

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:3
PLR-120991-17
Date:
February 22, 2018

Legend

Parent =

Merger-Sub =

Target =

Corp 1 =

Corp 2 =

Corp 3 =

LLC 1 =

LLC 2 =

Corp 4 =

Country A =

Date 1 =

Date 2 =

a =

b =

c =

d =

e =

Agreement =

Earn-Out Period =

Milestone A =

Milestone B =

Milestone C =

Milestone D =

Dear :

This letter responds to your letter dated June 30, 2017, submitted by your authorized representative, requesting a ruling under section 368(a)(1)(A) and section 368(a)(2)(E) of the Internal Revenue Code (Code). The information provided in that request and in subsequent correspondence is summarized below.

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

Summary of Facts

Parent is the publicly traded common parent of an affiliated group, the includible corporations of which join in the filing of a consolidated Federal income tax return. Parent owns all of the stock of Merger-Sub and Corp 1. Corp 1 owns all of the stock of Corp 2. Corp 2 owns all of the stock of Corp 3. Corp 3 owns all of the interests in LLC 1 and LLC 2, and a percent of the stock of Corp 4. LLC 1 and LLC 2 are each disregarded entities for Federal income tax purposes. LLC 1 owns b percent of Corp 4 and LLC 2 owns c percent of Corp 4.

Under an Agreement and Plan of Merger, entered into on Date 1 (the "Agreement") by Parent, Merger-Sub, and Target, pursuant to Country A law, Merger-Sub merged with and into Target, with Target surviving (the "Merger"). On Date 2, Target's shareholders received Parent stock and additional consideration in exchange for their Target stock worth \$d. The Agreement provides for additional contingent consideration ("Earn-Out Consideration") not to exceed \$e upon the achievement of Milestone A, Milestone B, Milestone C, or Milestone D during the Earn-Out Period.

Proposed Transaction

Parent is entering into the Proposed Transaction in order to integrate Target within other members of its affiliated group. The relevant steps of the Proposed Transaction are set forth below:

- (i) Parent will contribute all of the stock of Target to Corp 1.
- (ii) Corp 1 will contribute all of the stock of Target to Corp 2.
- (iii) Corp 2 will contribute all of the stock of Target to Corp 3.
- (iv) Corp 3 will contribute a percent of the stock of Target to Corp 4, b percent to LLC 1, and c percent to LLC 2. LLC 1 and LLC 2 will each contribute the stock of Target that it received from Corp 3 to Corp 4.

Representations

Parent makes the following representations with respect to the Proposed Transaction:

1. Without taking into account the Proposed Transaction, the Merger satisfied all the statutory and regulatory requirements to qualify as a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(E).
2. At all times during the Earn-Out Period, the portion of the Earn-Out Consideration that will be paid in the form of Parent voting stock will never be less than 80 percent of the total Earn-Out Consideration.

Ruling

The Proposed Transaction will not prevent the Earn-Out Consideration that is Parent voting stock from qualifying under sections 368(a)(1)(A) and 368(a)(2)(E) as stock of a corporation which before the merger was in control of the merged corporation.

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, including whether the Merger qualifies as a reorganization under section 368(a) of the Code.

Specifically, no opinion is expressed concerning the effect of the Earn-Out Consideration, and the provisions of the Agreement pertaining thereto, on the qualification of the Merger as a reorganization, within the meaning of section 368(a). In this regard, it is noted that these provisions do not meet certain requirements for private letter rulings, as set forth in section 2.01 of Rev. Proc. 84-42, 1984-2 C.B. 521, amplifying Rev. Proc. 77-37, 1977-2 C.B. 568.

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 representatives.

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.

Sincerely,

Mark J. Weiss
Chief, Branch 2
Office of Associate Chief Counsel (Corporate)