4.

S4 owns all of the common stock of S5, which is the sole class of stock outstanding in S5.

Acquiror owns all of the Class A voting common stock and all of the Class A-1 non-voting preferred stock of Acquiror Sub. S5 owns all of the Class B voting common stock of Acquiror Sub. S6, d% of the stock of which is indirectly owned by Acquiror and the remainder of which stock is owned by an unrelated party, owns all of the Class B non-voting preferred stock of Acquiror Sub. S3 owns all of the Class C voting common stock of Acquiror Sub. U1, a corporation unrelated to the Acquiror Group, owns all of the Class A non-voting preferred stock of Acquiror Sub. In a transaction unrelated to the Acquisition (as defined below), S4 acquired f shares of newly issued Class D common stock of Acquiror Sub. Acquiror Sub is a member of the Acquiror Group.

Target, a Country A corporation, is the parent corporation of a group of subsidiaries that conduct business throughout the world. Target currently has a single class of voting stock outstanding that trades on Exchange A, Exchange B, and Exchange C (as g shares) (together, the "Target Shares").

### **Proposed Transaction**

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Acquiror will acquire no more than e% of the outstanding Target Shares (which will constitute less than 80% of the Target Shares outstanding at the time of the Acquisition) and Acquiror Sub will acquire other outstanding Target Shares (which will constitute less than 80% of the Target Shares outstanding at the time of the Acquisition) (the “Acquiror Sub/Target Shares”) in exchange for shares of Acquiror (“Acquiror Stock”) (together, the “Acquisition”). In the Acquisition, Acquiror and Acquiror Sub together will acquire at least 80% of the Target Shares outstanding at the time of the Acquisition. The Acquisition will be effected as either a “scheme of arrangement” under Country A law or as an exchange offer.

To achieve certain Country B tax treatment for eligible Target shareholders, the parties expect that Target will recapitalize its single class of common stock into two classes of common stock prior to the Acquisition (the “Recapitalization”). Shares in each of the two new classes of Target Shares will possess identical voting rights and will be identical in all other respects, except that holders of one class of such recapitalized Target Shares will receive their shares of Acquiror Stock from Acquiror in the Acquisition, while holders of the other class of recapitalized Target Shares will receive their shares of Acquiror Stock from Acquiror Sub in the Acquisition.

Acquiror Sub will acquire the Acquiror Stock that it will use to acquire Acquiror Sub/Target Shares either (a) directly from Acquiror in exchange for stock of Acquiror Sub, (b) by purchase from Acquiror for cash, or (c) by some combination of (a) and (b).

Acquiror intends to make a § 338(g) election with respect to Target and some or all of Target’s non-United States subsidiaries in connection with the Acquisition.

### **Representations**

The taxpayer has made the following representations concerning the Acquisition:

(a) Acquiror and Acquiror Sub will together acquire at least 80 percent of the outstanding Target Shares, and neither Acquiror nor Acquiror Sub will individually acquire 80 percent or more of the outstanding Target Shares, in the Acquisition.

(b) Target shareholders will not control Acquiror or Acquiror Sub (within the meaning of § 368(c)) immediately after the Acquisition.

(c) At the time of the Acquisition, no shareholder or group of shareholders transferring Target Shares pursuant to the Acquisition will, through actual or constructive ownership, be in control of Acquiror or Acquiror Sub (within the meaning of § 304(c)).

(d) Immediately before the Acquisition, no member of the Acquiror Group will own any Target Shares, actually or constructively, within the meaning of § 318(a) (disregarding § 318(a)(4)).

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(e) Acquiror Sub has no plan or intention to, and Acquiror has no plan or intention to cause Acquiror Sub to, transfer the Acquiror Sub/Target Shares to Acquiror or any other member of the Acquiror Group.

(f) Neither Acquiror nor Acquiror Sub has any plan or intention to cause Target to liquidate for federal income tax purposes or to be treated as an entity other than a corporation for federal income tax purposes.

(g) Immediately before the Acquisition, neither Target nor any of its subsidiaries will be a controlled foreign corporation within the meaning of § 957.

(h) On the date of the Acquisition, neither Target nor any of its subsidiaries will be a passive foreign investment company within the meaning of § 1297.

(i) On the date of the Acquisition, neither Target nor any of its subsidiaries will be a foreign personal holding company within the meaning of § 552.

(j) At no time during the five year period ending on and including the date of the Acquisition will Target or any of its subsidiaries have been a U.S. real property holding corporation within the meaning of § 897(c)(2).

(k) On the date of the Acquisition, neither Target nor any of Target's non-U.S. affiliates will own any United States real property interests within the meaning of § 897 and the regulations thereunder.

(l) On the date of the Acquisition, neither Target nor any of Target's non-U.S. affiliates will own any assets used or held for use in a United States trade or business or any assets that have been used or held for use in a United States trade or business within the 10-year period ending on the date of the Acquisition.

(m) Some or all of Target's U.S. affiliates will own United States real property interests and/or United States trade or business assets on the date of the Acquisition.

(n) Acquiror will not be in control of Acquiror Sub (within the meaning of § 368(c) and Rev. Rul. 59-259, 1959-2 C.B. 115) at the time of or immediately after the Acquisition.

(o) At least 80 percent of the Target Shares will be acquired by Acquiror and Acquiror Sub within the 12-month period beginning on the first date on which Acquiror and Acquiror Sub acquire Target Shares.

(p) Acquiror and Acquiror Sub have no plan or intention to sell or otherwise dispose of any of the Target Shares to be acquired in the Acquisition.

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(q) There is no plan or intention to liquidate either Target or Acquiror Sub or to merge either Target or Acquiror Sub into any other corporation upon completion of the Acquisition.

### **Ruling**

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

(1) The Acquisition will constitute a qualified stock purchase within the meaning of § 338(d)(3), § 338(h)(3), and § 1.338-2(c)(12).

### **Caveats**

No opinion is expressed about the federal tax treatment of the Acquisition under other provisions of the Code or Regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Acquisition that are not specifically covered by the above ruling.

### **Procedural Statements**

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

Each taxpayer involved in the transaction should attach a copy of this ruling letter to the taxpayer's federal income tax return for the taxable year in which the Acquisition is completed.

Under a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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Richard K. Passales  
Senior Counsel, Branch 4  
Office of Associate Chief Counsel  
(Corporate)