Internal Revenue Service

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Refer Reply To:
CC:CORP:B05 - PLR 141260-01
Date:
November 29, 2001

In re:

P	=
Sub 1	=
Sub 2	=
Sub 3	=
Sub 4	=
Sub 5	=
Sub 6	=
Corp A	=
T1	=
T2	=
T3	=
Country X	=
Business A	=

Business B =

Business C =

Business D =

r =

s =

t =

u =

This is in response to your letter dated August 1, 2001, in which rulings are requested as to the federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated August 23, September 14, October 24, and November 9, 2001. The facts submitted for consideration are substantially as set forth below.

P is a widely held and publicly traded domestic corporation and is the common parent of an affiliated group of corporations.

Sub 1 is a wholly-owned domestic subsidiary of P and is engaged in Business A.

Sub 2 is a wholly-owned domestic subsidiary of Sub 1 and engaged in Business B. Sub 2 has outstanding solely common stock.

T1 is a wholly-owned Country X corporation of Sub 2 and is engaged in Business C.

Sub 3 is a wholly owned domestic subsidiary of Sub 1 and is engaged in Business C. Sub 3 has outstanding solely common stock.

Sub 4 is a domestic corporation and is owned 50 percent by Sub 1 and 50 percent by Sub 6. Sub 4 has outstanding solely common stock. Sub 4 is engaged in Business C.

T2 is a Country X corporation that is a partner in a partnership engaged in Business C (“Partnership”). T2 has outstanding common and preferred stock all of which is owned by P.

T3 is a Country X corporation that is a partner in a Partnership. T3 has outstanding r shares of common stock, s of which is owned by P and t of which is owned by T1, and u shares of preferred stock, all of which are owned by P.

Corp A is a widely held and publicly traded domestic corporation that is engaged in Business D. Corp A has outstanding solely common stock.

Sub 5 is a wholly owned domestic subsidiary of Corp A. Sub 5 has outstanding solely common stock.

Sub 6 is a wholly owned domestic subsidiary of Sub 5. Sub 6 has outstanding solely common stock.

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

(i) Sub 1 will merge with and into Sub 3 with Sub 3 surviving. As a result of the merger Sub 3 will become a wholly-owned subsidiary of P and Sub 2 will become a wholly-owned subsidiary of Sub 3.

(ii) P will acquire Corp A in a reverse triangular merger in which a newly formed subsidiary of P will merge into Corp A, and Corp A will be the surviving entity. In exchange for their stock in Corp A, the shareholders of Corp A will receive stock in P. P will contribute all of its Corp A shares to Sub 3.

(iii) Sub 3 will transfer all of the shares it holds in Sub 4 to Corp A in constructive exchange for Corp A shares.

(iv) Corp A will transfer all of the shares it holds in Sub 4 to Sub 5 in construction exchange for Sub 5 shares.

(v) Sub 5 will contribute all of the shares it holds in Sub 4 to Sub 6 in constructive exchange for Sub 6 shares.

(vi) T2 and T3 will convert all of their outstanding preferred stock into common stock.

(vii) P will transfer all of the stock it owns in T2 and T3 to Sub 3 in constructive exchange for Sub 3 shares.

(viii) Sub 3 will transfer all of the stock it owns in T2, T3, and Sub 2 to Corp A in constructive exchange for Corp A shares.

(ix) Corp A will transfer all of the stock it owns into T2, T3, and Sub 2 to Sub 5 in constructive exchange for Sub 5 shares.

(x) Sub 5 will transfer all of the stock it owns in T2, T3, and Sub 2 to Sub 6 in constructive exchange for Sub 6 shares.

(xi) Sub 6 will contribute all of the stock it owns in T2, T3, and Sub 2 to Sub 4 in

constructive exchange for Sub 4 shares.

(xii) Sub 4 will transfer all of the stock it owns in T2 and T3 to Sub 2 in constructive exchange for Sub 2 shares.

(xiii) Sub 2 will transfer all of the stock it owns in T2 and T3 to T1 in exchange for new, previously unissued Class B common shares of T1.

(xiv) T1, T2, and T3 ("Targets") will be amalgamated under the provisions of the relevant Country X corporate law. The amalgamation will result in the combination of T1, T2, and T3 into one Country X corporation ("Newco") that will be a contribution of the former corporations such that:

(1) all of the property (except amounts receivable from another former corporation or shares of the capital stock of another former corporation) of the former corporations immediately before the amalgamation will become property of Newco by virtue of the amalgamation;

(2) all of the liabilities (except amounts payable to another former corporation) of the former corporations immediately before the amalgamation will become liabilities of Newco by virtue of the amalgamation;

(3) the shares of the capital stock of T2 and T3 owned by T1 will be canceled.

In connection with the proposed transfers set forth in steps (vii) through (xii), taxpayer represents as follows:

(a) No stock or securities will be issued for services rendered to or for the benefit of Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, or Corp A (the "Transferees") in the transfers, and no stock or securities will be issued for indebtedness of the transferors.

(b) The transfers were not the result of the solicitation by a promoter, broker, or investment house.

(c) None of P, Sub 3, Sub 4, Sub 5, Sub 6 or Corp A (the "Transferors") will retain any rights in the T2 stock, the T3 stock, or the Sub 2 stock transferred (the"Transferred stock").

(d) No liabilities of the transferors will be assumed by the Transferees in the transaction.

(e) Except for indebtedness arising in the ordinary course of business and not amounting to a security, there is no indebtedness between Sub 3 and P, Corp A and Sub 3, Sub 5 and Corp A, Sub 6 and Sub 5, Sub 4 and Sub 6, or Sub 4 and Sub 2, and no indebtedness will be created in favor of any of

the transferors as a result of the transfers.

(f) The transfers will occur under a plan agreed upon before the transfers in which the rights of the parties are defined.

(g) There is no plan or intention on the part of the Transferees to redeem or otherwise reacquire any stock or indebtedness issued in the exchanges.

(h) Taking into account any issuance of additional shares of the Transferees' stock, any issuance of stock for services, the exercise of any stock rights, warrants, or subscriptions of the Transferees, public offering of a Transferees' stock, and the sale, exchange, transfer by gift, or other disposition of any stock received from the Transferees, each Transferor will be in "control" of its respective Transferee within the meaning of § 368(c)of the Internal Revenue Code, immediately after the transaction.

(i) The Transferees will remain in existence and use the property transferred to each as described above.

(j) There is no plan or intention by any Transferee to dispose of the transferred property other than in the normal course of business operations, except as described above.

(k) Each of the parties to the exchanges will pay its own expenses, if any, incurred in the exchanges.

(l) None of the Transferees will be an investment company within the meaning of § 351(e) and § 1.351-1(c)(1)(ii) of the Income Tax Regulations.

(m) None of the Transferors is under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the stock or securities received in the exchanges were not used to satisfy the indebtedness of such debtor.

(n) None of the Transferees will be a "personal service corporation" within the meaning of § 269A.

In connection with the proposed transaction set forth in steps (xiii) and (xiv), the taxpayer represents as follows:

(a) The fair market value of the Newco stock and other consideration received by Sub 2 will be approximately equal to the fair market value of the Target stock surrendered in the exchange.

(b) There is no plan or intention for Sub 2 to sell or otherwise dispose of any

of the shares of Newco.

(c) Newco will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by each Target immediately prior to the transaction. For purposes of this representation, amount paid by a Target to dissenters, amounts paid by a Target to shareholder who receive cash or other property, amounts used by a Target to pay its reorganization expenses, and all redemptions and distributions (except for regular, normal dividends) made by a Target immediately preceding the transfer will be included as assets of the Target held immediately prior to the transaction.

(d) After the transaction, Sub 2 will be in control of Newco within the meaning of § 368(a)(2)(H).

(e) Newco has no plan or intention to reacquire any of its stock issued in the transaction.

(f) Newco has no plan or intention to sell or otherwise dispose of any of the assets of a Target acquired in the transaction, except for dispositions made in the ordinary course of business.

(g) The liabilities of a Target assumed by Newco plus the liabilities, if any, to which the transferred assets are subject were incurred by the Target in the ordinary course of business and are associated with the assets transferred.

(h) Following the transaction, Newco will continue the historic business of the Targets or use a significant portion of each Target’s historic business assets in a business.

(i) At the time of the transaction, Newco will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Newco that, if exercised or converted, would affect Sub 2's acquisition or retention of control of Newco, as defined in § 368(a)(2)(H).

(j) Newco, each Target, and Sub 2 will pay their respective expenses, if any, incurred in connection with the transaction

(k) There is no intercorporate indebtedness existing between Newco and the Targets or between the Targets that was issued, acquired, or will be settled at a discount.

(l) No two parties to the transaction are investment companies as defined in § 368(a)(F)(iii) and (iv).

(m) The fair market value of the assets of a Target transferred to Newco will equal or exceed the sum of the liabilities assumed by Newco, plus the amount of liabilities, if any, to which the transferred assets are subject.

(n) The total adjusted basis of the assets of a Target transferred to Newco will equal or exceed the sum of the liabilities to be assumed by Newco, plus the amount of liabilities, if any, to which the transferred assets are subject, in each instance.

(o) None of the Targets is under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

Additional representations have been made by the taxpayer with respect to the proposed transaction, as follows:

(a) Neither T1, T2, nor T3 is a passive foreign investment company ("PFIC") as defined in § 1297.

(b) T1, T2, and T3 will each be a controlled foreign corporations ("CFC") within the meaning of § 957(a) immediately before the transaction and Newco will be a CFC immediately after the transaction.

(c) Sub 2 will be a §1248 shareholder of T1, T2, and T3 before the amalgamation, and Sub 2 will be a § 1248 shareholder of Newco, the acquiring foreign corporation, after the amalgamation.

(d) The notice requirements of § 1.367(b)-1(c)(1) will be met with respect to the proposed transaction.

(e) P will comply with § 1.367(b)-4(d) rules for subsequent exchanges when and where applicable.

Based solely on the information submitted and on the representations set forth above, we rule as follows with respect to the stock transfers in steps (vii) through (xii):

(1) For federal income tax purposes, the transfer of the T2 and T3 stock by P to Sub 3 will be treated as if P had transferred the T2 and T3 stock to Sub 3 in exchange for an amount of the outstanding shares of common stock equal in value to that of the property transferred (Rev. Rul. 64-155, 1964-1 C.B. 138).

(2) No gain or loss will be recognized by P on the transfer of T2 and T3 to Sub 3 solely in exchange for Sub 3 stock (§ 351(a)).

(3) No gain or loss will be recognized by Sub 3 upon the receipt of T2 and T3

stock (§ 1032(a)).

(4) The basis of the T2 and T3 stock to be received by Sub 3 will be the same as the basis of such stock in the hands of P immediately prior to the above transfer (§ 362(a)).

(5) The basis of the Sub 3 stock received by P will be the same as the basis of the T2 and T3 stock immediately before the transfer (§ 358(a)(1)).

(6) The holding period of the T2 and T3 stock to be received by Sub 3 from P will include the period during which P held such stock (§ 1223(2)).

(7) For federal income tax purposes, the transfer of the T2, T3, and Sub 2 stock by Sub 3 to Corp A will be treated as if Sub 3 had transferred the T2, T3 and Sub 2 stock to Corp A in exchange for an amount of the outstanding shares of common stock equal in value to that of the property transferred (Rev. Rul. 64-155, 1964-1 C.B. 138).

(8) No gain or loss will be recognized by Sub 3 on the transfer of the T2, T3 and Sub 2 stock to Corp A solely in exchange for Corp A stock (§ 351(a))

(9) No gain or loss will be recognized by Corp A upon the receipt of T2, T3 and Sub 2 stock (§ 1032(a)).

(10) The basis of the T2, T3, and Sub 2 stock to be received by Corp A will be the same as the basis of such stock in the hands of Sub 3 immediately prior to the above transfer (§ 362(a)).

(11) The basis of the Corp A stock received by Sub 3 will be the same as the basis of the T2, T3, and Sub 2 stock immediately before the transfer (§ 358(a)(1)).

(12) The holding period of the T2, T3, and Sub 2 stock to be received by Corp A from Sub 3 will include the period during which Sub 3 held such stock (§ 1223(2)).

(13) For federal income tax purposes, the transfer of the T2, T3, and Sub 2 stock by Corp A to Sub 5 will be treated as if Corp A had transferred the T2, T3, and Sub 2 stock to Sub 5 in exchange for an amount of the outstanding shares of common stock equal in value to that of the property transferred (Rev. Rul. 64-155, 1964-1 C.B. 138).

(14) No gain or loss will be recognized by Corp A on the transfer of the T2, T3, and Sub 2 stock to Sub 5 solely in exchange for Sub 5 stock (§ 351(a)).

(15) No gain or loss will be recognized by Sub 5 upon the receipt of the T2, T3,

and Sub 2 stock (§ 1032(a)).

(16) The basis of the T2, T3, and Sub 2 stock to be received by Sub 5 will be the same as the basis of such stock in the hands of Corp A immediately prior to the above transfer (§ 362(a)).

(17) The basis of the Sub 5 stock received by Corp A will be the same as the basis of the T2, T3, and Sub 2 stock immediately before the transfer (§ 358(a)(1)).

(18) The holding period of the T2, T3, and Sub 2 stock to be received by Sub 5 from Corp A will include the period during which Corp A held such stock (§ 1223(2)).

(19) For federal income tax purposes, the transfer of the T2, T3, and Sub 2 stock by Sub 5 to Sub 6 will be treated as if Sub 5 had transferred the T2, T3, and Sub 2 stock to Sub 6 in exchange for an amount of the outstanding shares of common stock equal in value to that of the property transferred (Rev. Rul. 64-155, 1964-1 C.B. 138).

(20) No gain or loss will be recognized by Sub 5 on the transfer of the T2, T3, and Sub 2 stock to Sub 6 solely in exchange for Sub 6 stock (§ 351(a)).

(21) No gain or loss will be recognized by Sub 6 upon the receipt of the T2, T3, and Sub 2 stock (§ 1032(a)).

(22) The basis of the T2, T3, and Sub 2 stock to be received by Sub 6 will be the same as the basis of such stock in the hands of Sub 5 immediately prior to the above transfer (§ 362(a)).

(23) The basis of the Sub 6 stock received by Sub 5 will be the same as the basis of the T2, T3, and Sub 2 stock immediately before the transfer (§ 358(a)(1)).

(24) The holding period of the T2, T3, and Sub 2 stock to be received by Sub 6 from Sub 5 will include the period during which P held such stock (§ 1223(2)).

(25) For federal income tax purposes, the transfer of the T2, T3, and Sub 2 stock by Sub 6 to Sub 4 will be treated as if Sub 6 had transferred the T2, T3, and Sub 2 stock to Sub 4 in exchange for an amount of the outstanding shares of common stock equal in value to that of the property transferred (Rev. Rul. 64-155, 1964-1 C.B. 138).

(26) No gain or loss will be recognized by Sub 6 on the transfer of the T2, T3, and Sub 2 stock to Sub 4 solely in exchange for Sub 4 stock (§ 351(a)).

(27) No gain or loss will be recognized by Sub 4 upon the receipt of the T2, T3, and Sub 2 stock (§ 1032(a)).

(28) The basis of the T2, T3, and Sub 2 stock to be received by Sub 4 will be the same as the basis of such stock in the hands of Sub 6 immediately prior to the above transfer (§ 362(a)).

(29) The basis of the Sub 4 stock received by Sub 6 will be the same as the basis of the T2, T3, and Sub 2 stock immediately before the transfer (§ 358(a)(1)).

(30) The holding period of the T2, T3, and Sub 2 stock to be received by Sub 4 from Sub 6 will include the period during which Sub 6 held such stock (§ 1223(2)).

(31) For federal income tax purposes, the transfer of the T2 and T3 stock by Sub 4 to Sub 2 will be treated as if Sub 4 had transferred the T2 and T3 stock to Sub 2 in exchange for an amount of the outstanding shares of common stock equal in value to that of the property transferred (Rev. Rul. 64-155, 1964-1 C.B. 138).

(32) No gain or loss will be recognized by Sub 4 on the transfer of the T2 and T3 to Sub 2 solely in exchange for Sub 2 stock (§ 351(a)).

(33) No gain or loss will be recognized by Sub 2 upon the receipt of the T2 and T3 stock (§ 1032(a)).

(34) The basis of the T2 and T3 stock to be received by Sub 2 will be the same as the basis of such stock in the hands of Sub 4 immediately prior to the above transfer (§ 362(a)).

(35) The basis of the Sub 2 stock received by Sub 4 will be the same as the basis of the T2 stock immediately before the transfer (§ 358(a)(1)).

(36) The holding period of the T2 and T3 stock to be received by Sub 2 from Sub 4 will include the period during which Sub 4 held such stock (§ 1223(2)).

Based solely on the information submitted and on the representations set forth above, we rule as follows with respect to steps (xiii) and (xiv):

(1) For Federal income tax purposes, the amalgamation transaction described in steps (xiii) and (Xiv), above, will be treated as (A) a transfer by T1, T2 and T3 of their assets and liabilities to Newco in exchange for stock of Newco, and (B) the distribution byT1, T2 and T3 of all of the

Newco stock to Sub 2 in exchange for all Sub 2's T1, T2 and T3 stock in three separate reorganizations.

(2) Each of the transfers by T1, T2 and T 3 of substantially all of its assets to Newco in exchange for Newco stock and the assumption by Newco of the liabilities, if any, of T1, T2 and T3, followed by the distribution by T1, T2 and T3 of the Newco stock to Sub 2 in complete liquidation of T1,T2 and T3 will each constitute a reorganization within the meaning of § 368(a)(1)(D). Newco, T1, T2 and T3 will each be "a party to a reorganization" within the meaning of § 368(b) with respect its respective reorganization. For purposes of this ruling, "substantially all" means at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by T1, T2 and T3 immediately prior to the transactions.

(3) No gain or loss will be recognized by T1, T2, and T3 upon the transfer of substantially all of their assets to Newco in exchange for Newco stock and the assumption by Newco of the T1, T2 and T3 liabilities, if any (§§ 361(a) and 357(a)).

(4) No gain of loss will be recognized by T1, T2, or T3 upon the distribution of Newco stock to Sub 2 in exchange for T1, T2, and T3 stock (§ 361(c)(1)).

(5) No gain of loss will be recognized by Newco upon the receipt of the assets of T1, T2, and T3 in exchange for Newco stock (§ 1032(a)).

(6) The basis of the assets of T1, T2, and T3 in the hands of Newco will be the same as the basis of those assets in the hands of T1, T2, and T3 immediately prior to the transfer (§ 362(b)).

(7) The holding period of the assets of T1, T2, and T3 acquired by Newco will include the period during which those assets were held by T1, T2, and T3 (§ 1223(2)).

(8) No gain or loss will be recognized by Sub 2 upon the receipt of the Newco stock in exchange for its T1, T2, and T3 stock (§ 354(a)(1).

(9) The basis of the shares of Newco common stock received by Sub 2 will be the same as the basis of the T1, T2, and T3 stock surrendered in exchange therefor (§ 358(a)(1)).

(10) The holding period of the Newco stock to be received by Sub 2 will include the period during which Sub 2 held the T1, T2, and T3 stock surrendered in exchange therefor, provided the T1, T2 and T3 stock was held as a capital asset on the date of the exchange (§ 1223(1)).

(11) The earnings and profits of T2 and T3, to the extent attributable to such stock under § 1.1248-2 or § 1.1248-3 (whichever applies), which were accumulated in the taxable years of that corporation after December 31, 1962, during the period that P held the T2 and T3 stock, or was considered to hold it by reason of the application of § 1223, while T2 and T3 were CFCs will be attributable to the T2 and T3 stock held by Sub 3.

(12) The earnings and profits of T2 and T3, to the extent attributable to such stock under § 1.1248-2 or § 1.1248-3 (whichever applies), which were accumulated in the taxable years of that corporation after December 31, 1962, during the period that Sub 3 held the T2 and T3 stock, or was considered to hold it by reason of the application of § 1223, while T2 and T3 were CFCs will be attributable to the T2 and T3 stock held by Corp A.

(13) The earnings and profits of T2 and T3, to the extent attributable to such stock under § 1.1248-2 or § 1.1248-3 (whichever applies), which were accumulated in the taxable years of that corporation after December 31, 1962, during the period that Corp A held the T2 and T3 stock, or was considered to hold it by reason of the application of § 1223, while T2 and T3 were CFCs will be attributable to the T2 and T3 stock held by Sub 5.

(14) The earnings and profits of T2 and T3, to the extent attributable to such stock under § 1.1248-2 or § 1.1248-3 (whichever applies), which were accumulated in the taxable years of that corporation after December 31, 1962, during the period that Sub 5 held the T2 and T3 stock, or was considered to hold it by reason of the application of § 1223, while T2 and T3 were CFCs will be attributable to the T2 and T3 stock held by Sub 6.

(15) The earnings and profits of T2 and T3, to the extent attributable to such stock under § 1.1248-2 or § 1.1248-3 (whichever applies), which were accumulated in the taxable years of that corporation after December 31, 1962, during the period that Sub 6 held the T2 and T3 stock, or was considered to hold it by reason of the application of § 1223, while T2 and T3 were CFCs will be attributable to the T2 and T3 stock held by Sub 4.

(16) The earnings and profits of T2 and T3, to the extent attributable to such stock under § 1.1248-2 or § 1.1248-3 (whichever applies), which were accumulated in the taxable years of that corporation after December 31, 1962, during the period that Sub 4 held the T2 and T3 stock, or was considered to hold it by reason of the application of § 1223, while T2 and T3 were CFCs will be attributable to the T2 and T3 stock held by Sub 2.

(17) Section 1.367(b)-4 will apply to the § 368(a)(1)(D) reorganizations involving T1, T2, and T3.

(18) No amount will be included in income under § 367(b) as a result of the

amalgamation of T1, T2, and T3 (§ 1.367(b)-4(b).)

(19) For the purposes of applying § 367(b) or § 1248 to subsequent exchanges, the determination of the earnings and profits attributable to an exchanging shareholder's stock in Newco shall be computed in accordance with § 1.367(b)-4(d).

No opinion is expressed regarding whether any or all of the above-referenced foreign corporations are PFICs (within the meaning of § 1297(a) and the regulations to be promulgated thereunder). If it is determined that any or all of the above-described foreign corporations are PFICs, no opinion is expressed with respect to the application of §§1291 through 1298 to the proposed transaction. In particular, in a transaction in which gain is not otherwise recognized, regulations under § 1291(f) may required gain recognition notwithstanding any other provision of the Code.

We express no opinion about the tax statement 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.

This 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.

A copy of this letter should be attached to the federal income tax return of the taxpayers involved for the taxable year in which the transaction covered by this letter is consummated.

Pursuant to a power of attorney on file in this office, we have sent a copy of this letter to your authorized representative.

Sincerely yours,

Debra Carlisle

Debra Carlisle
Chief, Branch 5
Office of the Associate Chief Counsel
(Corporate)