

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

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Refer Reply To:  
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Date:  
May 5, 2000

Parent =  
  
Corp A =  
  
Corp B =  
  
F-Holding =  
  
F-Sub =  
  
Branch 1 =  
  
Country A =  
  
Country B =  
  
Business A =

This letter responds to your letter dated December 22, 1999, requesting rulings as to certain federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated March 27, 2000, and April 19, 2000. The information submitted for consideration is substantially as summarized below.

Parent is the common parent of a consolidated group that includes Corp A and Corp B, both domestic corporations. All of Corp A's stock is owned indirectly by Parent. Corp A is currently engaged in Business A in Country A through Branch 1. Corp A owns all of the stock of Corp B.

Corp B owns all the stock of F-Holding, a Country B corporation organized as a holding company. F-Holding owns all the stock of F-Sub, a Country B corporation that is engaged in Business A in Country B.

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Corp A, Corp B, F-Holding and F-Sub are calendar-year accrual basis taxpayers.

For what have been represented to be valid business reasons, Corp A will transfer its Business A conducted through Branch 1 to F-Sub in the following proposed transaction:

- (i) Corp A will enter into a binding subscription agreement (the "Subscription Agreement") with F-Sub specifying that on or before the date of the proposed transaction (the "Transaction Date"), Corp A will transfer the Branch 1 assets to F-Sub in exchange for shares of preferred stock of F-Sub (the "F-Sub Preferred") to be issued on the Transaction Date and the assumption of liabilities.
- (ii) On the same date that Corp A enters into the Subscription Agreement, Corp A, Corp B and F-Holding will enter into an irrevocable transfer agreement (the "Transfer Agreement") specifying that (a) Corp A transfers its rights to the F-Sub Preferred under the Subscription Agreement to Corp B and (b) Corp B transfers the same rights to the F-Sub Preferred to F-Holding in exchange for shares of preferred stock of F-Holding (the "F-Holding Preferred") to be issued to Corp B on the Transaction Date. Because Corp A already owns 100% of Corp B, Corp B will not issue any additional stock in exchange for Corp A's contribution of the F-Sub Preferred.
- (iii) On the Transaction Date, Corp A will transfer the Branch 1 assets to F-Sub in exchange for the F-Sub Preferred and assumption of liabilities pursuant to the Subscription Agreement.
- (iv) On the Transaction Date, Corp A will transfer the F-Sub Preferred to Corp B pursuant to the Transfer Agreement.
- (v) On the Transaction Date, Corp B will transfer the F-Sub Preferred to F-Holding in exchange for the F-Holding Preferred pursuant to the Transfer Agreement.

Parent has represented that the assets and liabilities of Branch 1 are being transferred by Corp A directly to F-Sub rather than down the ownership chain in order to reduce substantially the level of foreign transfer and other taxes and duties that would be incurred and regulatory consents that would be required in such multiple transfer arrangements.

The taxpayer has made the following representations in connection with the proposed transaction:

- (a) No stock or securities will be issued for services rendered to or for the benefit of Corp B, F-Holding or F-Sub in connection with the proposed transaction, and no stock or securities will be issued for indebtedness of Corp B, F-Holding or F-Sub

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that is not evidenced by a security or for interest on indebtedness of Corp B, F-Holding or F-Sub which accrued on or after the beginning of the holding period of the respective transferor for the debt.

- (b) The respective transfers are not the result of the solicitation by a promoter, broker, or investment house.
- (c) Corp A, Corp B, and F-Holding will not retain any rights in the property transferred to F-Sub.
- (d) The value of the stock received (or constructively received) in exchange for accounts receivable will be equal to the net value of the accounts transferred, i.e., the face value of the accounts receivable previously included in income less the amount of the reserve for bad debts.
- (e) The adjusted basis and the fair market value of the assets to be transferred by Corp A, Corp B, and F-Holding to their respective transferees will, in each instance, be equal to or exceed the sum of the liabilities to be assumed by the respective transferees (including any reorganization expenses described in representation (o), below, that will be assumed and paid by F-Sub on behalf of the other parties to the transaction) plus any liabilities to which the transferred assets are subject.
- (f) The liabilities of Corp A, Corp B, and F-Holding to be assumed by their respective transferees were incurred in the ordinary course of business and are associated with the assets to be transferred.
- (g) There is no indebtedness between the transferees and the transferors except that Corp A, Corp B, and F-Sub may hold funds in their capacity as licensed banks (or as a holding company in the banking chain in the case of Corp B) that have been deposited with or loaned to them by other parties to the transaction on terms consistent with other deposits, accounts and loans that they have received from unrelated parties in the normal course of their banking business. There will be no indebtedness created in favor of Corp A, Corp B, and F-Holding as a result of the transactions.
- (h) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
- (i) All exchanges will occur on approximately the same date.
- (j) Each of Corp B, F-Holding, and F-Sub has no plan or intention to redeem or otherwise reacquire any stock or indebtedness to be issued (or deemed issued) in the proposed transaction.

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- (k) Taking into account any issuance of additional shares of each of Corp B, F-Holding, and F-Sub; any issuance of stock for services; the exercise of any Corp B, F-Holding, and F-Sub, stock rights, warrants, or subscriptions; public offerings of Corp B, F-Holding, or F-Sub, stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of the Corp B, F-Holding and F-Sub to be received in the exchange, (and assuming that the transaction is treated as if Corp A transferred the Branch 1 assets to Corp B in constructive exchange for additional shares of Corp B and the assumption of liabilities, and then Corp B transferred the Branch 1 assets to F-Holding in exchange for the F-Holding Preferred and the assumption of liabilities followed by the transfer of the Branch 1 assets by F-Holding to F-Sub in exchange for F-Sub Preferred and the assumption of liabilities,) Corp A, Corp B, and F-Holding will be in "control" of their respective transferees within the meaning of § 368(c).
- (l) Each of Corp A, Corp B and F-Holding will receive (or constructively receive) stock approximately equal to the fair market value of the property transferred to their respective transferees.
- (m) Corp B, F-Holding and F-Sub will remain in existence and F-Sub will retain and use the property transferred to it in a trade or business.
- (n) There is no plan or intention by Corp B, F-Holding and F-Sub to dispose of the transferred property other than in the normal course of their respective business operations or in accordance with the transactions described herein.
- (o) Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the transaction except that F-Sub will assume and pay reorganization expenses on behalf of Corp A, Corp B, and F-Holding in accordance with the guidelines of Rev. Rul. 74-477, 1974-2 C.B. 118 and Rev. Rul. 73-54, 1973-1 C.B. 187.
- (p) Corp B, F-Holding and F-Sub will not be investment companies within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii).
- (q) Neither Corp A, Corp B nor F-Holding is under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)), and the stock received (or constructively received) in the respective exchanges will not be used to satisfy the indebtedness of such debtor.
- (r) Corp B, F-Holding and F-Sub will not be "personal service corporations" within the meaning of § 269A.
- (s) Neither the F-Holding Preferred nor the F-Sub Preferred will constitute non-qualified preferred stock under § 351(g).

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- (t) But for local law restrictions and foreign tax considerations, Corp A would have transferred all of the assets of Branch 1 to Corp B and would have caused Corp B to transfer all such assets to F-Holding and would have caused F-Holding to transfer all such assets to F-Sub, all in actual or constructive exchange for the stock of Corp B, F-Holding and F-Sub, respectively.
- (u) None of the assets to be transferred by Corp A, Corp B or F-Holding were received by Corp A, Corp B or F-Holding as part of a plan of liquidation of another corporation.
- (v) Both Branch 1 and Corp B use the accrual method of accounting for U.S. Federal tax purposes and all of their income earned as of the Transaction Date will be, or has been, included in the computation of their respective taxable income.
- (w) Branch 1 has no previously deducted branch losses within the meaning of § 1.367(a)-6T.
- (x) F-Sub is a controlled foreign corporation, within the meaning of § 957, both before and after the transaction.
- (y) The Branch 1 assets and liabilities transferred to F-Sub will be used by F-Sub in the active conduct of a trade or business outside the United States within the meaning of § 367(a)(3)(A) and § 1.367(a)-2T.
- (z) Corp B will recognize the gain (if any) required to be recognized under § 367(a)(3)(B) notwithstanding the application of § 367(a)(3)(A).
- (aa) Corp B will comply with the reporting requirements of § 367(a) and 367(b).
- (bb) No assets described in § 1.367(a)-4T or -5T other than foreign currency and accounts receivable will be transferred in connection with the proposed transaction.

Based solely on the information submitted and on the representations set forth above, and provided that F-Holding and F-Sub are corporations within the meaning of § 7701(a)(3), it is held as follows:

1. For federal income tax purposes, steps (i) through (v), above will be treated as if Corp A transferred the Branch 1 assets to Corp B in constructive exchange for additional shares of Corp B and the assumption of liabilities, and then Corp B transferred the Branch 1 assets to F-Holding in exchange for the F-Holding Preferred and the assumption of liabilities followed by the transfer of the Branch

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- 1 assets by F-Holding to F-Sub in exchange for F-Sub Preferred and the assumption of liabilities. See Rev. Rul. 77-449, 1977-2 C.B. 110 and Rev. Rul. 64-155, 1964-1 C.B. 138.
2. Corp A will not recognize any gain or loss upon the transfer of the assets described above in constructive exchange for Corp B stock and the assumption of related liabilities (§§ 351(a) and 357(a)).
3. Subject to the application of § 367(a), Corp B will not recognize any gain or loss upon the transfer of assets described above in exchange for F-Holding Preferred and the assumption of related liabilities (§§ 351(a) and 357(a)).
4. Subject to the application of § 367(b), F-Holding will not recognize any gain or loss upon the transfer of the assets described above in exchange for F-Sub Preferred and the assumption of related liabilities (§§ 351(a) and 357(a)).
5. Neither Corp B, F-Holding nor F-Sub will recognize any gain or loss upon the receipt of assets described above in constructive or actual exchange for their stock (§ 1032(a)).
6. The basis of the assets received by Corp B will be the same as the basis of such assets in the hands of Corp A immediately prior to the transfer to Corp B (§ 362(a)). The basis of the assets received by F-Holding will be the same as the basis of such assets in the hands of Corp A immediately prior to the transfer to Corp B and then to F-Holding, increased by the amount of gain, if any, recognized by Corp B pursuant § 367 (§ 362(a)). The basis of the assets received by F-Sub will be the same as the basis of such assets in the hands of F-Holding immediately prior to the transfer (§ 362(a)).
7. The holding period of the assets received by Corp B will include the period during which such assets were held by Corp A (1223(2)). The holding period of the assets received by F-Holding will include the period during which such assets were held by Corp B (1223(2)). The holding period of the assets received by F-Sub will include the period during which such assets were held by F-Holding (1223(2)).
8. The basis of the stock of Corp B in the hands of Corp A will be increased by an amount equal to the basis of the assets transferred to Corp B, and decreased by the amount of the liabilities assumed by Corp B and the amount of liabilities to which the assets transferred are subject (§ 358(a)(1) and (d)).
9. The basis of the F-Holding Preferred in the hands of Corp B will be the same as the basis of the assets exchanged therefor, increased by the amount of gain, if any, recognized by Corp B pursuant to § 367, and decreased by the amount of

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liabilities assumed by F-Holding and the amount of liabilities to which the assets transferred are subject (§ 358(a)(1) and (d)).

10. The basis of the F-Sub Preferred in the hands of F-Holding will be the same as the basis of the assets exchanged therefor, and decreased by the amount of the liabilities assumed by F-Sub and the amount of liabilities to which the assets transferred are subject (§ 358(a)(1) and (d)).
11. The holding period of the Corp B stock constructively received by Corp A will include the period during which Corp A held the Branch 1 assets to be transferred, provided that such assets were held as capital assets in the hands of Corp A on the date of the exchange (1223(1)). The holding period of the F-Holding Preferred Stock received by Corp B will include the period during which Corp B held the Branch 1 assets to be transferred, provided that such assets were held as capital assets in the hands of Corp B on the date of the exchange (1223(1)). The holding period of the F-Sub Preferred Stock received by F-Holding will include the period during which F-Holding held the Branch 1 assets to be transferred, provided that such assets were held as capital assets in the hands of F-Holding on the date of the exchange (1223(1)).
12. The transfer of foreign currency by Corp B to F-Holding will be subject to § 367(a)(1). See § 1.367(a)-5T(d)(1). The gain to be recognized under § 367(a)(1) on the outbound transfer of foreign currency to F-Holding is limited to the gain realized on the transfer of such property over any loss realized as part of the same transaction on the transfer of such property. See § 1.367(a)-5T(d)(3).
13. The transfer of accounts receivable by Corp B to F-Holding will be subject to § 367(a) to the extent that they have not been included by the taxpayer in taxable income. See § 1.367(a)-5T(c).

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling letter have not yet been adopted. Therefore, this ruling letter may be revoked or modified upon the issuance of temporary or final regulations (or a notice with respect to their future issuance). See section 12.04 of Rev. Proc. 2000-1, 2000-1 I.R.B. 4, which discusses in greater detail the revocation or modification of ruling letters. However, when the criteria in section 12.05 of Rev. Proc 2000-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

The rulings contained in this letter are predicated upon the facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for a ruling. Verification of the

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information, representations, and other data may be required as part of the audit process.

No opinion is expressed about the tax treatment of the transaction under other provisions of the Internal Revenue Code and regulations, or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above rulings. This ruling has no effect on any earlier documents and is directed only to the taxpayer who requested it.

Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

A copy of this letter should 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.

In accordance with the power of attorney on file in this office a copy of this letter is being sent to the taxpayer.

Sincerely yours,

Assistant Chief Counsel (Corporate)

By Victor Penico, Chief, Branch 3