

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:4-PLR-134984-02

Date:

November 21, 2002

Legend:

Parent =

Sub1 =

Sub2 =

Sub3 =

Sub4 =

Sub5 =

Sub6 =

Sub7 =

Sub8 =

Sub1 Branch =

Sub2 Branch =

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Amalco =

b =c =d =e =

Country X =

Business A =

Company Y =

Dear :

This letter responds to your June 25, 2002 request for rulings on certain federal income tax consequences of a proposed transaction. Additional information was requested and submitted in letters dated August 2, September 25, October 3 and 25, and November 12, 2002. The information submitted with regard to this ruling request is summarized below.

Facts

Parent is a publicly traded Country X corporation. Parent is a holding company whose principal assets are the stock of Sub1 and Sub2.

Sub1 is a Country X corporation. Sub1 engages in Business A in Country X and other countries, including the United States, through subsidiaries and branches. In the United States, Sub1's primary indirect subsidiaries engaged in Business A are Sub3, Sub4 and Sub5. Sub1 also operates through a branch in the United States, Sub1 Branch. Sub1 has outstanding common and nonvoting preferred stock, all of which is owned by Parent.

Sub2 is a Country X corporation. Sub2 engages in Business A in Country X and in the United States. In the United States, Sub2's direct Business A is managed principally through its wholly owned subsidiary, Sub6, whose principal operating subsidiary is Sub7. Sub2 also operates in the United States through operating subsidiaries of Sub8 and a branch, Sub2 Branch. Sub2 has outstanding voting common and nonvoting preferred stock. Parent and Sub1 own approximately b and c percent, respectively, of Sub2's common stock. Sub2's preferred stock is publicly

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traded and constitutes less than d percent of the total value of Sub2 stock. Neither Parent nor Sub1 own any shares of Sub2's preferred stock.

As part of Parent's desire to integrate certain of its operations, Parent has engaged and contemplates engaging in the following transactions: (1) Sub2 plans to sell its shares of stock in Sub6; (2) Sub1 and Sub2 have transferred certain of their subsidiaries to Company Y in exchange for e percent of Company Y's stock; and (3) Parent is considering transferring the Sub1 Branch to Sub3 and the Sub2 Branch to one of Parent's companies in the United States.

Proposed Transactions

For what have been represented to be valid business reasons, the following transactions have been proposed:

Sub1 and Sub2 will be amalgamated under the provisions of the relevant Country X corporate law. The amalgamation will result in the combination of Sub1 and Sub2 into one Country X corporation, Amalco, that will be a continuation of Sub1 and Sub2 such that:

(1) all of the property of Sub1 and Sub2 immediately before the amalgamation will become property of Amalco by virtue of the amalgamation;

(2) all of the liabilities of Sub1 and Sub2 immediately before the amalgamation will become liabilities of Amalco by virtue of the amalgamation; and

(3) the shares of the capital stock of Sub2 owned by Sub1 will be either cancelled or transferred to Parent before the amalgamation.

Representations

In connection with this ruling request, the following representations have been made:

(a) The fair market value of the Amalco stock and other consideration received by the Sub1 and Sub2 shareholders will be approximately equal, in each instance, to the fair market value of the Sub1 and Sub2 stock surrendered in the exchange.

(b) There is no plan or intention for Parent to sell or otherwise dispose of any of the shares of Amalco.

(c) Amalco will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by each

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of Sub1 and Sub2 immediately prior to their respective transactions. For purposes of this representation, amounts paid by each of Sub1 or Sub2 to any dissenters in connection with the amalgamation, amounts paid by each of Sub1 or Sub2 to shareholders who receive cash or other property in connection with the amalgamation, amounts used by each of Sub1 or Sub2 to pay its reorganization expenses in connection with the amalgamation, and all redemptions and distributions (except for regular, normal dividends) made in connection with the amalgamation by each of Sub1 or Sub2 immediately preceding the transfer will be included as assets of Sub1 or Sub2, held immediately prior to their respective transactions.

(d) After the transactions, Parent will be in control of Amalco within the meaning of § 368(a)(2)(H) of the Internal Revenue Code.

(e) Amalco has no plan or intention to reacquire any of its stock issued in the transactions.

(f) Except for (1) Sub2's planned sale of its shares of Sub6 stock, (2) Sub1's and Sub2's transfer of certain of their subsidiaries to Company Y in exchange for certain of Company Y's stock, and (3) Parent's possible transfer of the Sub1 Branch to Sub3 and the Sub2 Branch to one of Parent's companies in the United States, Amalco has no plan or intention to sell or otherwise dispose of any of the assets of Sub1 and Sub2 acquired in the transactions, except for dispositions made in the ordinary course of business.

(g) The liabilities of Sub1 assumed by Amalco plus the liabilities, if any, to which the transferred assets are subject were incurred by Sub1 in the ordinary course of its business and are associated with the assets transferred.

(h) The liabilities of Sub2 assumed by Amalco plus the liabilities, if any, to which the transferred assets are subject were incurred by Sub2 in the ordinary course of its business and are associated with the assets transferred.

(i) Following the transactions, Amalco will (1) continue the historic business of Sub1 or use a significant portion of Sub1's historic business assets in a business and (2) continue the historic business of Sub2 or use a significant portion of Sub2's historic business assets in a business.

(j) At the time of the transactions, Amalco will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Amalco that, if exercised or converted, would affect Parent's acquisition or retention of control of Amalco, as defined in § 368(a)(2)(H).

(k) Amalco, Sub1, Sub2, and Parent will pay their respective expenses, if any, incurred in connection with the transactions.

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(l) There is no intercorporate indebtedness existing between Amalco and Sub1, between Amalco and Sub2, or between Sub1 and Sub2 that was issued, acquired, or will be settled at a discount.

(m) No two parties to the transactions are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(n) The fair market value of the assets of Sub1 transferred to Amalco will equal or exceed the sum of the liabilities assumed by Amalco, plus the amount of liabilities, if any, to which the transferred assets are subject.

(o) The fair market value of the assets of Sub2 transferred to Amalco will equal or exceed the sum of the liabilities assumed by Amalco, plus the amount of liabilities, if any, to which the transferred assets are subject.

(p) The total adjusted basis of the assets of Sub1 transferred to Amalco will equal or exceed the sum of the liabilities to be assumed from Sub1 by Amalco, plus the amount of liabilities, if any, to which the transferred assets are subject, in each instance.

(q) The total adjusted basis of the assets of Sub2 transferred to Amalco will equal or exceed the sum of the liabilities to be assumed from Sub2 by Amalco, plus the amount of liabilities, if any, to which the transferred assets are subject, in each instance.

(r) Neither Sub1 nor Sub2 is under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

(s) As part of the amalgamation, the Sub2 preferred shares will be exchanged for Amalco preferred shares that will be identical to the Sub2 preferred shares currently outstanding.

Additional representations have been made with respect to the proposed transactions as follows:

(aa) Sub1 owns United States real property interests as defined in § 897(c)(1)(A)(i).

(bb) The Sub2 Branch does not own any United States real property interests as defined in § 897(c)(1)(A)(i), except for leasehold interests it holds in connection with its Business A (see § 1.897-1(d)(2)(i) of the Income Tax Regulations).

(cc) The stock of the United States subsidiaries of Sub1 or Sub2 do not constitute United States real property interests as defined in § 897(c)(1)(A)(ii).

Rulings

Based solely on the information and representations submitted with the ruling request, we rule as follows:

(1) For Federal income tax purposes, the amalgamation transaction will be treated as (a) a transfer by Sub1 of all its assets and liabilities to Amalco in exchange for voting common stock of Amalco and preferred stock of Amalco, (b) a transfer by Sub2 of all its assets and liabilities to Amalco in exchange for voting common stock and preferred stock of Amalco with the same terms as the existing outstanding stock of Sub2, and (c)(i) the distribution by Sub1 and Sub2 of all of the Amalco voting common stock to Parent in exchange for all Parent's voting common stock in Sub1 and Sub2, respectively, (ii) a distribution by Sub1 of all of the Amalco preferred stock that it holds to Parent in exchange for Parent's Sub1 preferred stock, and (iii) the distribution by Sub2 of all the Amalco preferred stock to the Sub2 preferred shareholders in exchange for all the Sub2 preferred stock, in connection with the separate reorganizations of Sub1 and Sub2, as described above.

(2) Each of the transfers by Sub1 and Sub2 of all or substantially all of its assets to Amalco in exchange for Amalco common and preferred stock and the assumption by Amalco of the liabilities of Sub1 and Sub2, followed by the distribution by Sub1 and Sub2 of the Amalco stock to Parent and the Sub2 preferred shareholders, respectively, in complete liquidation of Sub1 and Sub2 will each constitute a reorganization within the meaning of § 368(a)(1)(D). Sub1 and Sub2 will each be "a party to a reorganization" within the meaning of § 368(b) with respect to its respective reorganization. Amalco will be a party to a reorganization within the meaning of § 368(b) with respect to both reorganizations. For purposes of this ruling, "substantially all" means at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by each of Sub1 and Sub2 immediately prior to the respective transactions.

(3) No gain or loss will be recognized by Sub1 and Sub2, in each instance, upon the transfer of their assets to Amalco in exchange for Amalco common and preferred stock and the assumption by Amalco of the Sub1 and Sub2 liabilities (§§ 361(a) and 357(a)).

(4) No gain or loss will be recognized by Sub1 and Sub2, in each instance, upon the distribution of Amalco common and preferred stock to Parent and Amalco preferred stock to the Sub2 preferred shareholders, as described above, in exchange for Sub1 and Sub2 common and preferred stock (§ 361(c)(1)).

(5) Amalco will recognize no gain or loss upon the receipt of the assets of Sub1 and Sub2, in each instance, in exchange for Amalco common and preferred stock, as described above (§ 1032(a)).

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(6) Amalco's basis in the assets of Sub1 and of Sub2 will be the same as the basis of those assets in the hands of Sub1 and Sub2, respectively, immediately prior to the transfer (§ 362(b)).

(7) The holding period of the assets of Sub1 and Sub2 acquired by Amalco will include the period during which those assets were held by Sub1 and Sub2 (§ 1223(2)).

(8) No gain or loss will be recognized by Parent upon the receipt of the Amalco stock in exchange for its Sub1 and Sub2 stock, as described above (§ 354(a)(1)).

(9) No gain or loss will be recognized by the Sub2 preferred shareholders upon the receipt of the Amalco preferred stock in exchange for their Sub2 preferred stock, as described above (§ 354(a)(1)).

(10) The basis of the shares of Amalco common stock and preferred stock received by Parent will be the same as the basis of the respective shares of Sub1 common stock and preferred stock surrendered in exchange therefor (§ 358(a)(1)), allocated as prescribed in Treas. Reg. § 1.358-2(a)(4).

(11) The holding period of the Amalco common and preferred stock received by Parent and the holding period of the Amalco preferred stock received by the Sub2 preferred shareholders will include the respective periods during which Parent and the Sub2 preferred shareholders held the Sub1 and Sub2 stock surrendered in exchange therefor, provided the Sub1 and Sub2 stock was held as a capital asset on the date of the exchange (§ 1223(1)).

(12) Amalco will be an acquiring corporation within the meaning of § 381(a), and Amalco will succeed to and take into account items described in § 381(c) of Sub1 and Sub2, subject to the conditions and limitations specified therein and in § 381(b).

Caveats

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.

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. In particular, no opinion is expressed concerning: (1) Sub2's planned sale of its shares of Sub6 stock; (2) Sub1's and Sub2's transfer of certain of their subsidiaries to Company Y in exchange for certain of Company Y's stock; (3) Parent's possible transfer of the Sub1 Branch to Sub3 and the Sub2 Branch to one of

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Parent's companies in the United States; (4) the application of § 897 to the amalgamation (see Treas. Reg. §§ 1.897-6T(b) and 1.897-5T(d) and Notice 89-57); and (5) the application of Treas. Reg. § 1.884-2T(c) to the amalgamation.

Procedural Statements

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

Sincerely,

Lewis K Brickates
Acting Chief, Branch 4
Office of Associate Chief Counsel
(Corporate)