

**Internal Revenue Service**

Number: **201121010**  
Release Date: 5/27/2011

Index Number: 332.00-00, 332.01-00,  
332.02-00, 332.04-00

Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

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PLR-142652-10  
Date:  
February 16, 2011

**Legend**

Parent =

Target =

FSub 1 =

FSub 2 =

Acquiring =

Country A =

Country B =

State C =

Business Entity D =

a =

b =

c =

d =

e =

f =

g =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This letter responds to your representative's October 14, 2010 letter requesting rulings on certain federal income tax consequences of a series of proposed transactions. The information submitted in that letter and in later correspondence is summarized below.

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

### **Summary of the Facts**

Parent is a publicly traded State C corporation and is the common parent of an affiliated group of corporations that files a consolidated return for U.S. federal income tax purposes (the "Parent Group"). Parent, through members of the Parent Group, owns all the shares of FSub 2, a company incorporated in Country A, with its principal place of business in Country A.

Target is a publicly traded company incorporated in Country A, with its principal place of business also in Country A. Target has one class of stock outstanding.

On Date 1, FSub 2 purchased a newly issued shares of Target, representing approximately b percent (less than 20 percent) of Target's outstanding shares, for an aggregate purchase price of c.

Parent, through members of the Parent Group, owns all of the stock of FSub 1, a controlled foreign corporation incorporated in Country B.

On Date 2, Parent and Target entered into a merger agreement.

Pursuant to the merger agreement, Parent has taken or proposes to take the following steps to acquire the remaining d percent of Target's stock held by the unrelated public shareholders:

- (i) On Date 3, FSub 1 formed Acquiring, a corporation organized in Country A, and will contribute cash to Acquiring to purchase the Target shares held by the Public and by FSub 2.
- (ii) On Date 4, Acquiring launched a tender offer (the "Tender Offer") to acquire the d percent of the Target shares held by the Public and the b percent held by FSub 2, for e per share. The Tender Offer is conditioned upon a minimum acceptance percentage of shares of 95 percent (by owning at least 95 percent of Target's shares, Acquiring could eliminate the minority shareholders through a statutory buy-out proceeding). If Acquiring were not to own at least 95 percent of Target's shares after the settlement of the Tender Offer, the minimum acceptance percentage will be reduced to 80 percent but only if (i) Acquiring receives proxies with respect to at least 80 percent of Target's shares allowing Acquiring to vote for Target to sell all of its assets, subject to liabilities, to Acquiring in exchange for a note (the "Acquiring Note," and collectively with the exchange for Target's assets and liabilities, the "Back-End Asset Sale" or "BEAS") at a shareholder meeting (the "BEAS Meeting") to be held after the settlement of the Tender Offer, but with a record date before such settlement, and (ii) Acquiring receives certain tax rulings from the Internal Revenue Service and Country A.
- (iii) Before the end of the Tender Offer acceptance period, Target will hold a shareholders' meeting to inform the shareholders of the terms and conditions of the Tender Offer and to adopt, conditional on the Tender Offer becoming unconditional, certain governance resolutions necessary to facilitate the Tender Offer.

- (iv) The shares of FSub 2 will be transferred to Acquiring in exchange for Acquiring shares with an equivalent fair market value. Effective two days after Acquiring acquires the shares of FSub 2, FSub 2 will elect, pursuant to Treas. Reg. § 301.7701-3, to be treated as a disregarded entity of Acquiring (together with the transfer, the “Reorganization”).
- (v) Assuming the Tender Offer conditions are satisfied, Acquiring will buy the tendered shares (the “Settlement”).
- (vi) Following the Settlement, and once Acquiring makes a final decision to cause the BEAS, the board of directors of Acquiring will adopt a resolution (the “Acquiring Resolution”) to implement the BEAS followed by liquidating distributions from Target consisting of cancellation of the Acquiring Note and of cash (the “Liquidation,” and, collectively with the BEAS, the “Proposed Liquidation”). A separate shareholder meeting will be held to approve the liquidation of Target (the “Liquidation Shareholder Meeting”). The BEAS will occur immediately prior to the Liquidation Shareholder Meeting. The Acquiring Note’s principal amount will be repaid on the date of the liquidating distribution by set-off against the payment by Target to Acquiring pursuant to the liquidating distribution. The Acquiring Note will provide that interest does not accrue until g weeks after such issuance. It is highly likely that the liquidation of Target will be completed in less than g weeks so that interest will not accrue on the Acquiring Note. Even if the liquidation of Target is delayed for any reason so that interest accrued on the Acquiring Note, this interest would not be paid. Rather, any such interest payment would be set-off against the payment by Target to Acquiring pursuant to the liquidating distribution. The Acquiring Note will not be used for any purpose other than as described above.
- (vii) After the Acquiring Resolution, Target will hold the BEAS Meeting, and the shareholders will vote to adopt the BEAS.
- (viii) Target will sell all of its assets to Acquiring in exchange for the Acquiring Note in the BEAS.
- (ix) Target will hold the Liquidation Shareholder Meeting, and the shareholders, including Acquiring, will vote to adopt the plan to liquidate Target and to adopt a resolution to convert Target to a Business Entity D.
- (x) Target will distribute cash to the remaining minority shareholders. The liquidating distribution owed to Acquiring will be offset by a cancellation of the Acquiring Note.

- (xi) All required actions will be taken to delist Target shares and American Depository shares from various stock exchanges as soon as feasible following payment to the minority shareholders.
- (xii) Target will convert to a Business Entity D. After Target converts to a Business Entity D, it will elect, pursuant to Treas. Reg. § 301.7701-3, to be disregarded as separate from its owner, Acquiring, for U.S. federal tax purposes.
- (xiii) Target will make a final distribution (if any) to the shareholders.

### **Representations**

The following representations are made with respect to the transactions described above:

1. If Acquiring causes the BEAS to occur, Target will thereafter liquidate.
2. A plan of liquidation will be adopted for Target specifying that the final liquidating distribution is to be completed within three years from the close of the taxable year of Target in which the first liquidating distribution is made.
3. Acquiring, on the date of adoption of the plan of liquidation, and at all times until the final liquidating distribution is completed, will be the owner of at least 80 percent of the single outstanding class of Target stock.
4. Except for the reacquisition by Target of  $\bar{f}$  shares of its stock that had been issued pursuant to the exercise of certain options, no shares of Target stock will have been redeemed during the three years preceding the adoption of the plan of complete liquidation of Target.
5. As soon as the BEAS has been completed, Target will cease to be a going concern and its activities will be limited to winding up its affairs, paying its debts, and distributing its remaining assets to its shareholders.
6. Target will retain no assets following the final liquidating distribution.
7. Target will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years prior to the date of adoption of the plan of liquidation.
8. No assets of Target have been, or will be, disposed of by either Target or Acquiring except for dispositions in the ordinary course of business and

dispositions occurring more than three years prior to adoption of the plan of liquidation.

9. The liquidation of Target will not be preceded or followed by the reincorporation, transfer, or sale of all or a part of the business assets of Target to another corporation (i) that is the alter ego of Target and (ii) that, directly or indirectly, will be owned more than 20 percent in value by persons holding directly or indirectly more than 20 percent in value of the stock of Target. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of section 318(a) as modified by section 304(c)(3).
10. Prior to adoption of the liquidation plan, no assets of Target will have been distributed in kind, transferred, or sold to Acquiring or FSub 2, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years prior to adoption of the liquidation plan.
11. Target will report all earned income represented by assets that will be distributed to its shareholders such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
12. The fair market value of the assets of Target will exceed its liabilities both at the date of the adoption of the plan of complete liquidation and immediately prior to the time the first liquidating distribution is made.
13. There is no intercorporate debt existing between Acquiring or FSub 2 and Target, and none will have been cancelled, forgiven, or discounted, except for transactions that occurred more than three years prior to the date of adoption of the liquidation plan.
14. Acquiring is not an organization that is exempt from federal income tax under section 501 or any other provision of the Code.
15. The fair market value of the consideration received by Acquiring and by the minority shareholders for each share of Target stock will approximately equal the fair market value of that stock.
16. The Proposed Liquidation will not constitute a statutory merger with regard to the minority shareholders.
17. The only property to be distributed to the minority shareholders of Target pursuant to the Proposed Liquidation will be cash.
18. None of the assets being distributed by Target to the minority shareholders (i) has a fair market value greater than its basis in the hands of Target, (ii) is an

installment obligation, (iii) is property described in the recapture provisions of the Code, or (iv) is property for which Target obtained a deduction.

19. All transactions to be undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the Proposed Liquidation have been fully disclosed.
20. On the effective date of Target converting to a Business Entity D, Target will be eligible to elect to be disregarded as an entity separate from its owner under Treas. Reg. §§ 301.7701-1 through 301.7701-3 and will make such election effective as of two days after Target's conversion.
21. Target will not distribute as part of the Proposed Liquidation "qualified property" as defined in Treas. Reg. § 1.367(e)-2(b)(2)(i)(B), that is used in the conduct of a trade or business within the United States at the time of distribution.
22. Target will not distribute property that had ceased to be used in the conduct of a United States trade or business within the ten-year period ending on the date of the distribution and that would have been subject to section 864(c)(7) had it been disposed of.
23. Acquiring will be a controlled foreign corporation, within the meaning of section 957(a), immediately before the Proposed Liquidation and will continue to be a controlled foreign corporation, within the meaning of section 957(a), after the Proposed Liquidation.
24. Acquiring will not be a passive foreign investment company within in the meaning of section 1297(a) immediately before or after the Proposed Liquidation.
25. Target will not distribute any U.S. real property interests (as defined in Treas. Reg. § 1.897-1(c)) in the Proposed Liquidation.
26. The notice requirements of Treas. Reg. § 1.367(b)-1(c)(1) will be met with respect to the Proposed Liquidation.
27. No formal or informal plan of complete liquidation other than that contemplated here will have been adopted by Target.

### **Rulings**

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

1. For federal income tax purposes, the BEAS will be treated as a distribution in the Proposed Liquidation of Target, rather than as a sale of property to Acquiring. The Proposed Liquidation will be treated as if Target distributed all of its business assets subject to liabilities to Acquiring, and distributed cash to the minority shareholders in complete liquidation. (See Rev. Rul. 83-142, 1983-2 C.B. 68; Rev. Rul. 78-397, 1978-2 C.B. 150.)
2. No gain or loss will be recognized by Acquiring on the receipt of assets and assumption of liabilities of Target in the Proposed Liquidation (section 332(a)).
3. No gain or loss will be recognized by Target on the distribution of assets to, and assumption of liabilities by, Acquiring in the Proposed Liquidation (section 337(a)).
4. Acquiring's basis in each asset received from Target in the Proposed Liquidation will equal the basis of such asset in the hands of Target immediately before the Proposed Liquidation (section 334(b)(1)).
5. Acquiring's holding period in each asset received from Target in the Proposed Liquidation will include the period during which that asset was held by Target (section 1223(2)).
6. Acquiring will succeed to and take into account the items of Target described in section 381(c), subject to the conditions and limitations specified in sections 381, 382, 383, and 384 and the regulations thereunder (section 381(a) and Treas. Reg. § 1.381(a)-1).
7. Acquiring will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Target as of the date of the Proposed Liquidation, after adjustments, as appropriate, to reflect the distribution of cash to the Minority Shareholders, (section 381(c)(2)(A), Treas. Reg. § 1.381(c)(2)-1, and *cf.* section 312(n)(7)). Any deficit in the earnings and profits of Target can be used only to offset earnings and profits accumulated after the date of the Proposed Liquidation (section 381(c)(2)(B)).

### **Caveats**

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, we express no opinion on whether the Reorganization qualifies as a reorganization under section 368.

### **Procedural Statements**



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

A copy of this ruling letter should be attached to the federal income tax return of each taxpayer involved for the taxable year in which the transaction covered by this ruling letter is consummated. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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Mark S. Jennings  
Chief, Branch 1  
(Corporate)