Internal Revenue Service

Number: **202504005**
Release Date: 1/24/2025

Index Number: 245A.00-00, 367.10-05

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:INTL:B04
PLR-108735-24

Date:
October 21, 2024

Legend

Parent Group =

US Sub 1 =

US Sub 2 =

US LLC 1 =

US LLC 2 =

US LLC 3 =

State A =
Foreign Sub 1 =

Foreign DE =

Foreign Sub 2 =

Country A =
Country B =
Taxable Year A =
Taxable Year B =
Taxable Year C =
Taxable Year D =
Date A =
Amount A =
Amount B =
Amount C =

Amount D =

Dear :

This letter responds to your authorized representative's letter dated April 29, 2024, requesting rulings under sections 245A and 367 of the Internal Revenue Code (the "Code") concerning the proposed transaction described below (the "Proposed Transaction"). Supplemental information was provided in letters dated July 5, 2024, and September 9, 2024.

The ruling contained in this letter is predicated on information and representations submitted by the taxpayer and accompanied by penalties of perjury statements executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the facts, representations, and other data may be required as part of the audit process.

FACTS

Parent is a domestic corporation incorporated in State A and is the common parent of an affiliated group of corporations that files a consolidated return for Federal income tax purposes (the "Parent Group"). The Parent Group includes US Sub 1, a domestic corporation incorporated in State A that is wholly owned by Parent, and US Sub 2, a domestic corporation incorporated in State A and wholly owned by US Sub 1 indirectly through US LLC 1, a domestic entity wholly owned by US Sub 1 that is disregarded as an entity separate from its owner for Federal income tax purposes.

US Sub 2 wholly owns Foreign Sub 1, a Country A limited partnership that has elected to be classified as a corporation for Federal income tax purposes, indirectly through US LLC 2 and US LLC 3, each a domestic entity wholly owned by US Sub 2 that is disregarded as an entity separate from its owner for Federal tax purposes.

Foreign Sub 1, through its directly and indirectly held subsidiaries, conducts certain foreign business operations on behalf of the Parent Group. Foreign Sub 1 wholly owns Foreign DE, a Country A limited company that has elected to be treated as disregarded as an entity separate from its owner for Federal tax purposes. Foreign DE directly and indirectly owns several foreign corporations that are controlled foreign corporations (within the meaning of section 957, "CFCs").

Parent undertook a series of transactions during Taxable Year B to divest itself of a business previously acquired as part of an acquisition in Taxable Year A. As part of that series of transactions, Foreign Sub 1 recognized a loss in Taxable Year B, which gave rise to an earnings and profits ("E&P") deficit of Amount A in the passive category (within the meaning of section 904(d)).

In Taxable Year C, on Date A, Foreign Sub 2, a foreign corporation organized under the laws of Country B that was wholly owned by Foreign Sub 1 indirectly through Foreign DE, liquidated with and into its tax owner, Foreign Sub 1, in a complete liquidation described in section 332 (the "Foreign Sub 2 Liquidation").

PROPOSED TRANSACTION

The following steps (collectively, the "Proposed Transaction") have been, or will be, effectuated as part of a single, integrated plan:

1. In Taxable Year D, CFCs owned by Foreign Sub 1 will pay dividends to Foreign Sub 1 totaling to Amount C (the "Subsidiary Dividends").

2. Also in Taxable Year D, Foreign Sub 1 will pay a dividend of Amount D to US Sub 2 (the "Foreign Sub 1 Dividend").

REPRESENTATIONS

The taxpayer has made the following representations with respect to the Proposed Transaction:

1. US Sub 2 would be eligible for the dividends received deduction under section 245A(a) for the foreign-source portion of the Foreign Sub 1 Dividend.

2. The Foreign Sub 2 Liquidation was not related to, nor was it part of a plan including, the Foreign Sub 1 Dividend or the Subsidiary Dividends.

3. The Foreign Sub 2 Liquidation was subject to Treas. Reg. §1.367(b)-7, and Amount B of the E&P deficit in the passive category became a hovering deficit in the passive category (the "Foreign Sub 1 Hovering Deficit"); the Foreign Sub 2 Liquidation was not subject to Treas. Reg. §1.367(b)-9.

4. The Foreign Sub 1 Hovering Deficit remaining as of the beginning of Taxable Year D is Amount B.

5. Foreign Sub 1's E&P in the general category as of the beginning of Taxable Year D is greater than Amount D.

6. For Taxable Year D, Foreign Sub 1 will not generate any E&P in the passive category, and the Subsidiary Dividends will be attributable solely to (i) E&P described in section 959(c)(1) or (c)(2), and (ii) general category E&P described in section 959(c)(3).

LAW AND ANALYSIS

Section 245A(a) generally allows a domestic corporation that is a United States shareholder with respect to a specified 10-percent owned foreign corporation (an "SFC") a 100-percent dividends received deduction (the "section 245A DRD") for the foreign-source portion of a dividend received from an SFC, subject to certain requirements and limitations. Section 245A(b) defines an SFC as any foreign corporation, other than a passive foreign investment corporation (as defined in section 1297) that is not also a CFC, with at least one domestic corporation as a United States shareholder. Section 951(b) provides that, for purposes of the Code, a United States shareholder means, with respect to any foreign corporation, a United States person (as defined in section 957(c)) who owns (within the meaning of section 958(a)), or is considered as owning by applying section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such corporation, or 10 percent or more of the total value of all classes of stock of such foreign corporation.

Section 245A(c)(1) provides that, for purposes of section 245A, the foreign-source portion of a dividend received from an SFC is an amount which bears the same ratio to the dividend as the undistributed foreign earnings of the SFC bears to the total undistributed earnings of the SFC (the "section 245A fraction"). Section 245A(c)(2) defines undistributed earnings as the amount of the SFC's E&P (computed in accordance with sections 964(a) and 986) as of the close of its taxable year in which the dividend is distributed, without diminution by reason of dividends distributed during the taxable year. Section 245A(c)(3), in turn, defines undistributed foreign earnings as the portion of undistributed earnings that is attributable to neither income described in section 245(a)(5)(A) (income effectively connected with the conduct of a trade or business within the United States), nor dividends described in section 245(a)(5)(B) but determined without regard to section 245(a)(12) (dividends received from 80-percent owned domestic corporations).

Section 964(a) generally provides that the E&P of any foreign corporation, and the deficit in E&P of any foreign corporation, for any taxable year is determined according to rules substantially similar to those applicable to domestic corporations, with certain modifications. Section 381(a)(1) applies to the acquisition of assets of a corporation by another corporation in a distribution to such other corporation to which section 332 (relating to liquidations of subsidiaries) applies. In the case of an acquisition described in section 381(a)(1), section 381(c)(2)(A) provides that the E&P or deficit in E&P, as applicable, of the distributor or transferor corporation are, subject to section 381(c)(2)(B), deemed to have been received or incurred by the acquiring corporation as of the close of the date of the distribution or transfer. Section 381(c)(2)(B) provides that a deficit in E&P of the distributor, transferor, or acquiring corporation can be used only to offset E&P accumulated after the date of transfer (such deficit becomes a "hovering deficit").

Treas. Reg. § 1.367(b)-7, in relevant part, provides rules regarding the manner and extent to which E&P of a foreign corporation carry over when one foreign corporation

("foreign acquiring corporation") acquires the assets of another foreign corporation ("foreign target corporation") in a transaction described in section 381 (the combined corporation, the "foreign surviving corporation", and the transaction, a "foreign section 381 transaction"). Treas. Reg. § 1.367(b)-7(a).

In light of the Tax Cuts and Jobs Act (Pub. L. 115-97, 131 Stat. 2054, 2208 (2017)), a transition rule in Treas. Reg. § 1.367(b)-7(g) provides that, in relevant part, all foreign target corporations, foreign acquiring corporations, and foreign surviving corporations are treated as nonpooling corporations in post-2017 taxable years (that is, taxable years of foreign corporations beginning after January 1, 2018).

Treas. Reg. § 1.367(b)-7(e)(2)(iii) provides rules with respect to deficits in E&P of nonpooling corporations. Specifically, if the foreign acquiring corporation or the foreign target corporation (or both) has an aggregate deficit in pre-1987 accumulated profits, Treas. Reg. § 1.367(b)-7(e)(2)(iii)(C) provides that the rules otherwise applicable to hovering deficits apply separately to the pre-transaction E&P of the relevant corporation. Thus, any hovering deficit offsets only post-transaction earnings accumulated by the foreign surviving corporation in the same separate category of E&P to which the relevant portion of the hovering deficit is attributable, and post-transaction earnings do not include E&P that are earned after the foreign section 381 transaction but distributed or deemed distributed in the same year they are earned. Id.[1]

Treas. Reg. § 1.367(b)-7(f)(1)(i) provides, in relevant part, that any deficit described in Treas. Reg. § 1.367(b)-7(e)(2)(iii) is not taken into account in determining current or accumulated E&P of a foreign surviving corporation other than to offset post-transaction accumulated earnings.

Foreign Sub 1's undistributed earnings are computed in accordance with sections 964(a) and 986 pursuant to section 245A(c).

The Foreign Sub 2 Liquidation is a foreign section 381 transaction to which Treas. Reg. § 1.367(b)-7 applies because a foreign corporation (Foreign Sub 1) acquired the assets of another foreign corporation (Foreign Sub 2) in a transaction described in section 381(a) (specifically, a distribution to which section 332 applies), and Foreign Sub 1 is the foreign surviving corporation. Pursuant to Treas. Reg. § 1.367(b)-7(g), Foreign Sub 1 is treated as a nonpooling corporation for its taxable years beginning on or after January 1, 2018.

Pursuant to Treas. Reg. § 1.367(b)-7(e)(2)(iii)(C), the Foreign Sub 1 Hovering Deficit will offset only post-transaction earnings in the passive category. Pursuant to Treas.

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[1] *Cf*. Treas. Reg. § 1.965-1(f)(29)(iii), which provides an exception to the general application of the hovering deficit rule for purposes of section 965, consistent with the directive in H.R. Rep. No. 115-466, at 618-19 (2017) (stating that deferred earnings of a United States shareholder are reduced by certain deficits (including hovering deficits)).

Reg. § 1.367(b)-7(f)(1), the Foreign Sub 1 Hovering Deficit is not taken into account in determining (that is, does not reduce or offset) Foreign Sub 1's current or accumulated E&P other than to offset post-transaction accumulated earnings.

CONCLUSION

Based solely on the information submitted and the representations set forth above, the Foreign Sub 1 Hovering Deficit is not taken into account in computing Foreign Sub 1's undistributed earnings (and therefore, its undistributed foreign earnings) for purposes of section 245A(c).

No opinion is expressed or implied as to the tax treatment of the Proposed Transaction under other provisions of the Code and regulations, and no opinion is expressed 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 this ruling.

In particular, no opinion is expressed on the following:

1. The amount in the numerator and denominator of the section 245A fraction.

2. The extent to which the Foreign Sub 1 Distribution is eligible for the section 245A DRD.

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.

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,

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Chadwick P. Rowland
Senior Technical Reviewer, Branch 4
(International)

cc: