



Subsidiary 1 =

Disregarded Entity =

Subsidiary 2 =

Department =

Business A =

State X =

State Y =

Country Z =

Date 1 =

Dear

This letter responds to your request for a ruling, dated June 8, 2016, submitted by your authorized representatives on behalf of US Parent. The information submitted for consideration is summarized below.

The ruling contained in this letter is 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 material 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 Facts**

US Parent, a State X corporation, is the common parent of an affiliated group of corporations that join in filing a consolidated return (Group). US Parent is an indirect subsidiary of Foreign Parent, which is a Country Z entity. Foreign Parent controls all of the stock of US Parent through a chain of wholly-owned foreign entities, Foreign Holding 1, Foreign Holding 2, Foreign Holding 3 and Foreign Holding 4. Foreign Holding 4 owns 100 percent of the stock of US Parent. US Parent owns all of the outstanding stock of Subsidiary 1, a State X corporation. Subsidiary 1 owns all of the outstanding membership interests in Disregarded Entity, a State X limited liability company disregarded from its owner for US federal income tax purposes. Disregarded Entity owns all of the stock of Subsidiary 2, State Y corporation.

US Parent acquired all of the outstanding stock of Subsidiary 1 on Date 1. Subsidiary 1 and its direct and indirect subsidiaries, including Subsidiary 2, filed consolidated returns prior to Date 1. Since Date 1, Subsidiary 1 and its direct or indirect US subsidiaries have also been included in the US Parent Group's consolidated return.

Subsidiary 2 is engaged in Business A. In order for Subsidiary 2 (and certain of its direct or indirect subsidiaries) to perform certain contracts, Subsidiary 2 needs a facility security clearance. Because of the indirect foreign ownership of stock in Subsidiary 2, Department requires that Subsidiary 2 be effectively insulated from foreign ownership, control, or influence in order to maintain those clearances.

To create a security measure designed to insulate Subsidiary 2 from any foreign control or influence that might arise from Foreign Parent's indirect ownership of stock in Subsidiary 2, Foreign Parent, US Parent, Subsidiary 1, Disregarded Entity, Subsidiary 2, and Department became parties to a Special Security Agreement (SSA). Under the SSA, the management of Subsidiary 2 must be conducted by a board of directors that is constituted in accordance with, and whose powers are defined by, certain requirements (described below) related to national security. These requirements do not impact Subsidiary 1's economic interest in, and rights with respect to, Subsidiary 2 (and indirectly Subsidiary 2's subsidiaries); rather, Subsidiary 1 retains all the economic benefit and risk, including the right to distributions and the right to sell or otherwise transfer its interests in Subsidiary 2 and the latter's subsidiaries. Moreover, Subsidiary 1 appoints (in some cases, as explained below, with prior government approval) all members of Subsidiary 2's board of directors and retains the powers normally retained by shareholders.

The SSA contains certain provisions relating to Subsidiary 2's board of directors (the Board). The SSA provides that the directors shall be appointed by Subsidiary 1, but requires that the Board be composed of (i) a minimum of two directors with no prior relationship with Subsidiary 2, Foreign Parent, or Subsidiary 2 affiliates (Outside Directors); (ii) the Board may include one or more security-cleared officer(s) of Subsidiary 2 (Officer Directors); and (iii) the Board may also include representatives of Subsidiary 2 who are not Outside Directors or Officer Directors (Inside Directors). The

Inside Directors may not have Department personnel security clearances and must be excluded from access to classified information by resolution of the Board. Any Subsidiary 2 Director who is also a significant shareholder, director, officer, employee, agent or representative of any Affiliate, as defined in the SSA, is deemed to be an Inside Director. The number of Outside Directors must exceed the number of Inside Directors. In addition, all Outside Directors and Officer Directors must be resident citizens of the United States who have or who are eligible to process Department personal security clearances at the level of Subsidiary 2's facility security clearances. Also, the chairman of the Board, who casts the deciding vote in the event of a tie, cannot be an Inside Director. Subsidiary 1 may remove any member of the Board for any reason permitted by the provisions of applicable state law or Subsidiary 2's certificate of incorporation or bylaws; however an Outside Director cannot be removed until that director, Subsidiary 2, and the Department have been notified and the Department provides written notice stating no objection, and a successor who is qualified to become an Outside Director has been nominated by Subsidiary 1 and approved by Department.

The Board generally has all of the powers afforded a board of directors. No action can be taken by the Board in the absence of a quorum (consisting of majority of the Board, including at least one Inside Director, if any, and one Outside Director). Subsidiary 1, however, has additional control of the actions of Subsidiary 2 in certain circumstances. The SSA provides that prior written approval by Subsidiary 1 is required for the Board to undertake the following actions: (i) the merger, consolidation, reorganization, or dissolution, liquidation of Subsidiary 2; (ii) the liquidation sale or pledge of all or substantially all of the assets of Subsidiary 2; (iii) a voluntary filing for bankruptcy or liquidation; (iv) the purchase of additional shares in Subsidiary 2 to prevent the dilution of its shares in Subsidiary 2 in the event Subsidiary 2 issues new shares; (v) the changing of the existing legal rights or preferences of the outstanding shares; (vi) amendment of Subsidiary 2's charter documents with respect to the above actions; and (vii) the initiation of an action to terminate the SSA.

The SSA has a term of 5 years (unless terminated by the Department) and will continue in successive 30-day periods until the parties execute a revised, restated or alternative agreement effectively mitigating foreign ownership, control or influence at Subsidiary 2. It can be terminated by the Department only (i) in the event of a sale of Subsidiary 2 or all of its shares to a company or person not under foreign ownership, control, or influence; (ii) when the Department determines that existence of the SSA is no longer necessary to maintain a facility security clearance for Subsidiary 2; (iii) when the Department determines that continuation of a facility security clearance for Subsidiary 2 is no longer necessary; (iv) when the Department determines that there has been a breach of the SSA requiring termination or termination is otherwise in the national interest; (v) when Subsidiary 1 and Subsidiary 2 petition the Department to terminate the SSA (such petition is granted by the Department at its sole discretion); or (vi) for any reason upon, or following the expiration date.

### **Ruling**

Based on the facts submitted, we rule as follows:

The SSA does not prevent Subsidiary 2 from being a member of the Group (within the meaning of section 1504(a)) of which US Parent is the common parent or prevent Subsidiary 2 from joining in the filing of a consolidated federal income tax return (within the meaning of sections 1501 and 1502 and the regulations thereunder) with the Group.

### **Caveat**

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.

### **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 letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number (PLR 118268-16) of this ruling letter.

A copy of this ruling letter is being sent to your first representative listed on the power of attorney on file with this office.

Sincerely,

*Richard K. Passales*

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

cc: