Internal Revenue Service

Index Number: 368.03-00

Number: **200028027**
Release Date: 7/14/2000

Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:CORP:5 - PLR-103446-00
Date:
April 18, 2000

In Re:

Acquiring =

Target =

FC =

Q =

Business A =

X Stock Exchange =

Date A =

Date B =

Date C =

Date D =

Date E =

Date F =

Date G =

Date H =

Date I =

Date J =

Date K =

aa =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

Country A =

Dear :

This is in reply to your letter dated February 8, 2000 requesting that we rule on certain federal income tax consequences of a proposed transaction. The information submitted in that request and in subsequent correspondence is substantially as set forth below.

Acquiring is a Country A corporation and is classified as a corporation for U.S. federal income tax purposes. Acquiring's capital stock consists of a single class of voting common stock that is widely held and traded on the X Stock Exchange. Acquiring is not, and has never been, a controlled foreign corporation, as defined in § 957. Acquiring is engaged in Business A and is engaged in a U.S. trade or business through its branches, agencies and representative offices located in the United States.

Target is a Country A corporation and is classified as a corporation for U.S. federal income tax purposes. Target's capital stock consists of a single class of common stock. Target is engaged in Business A and is engaged in a U.S. trade or business through its branches, agencies and representative offices located in the United States.

On Date A, FC initiated a tender offer for the outstanding common stock of Target. On Date B, Acquiring made a competing offer (the "Initial Offer") to acquire up to aa percent of the outstanding common stock of Target. Acquiring offered a shares of Acquiring common stock for every b shares of Target common stock. The Initial Offer was subject to certain conditions, including that at least c percent (by vote) of the outstanding Target common stock be tendered.

On Date C, FC raised its bid for the shares of Target and, in response, on Date D, Acquiring improved the terms of its offer by offering d shares of Acquiring stock plus e Qs for every f shares of Target common stock (the "Increased Bid"). The Initial Offer closed on Date E. The Initial Offer resulted in the acquisition by Acquiring of g percent of the outstanding shares of Target common stock (h percent in terms of voting rights).

On Date F, Acquiring launched a second tender offer (the "Second Offer") for all of the Target common stock still held by others. The Second Offer was not conditional and Acquiring was obligated to accept all shares of Target common stock tendered to it. The terms of the Second Offer were identical to those of the Increased Bid except that no Qs were offered in the Second Offer. The Second Offer closed on Date G. Following the Second Offer, Acquiring owned i percent of the outstanding shares of Target common stock (j percent in terms of voting rights).

The Acquiring common stock issued in the Initial Offer and Second Offer represented k percent of the total Acquiring common stock outstanding after the close of the Second Offer.

Under Country A law, a parent company holding at least l percent of the stock of a subsidiary has the authority to force the minority shareholders to sell their shares to the parent company. On Date H, Acquiring announced that its board of directors had authorized the launch of a public buyout offer (the "Public Buyout Offer") to acquire all the remaining outstanding shares of Target common stock for a set amount of cash, to be followed by a compulsory sale at that price (the "Compulsory Sale") by any remaining holders to Acquiring of any untendered Target common stock. The Public Buyout Offer closed Date I, and as of Date J, as a result of the Compulsory Sale, Acquiring became the owner of aa percent of the outstanding Target common stock. Acquiring's acquisition of aa percent of Target's common stock by means of the Initial Offer, the Second Offer, the Public Buyout Offer, and the Compulsory Sale is referred to herein as the "Acquisition."

Taxpayer has represented that Acquiring undertook the Acquisition in order to combine the capitalization, customer bases and business expertise of the two groups and thereby achieve a greatly strengthened position in the marketplace. After the close of the Initial Offer, a committee comprising representatives of both Acquiring and Target was formed to consider the specific steps that would be used to integrate the business activities.

At the end of Date K, management decided, as one step in the integration process, to launch the project of a formal merger (the "Merger") of Target into Acquiring under Country A law. In the Merger, by operation of law, all of Target's assets will be transferred to, and all of its liabilities will be assumed by, Acquiring, the separate existence of Target will cease, and all of the Target common stock will be canceled. No Acquiring common stock or other stock of Acquiring will be issued in the Merger.

Management is continuing its work to identify and develop appropriate strategies to integrate the operations of the Acquiring group and the Target group following the Merger. At least in some cases, such integration will involve the combination of common business activities in one or more countries in direct or indirect, new or existing subsidiaries of Acquiring. Such an approach will involve the transfer of some (and perhaps many) of the assets that will be received by Acquiring from Target in the Merger to new or existing (direct or indirect) subsidiaries of Acquiring.

The following representations have been made in connection with the transaction:

(a) As a result of the Acquisition, there has been a qualified stock purchase, within the meaning of § 338(d)(3) of the Internal Revenue Code, of Target by Acquiring.

(b) Acquiring will transfer a not insignificant amount of the assets received from Target in the Merger to one or more corporations controlled directly or indirectly by Acquiring, within the meaning of § 368(c).

Based solely on the information submitted and on the representations made by the taxpayer (including representations set forth above), it is held as follows:

(1) No gain or loss will be recognized by Target on the transfer of all of its

assets to Acquiring.

(2) No gain or loss will be recognized by Acquiring on the receipt of Target's assets.

(3) The basis of the assets of Target in the hands of Acquiring will be the same as the basis of those assets in the hands of Target immediately prior to the transaction.

(4) The holding period for the assets of Target in the hands of Acquiring will include the period during which those assets were held by Target.

(5) The taxable year of Target will end on the effective date of the transaction (§ 1.381(b)-1(a) of the Income Tax Regulations), and as provided in § 381(a) and § 1.381(a)-(1), Acquiring will succeed to and take into account those attributes of Target described in § 381(c), subject to the provisions and limitations specified in §§ 381, 382, 383, and 384, if applicable, and the regulations thereunder.

(6) Pursuant to § 381(c), 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 transfer. Any deficit in earnings and profits of either Target or Acquiring will be used only to offset the earnings and profits accumulated after the date of the transfer.

No opinion is expressed about the tax treatment of the proposed transaction under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed about the tax treatment of the above transactions under the international provisions of the Code. Specifically, no opinion is expressed concerning (a) the application of §§ 367 and 897, (b) whether assets of the merged entity will be attributable to the merged entity's U.S. office under § 864; (c) whether gain is required to be recognized under § 864(c)(7) for any assets transferred from the old companies or from the newly merged company to any other companies; (d) whether any income should be treated as effectively connected under § 864(c)(6), and (e) the recognition, source, or character of any item in the merger under the U.S.-Country A Income Tax Treaty.

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

It is important that a copy of this letter be attached to the federal income tax returns of the taxpayers involved for the taxable year in which the transaction covered by this ruling letter is consummated.

Pursuant to the power of attorney on file in this office, copies of this letter have been sent to the taxpayer's representatives.

Sincerely yours,
Assistant Chief Counsel (Corporate)
By Charles Whedbee
Senior Technical Reviewer, Branch 5