



Date A =

Date B =

a =

b =

c =

d =

e =

f =

g =

Dear :

This letter ruling responds to a letter from your authorized representative dated July 12, 2017, submitted on behalf of U.S. Sub 1 (or “Taxpayer”), requesting rulings on certain federal income tax consequences of a series of transactions (the “Proposed Transaction”). Additional information was submitted in letters dated September 8, 2017, October 13, 2017, November 10, 2017, and December 18, 2017. The material information provided in that letter and in later correspondence is summarized below.

This letter is issued pursuant to § 6.03 of Rev. Proc. 2017-1, 2017-1 I.R.B. 1, regarding one or more significant issues under §§ 332, 351, 355 or 368. The rulings contained in this letter only address one or more discrete legal issues involved in the transaction. This Office expresses no opinion as to the overall tax consequences of the transactions described in this letter or as to any issue not specifically addressed by the rulings below.

### **Summary of Facts**

Foreign Parent wholly owns U.S. Sub 1, the common parent of U.S. Consolidated Group 1. Foreign Parent also owns a% (at least 80%) of Foreign Sub 1, which owns approximately b% (at least 80%) of U.S. Sub 2, the common parent of U.S. Consolidated Group 2. Foreign Sub 1 also owns Foreign Sub 2, which owns Foreign

Sub 3, which owns Foreign Sub 4. Foreign Sub 4 owns the remaining approximately c% of U.S. Sub 2. U.S. Sub 1 owns various U.S. subsidiaries while U.S. Sub 2 owns various U.S. subsidiaries and foreign subsidiaries.

On Date A, U.S. Sub 1 distributed \$d to Foreign Parent (“U.S. Sub 1 Distribution”). Within e months after the U.S. Sub 1 Distribution, Foreign Parent proposes to undertake the following steps (each a “Step” and collectively, the “Proposed Transaction”).

1. U.S. Sub 2 will contribute certain assets and liabilities, including its stock in the subsidiaries of the U.S. Consolidated Group 2 (and excluding foreign subsidiaries), to U.S. Spinco (a newly formed domestic corporation) in exchange for 100% of U.S. Spinco’s stock.
2. Foreign Sub 4 will sell its c% interest in U.S. Sub 2 to Foreign Parent in exchange for \$f.
3. U.S. Sub 2 will distribute 100% of U.S. Spinco pro rata to Foreign Sub 1 and Foreign Parent (“U.S. Spinco Distribution 1”).
4. Foreign Sub 1 will distribute its b% of U.S. Spinco stock to Foreign Parent (“U.S. Spinco Distribution 2”).
5. Foreign Parent will contribute 100% of U.S. Spinco to U.S. Sub 1 (“U.S. Spinco Contribution”).
6. U.S. Spinco will merge into U.S. Sub 1 with U.S. Sub 1 surviving (“U.S. Sub 1 Merger”).

Foreign Parent considered the following two alternative transactions to the Proposed Transaction.

Alternative Transaction 1: Foreign Parent contributes 100% of U.S. Sub 1 to Foreign Sub 1. Foreign Sub 1 then contributes 100% of U.S. Sub 1 to U.S. Sub 2.

Alternative Transaction 2: Foreign Sub 1 transfers 100% of U.S. Sub 2 to Foreign Parent. Foreign Parent then contributes 100% of U.S. Sub 2 to U.S. Sub 1. Alternative 2 contemplates a distribution of Foreign Sub 4’s approximately c% interest in U.S. Sub 2 to Foreign Sub 1 immediately prior to Foreign Sub 1’s distribution of U.S. Sub 2 to Foreign Parent.

### **Representations**

Taxpayer makes the following representations:

(a) Step 5, when viewed separately and independently from the other Steps and the U.S. Sub 1 Distribution, would be treated as a contribution of U.S. Spinco stock to which § 351 applies.

(b) Step 6, when viewed separately and independently from the other Steps, would be treated as a reorganization under § 368(a)(1)(A).

(c) If Foreign Parent undertakes Alternative Transaction 1 or Alternative Transaction 2, Foreign Parent would incur an increase in foreign taxes that it will not incur if it undertakes the Proposed Transaction.

(d) As of Date B, the U.S. Consolidated Group 1 had approximately \$g of an NOL carryover balance. The utilization of these NOLs is not subject to any current limitation under section 382 or Treas. Reg. § 1.1502-21.

(e) If Foreign Parent undertakes Alternative Transaction 1 or Alternative Transaction 2, it is anticipated that the NOLs of U.S. Consolidated Group 1 would be limited by § 1.1502-21, and no such limitation would occur as a result of the Proposed Transaction.

(f) Except for the legal issue of whether the Alternative Transactions are treated as impractical and unduly expensive for purposes of satisfying the business purpose requirement in § 1.355-2(b)(3), U.S. Spinco Distribution 1 and U.S. Spinco Distribution 2 would otherwise qualify as distributions under § 355.

(g) Except for the legal issue of whether the U.S. Spinco Contribution and the U.S. Sub 1 Distribution are treated as separate transactions, the U.S. Sub 1 Distribution would otherwise be treated as a distribution by U.S. Sub 1 to Foreign Parent with respect to its stock under § 301.

(h) Neither U.S. Sub 2 nor U.S. Spinco has been or will be a United States real property holding corporation (within the meaning of section 897(c)(2)) (a "USRPHC") at any time during the five-year period ending on the date of the U.S. Spinco Distribution 1, and neither U.S. Sub 2 nor U.S. Spinco will be a USRPHC immediately after the U.S. Sub 1 Merger.

## **Rulings**

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

(1) Steps 5 and 6 will be integrated to be treated as a reorganization under section 368(a)(1)(D). See Rev. Rul. 67-274, 1967-2 C.B. 141 (1967).

(2) The increased foreign tax costs and additional limitation on the use of NOLs anticipated to result under Alternative Transaction 1 and Alternative Transaction 2 can be considered for purposes of determining whether Alternative Transaction 1 and Alternative Transaction 2 are impractical and unduly expensive under § 1.355-2(b)(3).

### **Caveats**

(1) No opinion is expressed on whether the U.S. Spinco Distribution 1 or the U.S. Spinco Distribution 2 is carried out for a valid corporate business purpose for purposes of § 1.355-2(b)(1).

(2) No opinion is expressed on whether the U.S. Sub 1 Distribution is treated as a separate § 301 distribution or as boot in the § 368(a)(1)(D) reorganization pursuant to Ruling 1.

(3) 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) of the Code provides that it may not be used or cited as precedent.

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. 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.

The rulings contained in this letter are based upon information 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 request for rulings, it is subject to verification on examination.

Sincerely,

Douglas C. Bates  
Branch Chief, Branch 4  
Office of Associate Chief Counsel (Corporate )