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April 03, 2006

LEGEND:

Parent =

Sub =

FSub1 =

FSub2 =

FSub3 =

FSub4 =

FSub5 =

FSub6 =

FSub7 =

FSub8 =

State X =

Country A =

Country B =

Country C =

Country B Currency =

Business Y =

Branch =

Month Z =

a =

b =

c =

d =

e =

f =

g =

Dear :

This letter responds to your letter dated December 16, 2005, which requests rulings under §§ 351 and 367 of the Internal Revenue Code of 1986, as amended (the "Code"), with respect to a series of proposed transactions (the "Proposed Transaction"). Additional information was submitted in letters dated February 3, February 22, March 6, and March 14, 2006. The material information submitted for consideration is summarized below.

## SUMMARY OF THE FACTS

Parent is a publicly traded State X corporation and the common parent of a group comprised of both domestic and foreign corporations. Parent joins with its includible affiliates in filing a consolidated federal income tax return.

Sub, a State X corporation, is a member of the Parent consolidated group.

FSub1, a Country A exempt company, is a corporation within the meaning of § 7701(a)(3) and a controlled foreign corporation within the meaning of § 957 (“CFC”). Sub indirectly owns all of the outstanding shares of FSub1.

FSub2, a Country A exempt company, is a corporation within the meaning of § 7701(a)(3) and a CFC. FSub1 owns all of the outstanding shares of FSub2.

FSub3, a Country A exempt company, is a corporation within the meaning of § 7701(a)(3) and a CFC. FSub2 owns all of the outstanding shares of FSub3.

FSub4, a Country A exempt company, is a corporation within the meaning of § 7701(a)(3) and a CFC. FSub3 owns all of the outstanding shares of FSub4.

FSub5, a Country A exempt company, elected under Treas. Reg. § 301.7701-3 to be disregarded as a separate entity for federal tax purposes. FSub4 is the sole shareholder of FSub5. FSub5 currently conducts Business Y in Country B through Branch (the “Branch Business”).

FSub6 will be incorporated as a Country B corporation to facilitate the Proposed Transaction. FSub6 will be a corporation within the meaning of § 7701(a)(3) and a CFC. FSub4 will own all of the outstanding stock of FSub6.

FSub7, a Country B corporation, is a corporation within the meaning of § 7701(a)(3) and a CFC. FSub7 has solely common stock outstanding, all of which is owned by FSub4.

FSub8, a Country C corporation, is a corporation within the meaning of § 7701(a)(3) and a CFC. Parent indirectly owns all of the outstanding shares of FSub8 through its domestic and foreign subsidiaries.

## PROPOSED TRANSACTION

Parent has determined that it is necessary to operate the Branch Business as a Country B corporation. To effectuate the conversion, Parent proposes the following series of transactions:

- (i) In Month Z, FSub4 transferred approximately a Country B Currency to FSub7 in exchange for additional common shares of FSub7. This cash enabled FSub7 to begin the process of obtaining the required licenses in Country B to conduct the Branch Business.
- (ii) Parent or FSub8 will loan b Country B Currency to FSub4 on a short term basis.
- (iii) FSub4 will transfer b Country B Currency to FSub7 in exchange for c shares (100 percent) of a newly issued class of FSub7 voting preferred stock. FSub7 will incur a capital duty tax in Country B in an amount equal to a percentage of b. The FSub7 voting preferred stock will have d percent or less of the voting rights on general corporate matters, and the right to appoint e out of the initial f directors expected to serve on the FSub7 board of directors. Although FSub7 preferred stock will not be convertible into common shares, the preferred shareholders will be entitled to a dividend whenever a dividend on the common shares is declared. The preferred dividend will be calculated as if each share of the preferred stock had been converted into g (a fraction) of a share of common stock (i.e., each preferred share will receive a dividend equal to g (a fraction) the dividend paid on each common share). Upon a liquidation of FSub7, the preferred stock will be entitled to a liquidation preference equal to b Country B Currency.
- (iv) FSub5 will transfer the Branch Business assets (the "Branch Business Assets") to FSub7 in exchange for b Country B Currency. FSub5 will retain some of the cash and marketable assets of the Branch.
- (v) FSub5 will make a distribution of its net cash and marketable assets to FSub4. FSub5 will remain in existence as a legal entity but continue to be disregarded as a separate entity for federal tax purposes.
- (vi) FSub4 will pay off its loan from Parent or FSub8.
- (vii) FSub4 will transfer 100 percent of the FSub7 voting preferred stock to FSub6 solely in exchange for additional common shares of FSub6. FSub6 will not assume any liabilities in connection with the exchange. FSub6 will incur a capital duty tax in Country B in an amount equal to a percentage of b.

## REPRESENTATIONS

In connection with the transfers described in steps (i), (iii) and (iv) above (the “First Transfer”), the following representations have been made:

- (a) No stock or securities will be issued for services rendered to or for the benefit of FSub7 in connection with the First Transfer, and no stock or securities will be issued for any indebtedness of FSub7.
- (b) The First Transfer is not the result of the solicitation by a promoter, broker, or investment house.
- (c) FSub4 will not retain any rights in the property transferred to FSub7.
- (d) The value of the stock received in exchange for accounts receivable will be equal to the net value of the accounts transferred.
- (e) The adjusted basis and the fair market value of the assets to be transferred by FSub4 to FSub7 will, in each instance, be equal to or exceed the sum of the liabilities to be assumed by FSub7 (within the meaning of § 357(d)).
- (f) The liabilities of FSub4 to be assumed by FSub7 (within the meaning of § 357(d)) were incurred in the ordinary course of business and are associated with the assets to be transferred.
- (g) There is no indebtedness between FSub7 and FSub4 and there will be no indebtedness created in favor of FSub4 as a result of the transaction.
- (h) The First Transfer will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
- (i) With the exception of step (i) of the Proposed Transaction, all exchanges will occur on approximately the same date.
- (j) Except as described in step (vii) of the Proposed Transaction, FSub4 has no plan or intention to dispose of the shares of FSub7 following the First Transfer.
- (k) There is no plan or intention on the part of FSub7 to redeem or otherwise reacquire any shares to be issued in the First Transfer.
- (l) Taking into account any issuance of additional shares of FSub7 stock; any issuance of stock for services; the exercise of any FSub7 stock rights, warrants, or subscriptions; a public offering of FSub7 stock; and the sale, exchange, transfer by

- gift, or other disposition of any of the stock of FSub7 to be received in the exchange, FSub4 will be in “control” of FSub7 within the meaning of § 368(c).
- (m) FSub4 will receive FSub7 stock approximately equal to the fair market value of the property transferred to FSub7.
  - (n) FSub7 will remain in existence and retain and use the property transferred to it in a trade or business.
  - (o) There is no plan or intention by FSub7 to dispose of the transferred property other than in the normal course of business operations.
  - (p) Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the First Transfer.
  - (q) FSub7 will not be an investment company within the meaning of §§ 351(e)(1) and 1.351-1(c)(1)(ii).
  - (r) FSub4 is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the shares received in the exchange will not be used to satisfy the indebtedness of such debtors.
  - (s) FSub7 will not be a “personal service corporation” within the meaning of § 269A.
  - (t) The FSub7 preferred stock will not be nonqualified preferred stock (within the meaning of § 351(g)(2)).
  - (u) The aggregate fair market value of the assets to be transferred by FSub4 to FSub7 will equal or exceed the aggregate adjusted basis of the transferred assets immediately after the transaction.
  - (v) The notice requirement of § 1.367(b)-1(c)(1) will be met for the First Transfer.
  - (w) Both FSub4 and FSub7 will be a controlled foreign corporation (within the meaning of § 957) with respect to which Sub will be a § 1248 shareholder before and after the First Transfer.

In connection with the transfer described in step (vii) of the Proposed Transaction (the “Second Transfer”), the following representations have been made:

- (a) No stock or securities will be issued for services rendered to or for the benefit of FSub6 in connection with the Second Transfer, and no stock or securities will be issued for any indebtedness of FSub6.
- (b) None of the stock to be transferred is “§ 306 stock” within the meaning of § 306(c) of the Code.
- (c) The Second Transfer is not the result of the solicitation by a promoter, broker, or investment house.
- (d) FSub4 will not retain any rights in the stock transferred to FSub6.
- (e) There is no indebtedness relating to the stock being transferred that is being assumed (within the meaning of § 357(d)) by FSub6.
- (f) There is no indebtedness between FSub6 and the FSub4 and there will be no indebtedness created in favor of the FSub4 as a result of the transaction.
- (g) The Second Transfer will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
- (h) All exchanges will occur on approximately the same date.
- (i) FSub4 has no plan or intention to dispose of the shares of FSub6 following the Second Transfer.
- (j) There is no plan or intention on the part of FSub6 to redeem or otherwise reacquire any shares to be issued in the Second Transfer.
- (k) Taking into account any issuance of additional shares of FSub6 stock; any issuance of stock for services; the exercise of any FSub6 stock rights, warrants, or subscriptions; a public offering of FSub6 stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of FSub6 to be received in the exchange, FSub4 will be in “control” of FSub6 within the meaning of § 368(c).
- (l) FSub4 will receive FSub6 stock approximately equal to the fair market value of the stock transferred to FSub6.
- (m) FSub6 will remain in existence and retain the stock transferred to it.
- (n) There is no plan or intention by FSub6 to dispose of the transferred stock other than in the normal course of business operations.

- (o) Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the Second Transfer.
- (p) FSub6 will not be an investment company within the meaning of §§ 351(e)(1) and 1.351-1(c)(1)(ii).
- (q) FSub4 is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the shares received in the exchange will not be used to satisfy the indebtedness of such debtors.
- (r) FSub6 will not be a “personal service corporation” within the meaning of § 269A.
- (s) The aggregate fair market value of the stock to be transferred by FSub4 to FSub6 will equal or exceed the aggregate adjusted basis of the transferred stock immediately after the transaction.
- (t) The notice requirement of § 1.367(b)-1(c)(1) will be met for the Second Transfer.
- (u) Each of FSub4, FSub6 and FSub7 will be a controlled foreign corporation (within the meaning of § 957) with respect to which Sub will be a § 1248 shareholder before and after the Second Transfer.

## RULINGS

Based solely on the information submitted and the representations set forth above, we hold as follows:

- (1) For federal income tax purposes, the circular flow of cash described in Steps (iii) and (iv) of the Proposed Transaction will be disregarded and the transactions will be treated as a transfer by FSub4 of the Branch Business Assets to FSub7 in exchange for FSub7 stock. Rev. Rul. 83-142, 1983-1 C.B. 68.
- (2) No gain or loss will be recognized by FSub4 on the First Transfer or the Second Transfer. Sections 351(a) and 357(c).
- (3) No gain or loss will be recognized by FSub7 on the First Transfer or by FSub6 on the Second Transfer. Section 1032(a).
- (4) The basis of the FSub7 common stock and voting preferred stock received by FSub4 will be the same as the basis of the assets exchanged therefore, reduced by any assumed liabilities not described under § 357(c)(3), and allocated among the

FSub7 common stock and voting preferred stock received by FSub4 in proportion to the fair market values of each class. Sections 358(a), (b)(1), (d), and 1.358-2(b)(2).

- (5) The basis of the FSub6 stock received by FSub4 will be the same as the basis of the stock exchanged therefore. Section 358(a).
- (6) The basis of each asset received by FSub7 as a result of the First Transfer and by FSub6 as a result of the Second Transfer will equal the basis of that asset in the hands of the transferor immediately before the exchange. Section 362(a).
- (7) The holding period of the FSub7 stock received by FSub4 in the First Transfer and the FSub6 stock received by FSub4 in the Second Transfer will include, in each instance, the period during which the property exchanged therefore was held, provided such property was held as a capital asset by the transferors on the date of the exchange. Section 1223(1).
- (8) The holding period of each asset received by FSub7 as a result of the First Transfer and by FSub6 as a result of the Second Transfer will include the period during which the transferor held the asset. Section 1223(2).
- (9) The First Transfer and Second Transfer will be exchanges to which §§ 1.367(b)-1(c) and 1.367(b)-4(a) apply.
- (10) Provided the notice requirement of § 1.367(b)-1(c)(1) will be met, no amount will be included in income as a deemed dividend under § 1.367(b)-4(b).

#### 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.

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.

#### 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.

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.

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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Michael J. Wilder  
Senior Technician Reviewer, Branch 1  
Office of Associate Chief Counsel (Corporate)

cc: