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Date:  
November 24, 2020

Parent =

Sub1 =

Sub2 =

Sub3 =

Sub4 =

Sub5 =

Sub6 =

DE1 =

DE2 =

DE3 =

FSub1 =

FSub2 =

FSub3 =

FSub4 =

FSub5 =

FSub6 =

FSub7 =

FSub8 =

FSub9 =

FDE1 =

FDE2 =

FDE3 =

FDE4 =

FDE5 =

FDE6 =

FDE7 =

FDE8

Foreign Subs Group 1 =

Foreign Subs Group 2 =

Foreign Subs Group 3 =

Country A =

Country B =

Territory A =

Territory B =

Territory C =

a =

Business =

FSub3 IP =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Date 11 =

Date 12 =

Date 13 =

Date 14 =

Date 15 =  
Date 16 =  
Date 17 =  
Date 18 =  
Year 1 =  
Year 2 =  
Year 3 =

Dear :

This letter responds to your authorized representative's letter dated September 1, 2019, requesting rulings on certain federal income tax consequences of a transaction (the "Completed Transaction"). The material information submitted in that request and in later correspondences is summarized below.

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.

This letter is issued pursuant to section 6.03(2) of Rev. Proc. 2019-1, 2019-1 I.R.B. 1, regarding one or more significant issues under section 368. The rulings contained in this letter related to section 368 only address one or more significant 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**

### Corporate Structure and Background

Parent is a publicly traded domestic corporation and the common parent of a consolidated group (the "Parent US Group"). Parent owns all of the stock of Sub1, a domestic corporation that is a member of the Parent US Group.

Sub1 owns all of the interests in DE1, a domestic eligible entity (within the meaning of Treas. Reg. § 301.7701-3(a)) that is disregarded as separate from its owner for federal income tax purposes (a "disregarded entity").

DE1 owns, directly and indirectly through a disregarded entity, all of the equity of Sub2, a domestic eligible entity (within the meaning of Treas. Reg. § 301.7701-3(a)) that is classified as a corporation for federal income tax purposes (an “eligible entity classified as a corporation”). Sub2 is a member of the Parent US Group.

Sub2 owns all of the interests in DE2, a domestic disregarded entity.

DE2 owns all of the interests in FSub1, a foreign eligible entity classified as a corporation.

FSub1 owns all of the interests in FDE1 and FDE3, each a foreign disregarded entity. FSub1 and FDE1 together own all of the interests in FDE2, a foreign disregarded entity, and FSub2, a foreign eligible entity classified as a corporation.

FSub2 is the holding company for certain intangible property rights and foreign subsidiaries in Parent’s worldwide group (the “Parent Worldwide Group”). FSub2 also holds a portfolio of investment assets (the “FSub2 Investment Assets”).

As a holding company, FSub2 owns all of the interests in FSub3, a foreign eligible entity classified as a corporation, and in FDE4, FDE5, FDE6, and FDE7, each of which is a foreign disregarded entity. FSub2 also owns all of the interests in the entities in Foreign Subs Group 2 and Foreign Subs Group 3.

FDE4 owns all of the interests in various subsidiaries, including FSub4, a foreign eligible entity classified as a corporation, and the entities in Foreign Subs Group 1.

FDE5 owns all of the interests in FSub5, a foreign eligible entity classified as a corporation, and all of the interests in FDE8, a foreign disregarded entity.

### FSub2 Intangible Properties

FSub2’s intangible properties include its rights under various agreements, including but not limited to a cost sharing agreement, buy-in agreements, and platform contribution license agreements. Certain of these agreements are described below.

Since Date 1, FSub2 and DE1 have been participants in a cost sharing arrangement (the “Arrangement”), pursuant to which they share the costs and benefits of certain intangible development activities for programs within the Business (the “R&D Activity”). As part of this arrangement, the parties develop intangible property. The terms of this arrangement are documented in a cost sharing agreement (the “Cost Sharing Agreement”). Under that agreement, FSub2 has the following rights with respect to the intangible property developed by it and DE1 (such rights, “FSub2’s Cost Shared Intangibles”):

1. A non-exclusive and perpetual right to manufacture, produce, distribute, sell, license, and otherwise use FSub2’s Cost Shared Intangibles in Territory A and

Territory B, and in further research and development of similar intangible properties; and

2. The right to commercialize or monetize FSub2's Cost Shared Intangibles, by entering into revenue-producing contracts with customers located in Territory A and Territory B.

FSub2 and DE1 share the intangible development costs ("IDCs") that are directly identified with, or reasonably allocable to, the R&D Activity in proportion to each party's share of reasonably anticipated benefits ("RAB shares") resulting from use of the cost shared intangible properties. These IDCs include, but are not limited to, the salaries and fees of certain of FSub2's and DE1's employees and independent contractors. The IDCs also include any stock-based compensation (as defined in Treas. Reg. § 1.482-7) granted to such individuals after Date 2, to the extent that the stock-based compensation is related to the R&D Activity.

FSub2 additionally has certain intangible property rights under various buy-in or platform contribution license agreements ("FSub2's Buy-In Intangibles," and together with FSub2's Cost Shared Intangibles, the "FSub2 Intangibles"), in exchange for which FSub2 made platform contribution transaction payments ("PCT payments").

Aside from the FSub2 Intangibles, FSub2 also holds intangible property rights to technologies developed by Sub3 and Sub4. FSub2 directly and indirectly acquired such rights from DE1 in Year 1 and Year 2, at a time in which DE1 was a corporation for federal income tax purposes. FSub2 directly acquired such rights for exploitation in Territory A and Territory B (the "FSub2 Section 367(d) IP"). FSub2 indirectly acquired, through FDE5 and FDE8, the rights for exploitation in Territory C (the "Other Section 367(d) IP"). Each acquisition occurred pursuant to a transaction subject to section 367(d). As a result, FSub2 was and is deemed to make a series of annual payments to DE1 (when it was a corporation) and Sub1 (since the time DE1 became a disregarded entity) over the useful life of each of the FSub2 Section 367(d) IP (each, a "Deemed Payment") and the Other Section 367(d) IP.

FSub2 has granted to FDE6 a non-exclusive license to use the FSub2 Intangibles and FSub2 Section 367(d) IP in Territory A and Territory B (the "FDE6 Operating License"). In turn, and as permitted under the FDE6 Operating License, FDE6 has sublicensed the rights to use the FSub2 Intangibles and FSub2 Section 367(d) IP in Territory A to FDE5 (the "FDE5 Operating License"), and in Territory B to FDE7 (the "FDE7 Operating License").

#### Other Intangible Properties

In addition to FSub2, certain of the Parent Worldwide Group's intangible property rights are held by FDE2. These intangible properties consist of a patent portfolio that FDE2 acquired in a transaction that was subject to section 367(d), following the Parent Worldwide Group's acquisition of Sub5 in Year 2. FDE2 also holds intangible property

rights of FSub6, which the Parent Worldwide Group acquired in Year 3. FDE2 granted to FSub2 and DE1 licenses for the use of these intangible properties, in each case in exchange for the receipt of royalties over an a-year term beginning on Date 3.

### **COMPLETED TRANSACTION**

In the Completed Transaction, the Parent Worldwide Group relocated substantially all of its intangible properties related to the Business, including all of the FSub2 Intangibles and the FSub2 Section 367(d) IP, to Country A, and consolidated the ownership of its foreign subsidiaries under two foreign holding companies. The foreign holding companies are located in jurisdictions where the Parent Worldwide Group had existing regional management functions. Following the Completed Transaction, each foreign holding company holds and oversees the operations of subsidiaries located within its geographic region. The relevant steps of the Completed Transaction are set forth below.

1. Effective Date 4, DE2 formed Sub6, a domestic corporation.
2. Effective Date 5, FSub2 formed FSub7, a foreign eligible entity classified as a corporation.
3. Effective Date 6, FSub1 formed FSub8, a foreign eligible entity classified as a corporation.
4. Effective Date 7, FSub1 formed FSub9, a foreign eligible entity classified as a corporation.
5. Effective Date 8, FSub3 distributed the FSub3 IP to FSub2.
6. Effective the same day but after Step 5, FSub2 distributed the FSub3 IP pro rata to FSub1 and FDE1.
7. Effective the same day but after Step 6, FDE1 distributed its pro rata share of the FSub3 IP to FSub1.
8. Effective the same day but after Step 7, FSub1 distributed the FSub3 IP to DE2.
9. Effective the same day but after Step 8, DE2 distributed the FSub3 IP to Sub2.
10. Effective the same day but after Step 9, Sub2 distributed the FSub3 IP to DE1.
11. Effective Date 9, FDE5 distributed all of the interests in FSub5 to FSub2.
12. Effective the same day, FDE2 filed an entity classification election under Treas. Reg. § 301.7701-3 to be treated as a corporation ("FSub10") for federal income tax purposes.
13. Effective Date 10, FSub2 contributed all of the interests in FSub3 to FSub7.



14. Effective Date 11, FDE1 merged into FSub1.
15. Effective Date 12, FSub2 filed an entity classification election under Treas. Reg. § 301.7701-3 to be disregarded as an entity separate from FSub1 (thereafter, "FDE9") for federal income tax purposes (the "Conversion").
16. Effective the same day but after Step 15, FDE4 sold all of its interests in FSub4 to FSub9 in exchange for a promissory note (the "Note").
17. Effective the same day but after Step 16, FDE4 distributed all of its interests in the entities in Foreign Subs Group 1 and the Note to FDE9.
18. Effective the same day but after Step 17, FDE9 distributed the FSub2 Intangibles, the FSub2 Section 367(d) IP, the Note, and all of its interests in FSub7, FDE4, FDE5, and the entities in Foreign Subs Group 1, Foreign Subs Group 2, and Foreign Subs Group 3, to FSub1. FDE9 also assigned its rights and obligations as licensor under the FDE6 Operating License to FSub1.
19. Effective Date 13, FSub1 contributed the Note and all of the interests in the entities in Foreign Subs Group 1 and Foreign Subs Group 2 to FSub9. Some of the contributions occurred in exchange for shares of FSub9, and some of the contributions occurred without any such exchange.
20. Effective the same day, FSub1 contributed all of the interests in FDE3, FDE4, FDE5, and the entities in Foreign Subs Group 3 to FSub8. The contribution of FDE3 occurred in exchange for shares of FSub8, and the contribution of FDE4, FDE5, and the entities in Foreign Subs Group 3 occurred without any such exchange.
21. Effective Date 14, FDE9 distributed the FSub2 Investment Assets (other than certain derivative assets) to FSub1.
22. Effective Date 15, FSub1 contributed all of the interests in FDE9 to FSub9 in exchange for FSub9 shares (together with the contributions in Step 19 and Step 20, the "Asset Contributions"). The historic assets of FSub2 that FSub1 contributes to FSub8 and FSub9 in the Asset Contributions together are referred to as the "Reincorporated Assets." The historic assets of FSub2 that FSub1 retains (*i.e.*, FSub7, the FSub2 Intangibles, the FSub2 Section 367(d) IP, and the FSub2 Investment Assets other than certain derivative assets) together are referred to as the "Retained Assets".
23. Effective Date 16, FSub1 formed DE3, a domestic disregarded entity.
24. Effective Date 17, DE2 contributed all of the interests in FSub1 to Sub6 in exchange for Sub6 shares (the "Contribution").

25. Effective Date 18, FSub1 contributed to DE3 its rights to use the FSub2 Intangibles in Country B. DE3 granted to FSub1 an operating license with respect to the use of the FSub2 Intangibles in Country B.
26. Effective the same day but after Step 25, FSub1 merged into Sub6 (the “Merger”, and together with the Contribution, the “Reorganization”). Thereafter, Sub6 holds the FSub2 Section 367(d) IP (among other assets) as a member of the Parent US Group.
27. Effective the same day and the same time as Step 26, Sub6 and FDE6 terminated the FDE6 Operating License, FDE6 and FDE5 terminated the FDE5 Operating License, and FDE6 and FDE7 terminated the FDE7 Operating License.
28. Effective the same day and the same time as Step 26, DE1 and Sub6 entered into a new operating license with FDE5 and a new operating license with FDE7.

### **REPRESENTATIONS**

1. For federal income tax purposes, the Conversion is intended to be treated as a transfer by FSub2 of substantially all of its assets to FSub1 solely in exchange for FSub1 voting stock and FSub1’s assumption of FSub2’s liabilities, followed by the distribution by FSub2 of the FSub1 voting stock to FSub1 in complete liquidation (the “Intended Characterization”). Provided that the Conversion is treated in accordance with the Intended Characterization, then except for the issues of whether the qualification of the Reorganization as a reorganization under section 368(a)(1)(F) or the Asset Contributions will prevent the Conversion from qualifying as a reorganization under section 368(a)(1)(C), and to the best knowledge and belief of Parent, the Conversion qualifies as a reorganization under section 368(a)(1)(C).
2. Except for the issue of whether the Asset Contributions will prevent the Reorganization from qualifying as a reorganization under section 368(a)(1)(F), and to the best knowledge and belief of Parent, the Reorganization qualifies as a reorganization under section 368(a)(1)(F).
3. Following the Reorganization, and for each of the Parent US Group’s consolidated return years in the remaining useful life of the FSub2 Section 367(d) IP, no member of the Parent US Group will:
  - a. Include the amount of any Deemed Payment in gross income;
  - b. Take any deduction for any Deemed Payment;
  - c. Make any adjustments to earnings and profits with respect to any Deemed Payment;

- d. Make any adjustments to stock basis with respect to any Deemed Payment under Treas. Reg. § 1.1502-32 or Treas. Reg. § 1.367(d)-1T(g)(1)(ii)(B); or
  - e. Make any other adjustments to any item of income, gain, deduction, or loss with respect to any Deemed Payment, or otherwise take into account any Deemed Payment for federal income tax purposes, in any manner that is inconsistent with the treatment of such Deemed Payment as paid between divisions of a single corporation.
4. Assuming the Conversion qualifies as a reorganization under section 368(a)(1)(C), no party to the reorganization received other property or money within the meaning of sections 356 and 361.
5. Assuming the Reorganization qualifies as a reorganization under section 368(a)(1)(F), no party to the reorganization received other property or money within the meaning of sections 356 and 361.
6. Prior to the Reorganization, the Parent US Group was reimbursed by the foreign Arrangement participant(s) for any outstanding IDCs, including stock-based compensation, in excess of those attributable to the Parent US Group's RAB share, that the Parent US Group incurred prior to the Reorganization.
7. Since Date 2, the Arrangement participants have included in IDCs all stock-based compensation related to intangible development activity pursuant to the Arrangement in accordance with the final Treasury regulations published in Treasury Decision 9088 (August 25, 2003) and their successor regulations, and the respective Arrangement participants have shared the costs of that stock-based compensation in proportion to the Arrangement participants' RAB shares.
8. Prior to the Reorganization, the Parent US Group was paid by the foreign Arrangement participant(s) for any outstanding PCT payments owing under the terms of the PCT agreements attributable to the foreign Arrangement participant(s) right to platform contributions through the date of the Reorganization. Following the Reorganization, Sub6 will pay the Parent US Group any remaining payments owing under the terms of the PCT agreements as they become due.
9. The Parent US Group will continue to recognize income inclusions in accordance with section 367(d) and the regulations issued thereunder over the remaining useful life, or upon disposition within the useful life, of any intangible property which was subject to section 367(d) (other than the FSub2 Section 367(d) IP)).
10. FSub2 has not purchased assets from either related or unrelated persons in an installment sale.

11. None of FSub2's Buy-In Intangibles contributed to the Arrangement by the Parent US Group prior to the Completed Transaction have used, in the case of a PCT compensated through a royalty or installment payments, a ramp-up royalty rate or ramp-up of installment payments.
12. Immediately prior to the Completed Transaction, FSub2 had the rights to exploit certain property (within the meaning of section 367(d)(4)) associated with the Business in Territory A and Territory B, including but not limited to rights to exploit the technology, marketing, and user base property, as covered by the Arrangement. As a result of the Completed Transaction, Sub6 and DE3 directly hold all of the rights to the property that FSub2 held immediately prior to the Completed Transaction, as referenced in the preceding sentence of this representation, excluding the stock of foreign subsidiaries. Such excluded foreign subsidiaries, other than FDE5, FDE7, and FDE8, do not have any rights to exploit property (within the meaning of section 367(d)(4)). Each of FDE5 and FDE7 holds an operating license to market and sell products, and to provide services, in its respective territory. Each of FDE5 and FDE8 holds rights to use certain intangible properties in Territory C.
13. As a result of the Completed Transaction, the rights to exploit the user base and marketing intangibles associated with a technology platform in a territory are held by the same legal entity that holds the rights to exploit the associated technology platform in such territory. User base includes, but is not limited to, persons accessing or using the technology platform, persons advertising on the technology platform, and third-party developers using the technology platform to allow persons to access their products. Marketing intangibles include, but are not limited to, trademarks, tradenames, brands, goodwill and going concern value, domain names, customer lists, registrations, copyrights, designs, and marketing strategies.

## **RULINGS**

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

1. For federal income tax purposes, the Conversion will be treated as a transfer by FSub2 of substantially all of its assets to FSub1 solely in exchange for FSub1 voting stock and FSub1's assumption of FSub2's liabilities, followed by the distribution by FSub2 of the FSub1 voting stock to FSub1 in complete liquidation.
2. The Asset Contributions will not prevent the Conversion from qualifying as a reorganization under section 368(a)(1)(C). Treas. Reg. § 1.368-2(k)(1).
3. The Asset Contributions will not prevent the Reorganization from qualifying as a reorganization under section 368(a)(1)(F). Treas. Reg. § 1.368-2(m)(3).

4. The qualification of the Reorganization as a reorganization under section 368(a)(1)(F) will not prevent the Conversion from qualifying as a reorganization under section 368(a)(1)(C). Treas. Reg. § 1.368-2(m)(3)(ii).
5. Each Deemed Payment received following the Reorganization is redetermined to be excluded from gross income under Treas. Reg. § 1.1502-13(c)(6)(ii)(D). Accordingly, the Deemed Payment is redetermined to be excluded from Sub1's gross income for each of the Parent US Group's consolidated return years for the remaining useful life of the FSub2 Section 367(d) IP.
6. For purposes of determining the effect of the Deemed Payments, under Treas. Reg. § 1.1502-13(c)(1):
  - a. Sub1's intercompany item from the deemed receipt of the Deemed Payment will not be: (i) taxable income, (ii) tax exempt income, or (iii) a distribution with respect to stock, within the meaning of Treas. Reg. § 1.1502-32(b)(2); or taken into account for purposes of earnings and profits under Treas. Reg. § 1.1502-33;
  - b. Sub6's corresponding item from the deemed payment of the Deemed Payment will not be: a non-capital, non-deductible amount, within the meaning of Treas. Reg. § 1.1502-32(b)(2); or taken into account for purposes of earnings and profits under Treas. Reg. § 1.1502-33; and
  - c. The Deemed Payment will not be subject to Treas. Reg. § 1.367(d)-1T(g)(1).
7. The deemed dividend that Sub2 will be required to include in income pursuant to Treas. Reg. § 1.367(b)-3(b)(3) in connection with the Reorganization is a dividend for purposes of the dividends received deduction under section 245A(a).
8. Assuming the Conversion qualifies as a reorganization under section 368(a)(1)(C), the consideration provided or deemed to be provided by FSub1 as described herein satisfies the requirements of Treas. Reg. § 1.482-7(f)(4) for FSub1's receipt of FSub2's assets (which include the FSub2 Intangibles) in the Conversion.
9. Assuming the Reorganization qualifies as a reorganization under section 368(a)(1)(F), the consideration provided or deemed to be provided by Sub6 as described herein satisfies the requirements of Treas. Reg. § 1.482-7(f)(4) for Sub6's receipt of FSub1's assets (which include the FSub2 Intangibles) in the Reorganization.
10. Other than the payments described herein and payments required under Treas. Reg. § 1.482-7(d)(3)(iii)(A)(4), and under the factual circumstances described

herein, Treas. Reg. § 1.482-7 does not require any additional payment for the mere termination of the Arrangement.

### **CLOSING AGREEMENT**

We will, accordingly, approve a closing agreement with the taxpayer with respect to certain of those issues affecting its tax liability on the basis set forth above. The necessary closing agreement for Parent has been prepared in triplicate and is enclosed. In pursuance of our practice with respect to such agreements, the agreement contains a stipulation to the effect that any change or modification of applicable statutes enacted subsequent to the date of this agreement and made applicable to the taxable period involved will render the agreement ineffective to the extent that it is dependent upon such statutes.

### **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 under any provision of the Internal Revenue Code (the "Code") and the regulations thereunder, including, but not limited to, the arm's length price required for any transfers of property, resources, capabilities, or rights or the amount of the IDCs required to be shared. Furthermore, no ruling or determination has been made concerning whether the Completed Transaction constitutes a sale or other disposition for purposes of section 453 installment reporting. No opinion is expressed or implied with respect to the appropriate amount of any income inclusions under section 367(d) (other than the excluded Deemed Payments) or with respect to the remaining useful life of property giving rise to such inclusions.

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.

Sincerely,

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Lisa Fuller  
Deputy Associate Chief Counsel (Corporate)  
Office of Associate Chief Counsel (Corporate)

cc: