

Date Released: December 30, 2016

Cite: PR 2016-013

Code Sections: 1076.01

Act: 1-2011

Date Issued: December 23, 2016

In your letter dated November Year 2, you requested our rulings on behalf of Sub PR, Inc. and its affiliates, in connection with the Puerto Rico income tax implications of the transactions described below under the provisions of the Puerto Rico Internal Revenue Code of 2011, as amended ("Code"), Administrative Determination No. 12-04 of February 14, 2012 ("AD 12-04"), and Administrative Determination No. 12-09 of May 29, 2012 ("AD 12-09").

I. STATEMENTS OF FACTS

Sub PR, Inc. ("Sub PR") is a corporation organized under the laws of the Commonwealth of Puerto Rico, uses the accrual method of accounting, and has a fiscal year ending on May as its taxable year. Sub PR is engaged in the acquisition and processing of products derived from other agricultural products, as well as engaged in the distribution of products and raw materials in the local market. Sub PR operates in Puerto Rico, business activity for which it has a bona fide farmer certificate, enjoying tax exemption under the provisions of the Puerto Rico Agricultural Tax Incentives Act, Act No. 225-1995. Its distribution business activity does not enjoy tax exemption and, thus, is considered fully taxable. On November Year 1, Sub PR was converted to a Limited Liability Company, Sub PR LLC (hereinafter referred to as "Sub LLC").

Sub Holdings ("Holdings") is an entity organized under the laws of Country A that uses the accrual method of accounting and has a fiscal year ending on May as its taxable year. Holdings is a holding company not engaged in a trade or business in Puerto Rico who owns all the membership interests of Sub LLC. For United States tax purposes ("US tax purposes"), it has elected to be considered a disregarded entity. Holdings changed its name to Holdings A effective on May 29 Year 2.

Holdings Sarl ("Holdings S") is an LLC organized under the laws of Country B and has a fiscal year ending on May as its taxable year. Holdings S is not engaged in a trade or business in Puerto Rico. Its principal assets are investments in Holdings and other non-US entities. For US tax purposes, it has elected to be considered a corporation.

Sub L is an LLC organized under the laws of Country B that uses the accrual method of accounting and has a fiscal year ending May as its taxable year. Prior to May Year 2, Sub L was not engaged in a trade or business in Puerto Rico. For US tax purposes, it has elected to be treated as a corporation.

Sub AM is an LLC organized under the laws of Country B that uses the accrual method of accounting and has a fiscal year ending May as its taxable year. Prior to May Year 2, Sub AM was not engaged in a trade or business in Puerto Rico. For US tax purposes, it has elected to be treated as a partnership.

Sub I is a corporation organized under the laws of Country C that uses the accrual method of accounting and has a fiscal year ending May as its taxable year. Prior to May Year 2, Sub I was not engaged in a trade or business in Puerto Rico.

ABC, Inc. ("ABC") is a corporation organized under the laws of Country C that uses the accrual method of accounting and its taxable year ends on August each year. Prior to May Year 2, ABC was not engaged in a trade or business in Puerto Rico.

ABC Luxembourg Sarl ("ABC LuxSub") is an LLC organized under the laws of Country B that uses the accrual method of accounting and its taxable year ends on August each year. Prior to May Year 2, ABC LuxSub was not engaged in a trade or business in Puerto Rico.

ABC M Luxembourg Sarl ("ABC Sarl") is an LLC organized under the laws of Country B that uses the accrual method of accounting and its taxable year ends on August each year. Prior to Year 2, ABC Sarl was not engaged in a trade or business in Puerto Rico. For US tax purposes, it has elected to be treated as a partnership.

Sub C, Inc. ("Sub C") is a corporation organized under the laws of the Country C that uses the accrual method of accounting and its taxable year ends on May each year. Prior to May Year 2, Sub C was not engaged in a trade or business in Puerto Rico.

Sub C LuxSub is an LLC organized under the laws of Country B that uses the accrual method of accounting and its taxable year ends on May 31st of each year. Prior to Year 2, Sub C LuxSub was not engaged in a trade or business in Puerto Rico. For US tax purposes, it has elected to be treated as a corporation.

Sub C International ("Sub C Sarl") is an LLC organized under the laws of Country B that uses the accrual method of accounting and its taxable year ends on May each year. Prior to Year 2, Sub C Sarl was not engaged in a trade or business in Puerto Rico. For US tax purposes, it has elected to be treated as a partnership.

SUB M is an LLC organized under the laws of Country B that uses the accrual method of accounting and its taxable year ends on May each year. Prior to May Year 2, Sub M was not engaged in a trade or business in Puerto Rico. For US tax purposes, it has elected to be treated as a partnership.

You further represented that in order to: (i) combine the operations of a Sub C-ABC joint venture formed in 2002, DZ, with CMA in order to create a premier product company, (ii) connect the strengths and capabilities of Sub U , Sub C, and ABC to benefit industry customers with innovative products, services, and solutions, (iii) maintain similar tax posture and benefits for each partner after integration into the joint venture, and (iv) establish a separate chain of ownership for the foreign investment in the joint venture to facilitate future restructuring, the following steps were taken with regard to the aforementioned entities (hereinafter collectively referred to as the "Transactions").

The Transactions include the following steps:

Step 1 - Formation of Sub M and CTB election: In a transaction occurring outside of Puerto Rico for tax purposes:

- a) On February Year 1, Sub C and ABC formed Sub M.
- b) Sub M filed a U.S. Entity Classification Election ("CTB election") to be treated as a partnership for U.S. federal tax purposes, effective February Year 1.

Step 2– Formation of Sub L: In a transaction occurring outside of Puerto Rico for tax purposes:

- a) On September Year 1, Holdings S formed Sub L and capitalized the company with \$XXX

Step 3– Formation of Puerto Rico NewCo: In a transaction occurring in Puerto Rico for tax purposes:

- a) On October Year 1, Holdings S formed Puerto Rico NewCo and capitalized the corporation with \$XXX.

Step 4– Formation of New Sub U LLC and contribution of U.S. asset: In a transaction occurring outside of Puerto Rico for tax purposes:

- a) On November Year 1, Sub I formed New Sub U LLC. New Sub U LLC should default to an entity disregarded as separate from its owner for U.S. federal tax purposes.
- b) During the last quarter of the taxable year ending in Year 2, across multiple dates, Sub I contributed U.S. assets (e.g., real estate, plants and equipment, intellectual property legal ownership rights, etc.), and its 50% interest in JV to New Sub U LLC.
- c) Prior to the contributions in Step 4(b), Sub I formally documented the termination of any rights in the applicable patents and trademarks formerly granted to Sub U, XYZ, and Sub International.

Step 5– Sub is converted to an LLC: In a transaction occurring in Puerto Rico for tax purposes:

- a) On November Year 1, Sub PR is converted to an LLC.

Step 6– Distribution of Sub LLC assets and an intercompany receivable: In a transaction occurring in Puerto Rico for tax purposes:

- a) On January Year 2, Sub LLC distributed its assets related to marketing, promotion, and other ancillary functions of products and consumer business of Sub U (the “assets”) with a fair market value (“FMV”) of \$XXX, to Holdings.
- b) On January Year 2, Holdings distributed the assets it received from Sub LLC to Holdings S.
- c) On January Year 2, Holdings S contributes the assets it received from Holdings to the share capital of Puerto Rico NewCo (i.e., no shares were issued in the exchange).
- d) On January Year 2, Sub LLC distributed an intercompany receivable in the amount of \$XXX to Holdings.

Step 7– Formation of Sub AM and CTB election: In a transaction occurring outside of Puerto Rico for tax purposes:

- a) On May Year 2, Sub I and Sub L formed Sub AM and capitalized the company with \$XXX and \$XXX, respectively. The share capital of Sub AM was set at \$XXX, represented by XXXordinary, voting shares, consisting of XXX Class A and XXX Class B shares, each having a par value of \$XXX. Subsequently, Sub L owned XXX Class A shares and XXX Class B shares. Sub I owned XXX Class A shares and XXX Class B shares.
- b) Sub AM filed a CTB election to be treated as a partnership for U.S. federal tax purposes, effective May Year 2.

Step 8– Contribution of Holdings & Sub LLC CTB election: In a transaction occurring in Puerto Rico for tax purposes:

- a) On May Year 2, Holdings S contributed its interest in Holdings to Sub L in exchange for two shares.
- b) For US tax purposes, Sub LLC filed a CTB election to be treated as an entity disregarded as separate from its owner, effective May Year 2.
- c) The Closing Agreement entered on June Year 1 between this Department, Sub PR, Holdings, and Holdings S (hereinafter the “Closing Agreement”) established the tax liability of deemed distributions to be made by said entities regarding a

reorganization that was to take place and other distributions made as a result of said reorganization. Among the statements and agreements entered into it was stated that Holdings, a corporation organized under the laws of Country A, for U.S. federal income tax purposes elected to be treated as a disregarded entity. In accordance to this, Section 1010.01(a)(3)(A) of the Code states that when an LLC by election or law is treated as a pass through entity for U.S. federal tax purposes, it shall be considered a partnership under the Code and it will not be eligible to be taxed as a corporation. Therefore, since Holdings is treated as a disregarded entity for U.S. federal tax purposes, it will be treated as a partnership under the Code.

- d) The Closing Agreement was particularly executed to pre-pay the withholding tax over the estimated accumulated earnings and profits as of May Year 1 at a reduced rate of 3%. A supplementary closing agreement will be executed to true-up the undistributed earnings of Sub LLC as of May Year 2, and to report Sub L as the legal entity deemed to receive the undistributed earnings (rather than Holdings S as stated in the Closing Agreement).

Step 9– Contribution of New Sub U LLC to Sub AM: In a transaction occurring outside of Puerto Rico for tax purposes:

- a) On May Year 2, Sub I contributed its interest in New Sub U LLC to Sub AM in exchange for an additional XXX Class A shares and XXX Class B shares in Sub AM, each having a par value of \$XXX.

Step 10–Contribution of Holdings to Sub AM: In a transaction occurring outside of Puerto Rico for tax purposes:

- a) On May Year 2, Sub L contributed its interest in Holdings to Sub AM in exchange for an additional XXX Class A shares and XXX Class B shares in Sub AM, each having a par value of \$XXX.

Step 11– Contribution of Sub M LLC to Sub M: In a transaction occurring outside of Puerto Rico for tax purposes:

- a) On May Year 2, Sub C and ABC contributed their interests in Sub M LLC to Sub M in exchange for a XXX% and XXX% interest in the partnership, respectively.

Step 12–Contribution of New Sub U LLC and Holdings to Sub M: In a transaction occurring outside of Puerto Rico for tax purposes:

- a) On May Year 2, Sub AM contributed its interest in New Sub U LLC and its interest in Holdings to Sub M in exchange for the issuance of XXX ordinary shares in Sub M, each having a par value of \$XXX.

Step 13–Contribution of U.S. LLCs and Sub M ULC to Sub M: In a transaction occurring outside of Puerto Rico for tax purposes:

- a) Sub C and Sub C LuxSub formed Sub C Sarl and capitalized the company with their interests in New Sub C LLC and Sub M ULC.
- b) ABC and ABC LuxSub formed ABC Sarl and capitalized the company with their interests in New ABC LLC and Sub M ULC.

Step 14—Contribution of Sub M Interests: In a transaction occurring outside of Puerto Rico for tax purposes:

- a) On May Year 2, Sub C and ABC contributed their interests in Sub M to Sub C Sarl and ABC Sarl, respectively.

Step 15— Merger of U.S. LLCs: In a transaction occurring outside of Puerto Rico for tax purposes:

- a) On May Year 2, New Sub C LLC, New ABC LLC, New Sub U LLC, and Sub M LLC merged under U.S. law, with Sub M LLC as the surviving entity.

II. RULINGS REQUESTED

General Rulings

- 1. For purposes of Section 1034.04(i) of the 2011 Code, the Transactions shall not be treated as having the purpose of avoiding the payment of Puerto Rico income taxes.
- 2. The transactions described in Steps 1, 2, 4, 6(b), 7, 8(a), 9, 10, 11, 12, 13, 14, and 15 are not subject to Puerto Rico taxation since they occurred outside of Puerto Rico.
- 3. The formation of Puerto Rico NewCo is not subject to taxation under Section 1034.04(b)(5) of the 2011 Code.

Rulings Related to Step 5 - Sub PR is converted to an LLC

- 4. The conversion of Sub PR into an LLC constitutes a reorganization within the meaning of Section 1034.04(g)(1)(F) of the 2011 Code.
- 5. No gain or loss shall be recognized by Sub PR or Sub LLC as a result of the Conversion, pursuant to Sections 1034.04(b)(4), 1034.04(b)(3), and 1034.04(o) of the 2011 Code.
- 6. Sub LLC is considered the same legal entity as Sub PR for tax purposes. Therefore, the assets will continue to have the same basis and holding period as they had prior to the Conversion, pursuant to Sections 1034.02(a)(7)(b) and 1034.01(g)(2) of the 2011 Code.

Rulings Related to Step 6 - Distribution of Sub LLC assets and the intercompany receivable:

7. The distribution of assets and the intercompany receivable from Sub LLC to Holdings should be considered a nontaxable distribution under 2011 Code Section 1034.04(g)(1)(D).
8. The distribution of assets from Holdings to Holdings S should be considered a nontaxable distribution under 2011 Code Section 1034.04(g)(1)(D).
9. The contribution of assets from Holdings S to Puerto Rico NewCo is considered a non-taxable transaction under Section 1034.04(b)(5) of the 2011 Code.

Rulings Related to Step 8 - Contribution of Holdings & Sub CTB election

10. In accordance to Section 1076.01(b) of the 2011 Code and AD 12-04, Sub LLC and Holdings, shall be deemed as having completely liquidated as of May 27, 2014.
11. Pursuant to Sections 1076.01(b) and 1034.04(b)(6) of the 2011 Code and AD 12-04, no gain or loss shall be recognized by Holdings and Sub L on the receipt of assets and liabilities upon the deemed liquidation of Sub LLC, that is treated as having occurred on May Year 2.
12. Pursuant to Sections 1076.01(b) and 1034.04(q)(3) of the 2011 Code and AD 12-04, no gain or loss shall be recognized by Sub LLC and Holdings, on the transfer in deemed liquidation of their assets and liabilities to Holdings and Sub L, respectively, that are treated as having occurred on May Year 2.
13. Sub LLC will not be subject to the recapture and income recognition rules in the last sentence of Section 1076.01(b).
14. In accordance to Section 1072.01(a) of the 2011 Code, no gain or loss shall be recognized by Sub LLC, Holdings and Sub L on account of the deemed contribution.
15. The tax basis and the holding period of the property deemed transferred by Sub LLC and Holdings in deemed liquidation, and immediately thereafter deemed contributed by Sub L and Holdings to Sub LLC as new partnerships shall be determined as provided by Sections 1034.02(a)(13), 1034.01(g)(2) and 1072.03 of the 2011 Code. Therefore, said property shall have the same tax basis and holding period in the hands of the new partnership as they had in the hands of Sub LLC immediately before the transfer.
16. Due to the deemed liquidation of Sub LLC, all the tax attributes described in Section 1034.04(t)(3) of the 2011 Code in the hands of Sub LLC as of May Year 2 shall succeed and be taken into consideration by Sub L.

17. In accordance to Sections 1071.01, 1071.02(b), 1093.01(a), and 1092.01(c) of the 2011 Code, effective May Year 2 Holdings and Sub L shall be treated as engaged in a trade or business in Puerto Rico in connection with its distributive share of Sub LLC's taxable income that is effectively connected to Sub LLC's trade or business in Puerto Rico, as such determination is made under Section 1123(f) of the 1994 Code.
18. Sub L's distributive share of Holdings' taxable income that is effectively connected to Sub LLC's trade or business in Puerto Rico shall be subject to income tax under the 2011 Code in accordance to Section 1092.01(b) thereof. In addition, provided that Sub L's income from sources without Puerto Rico, if any, is not considered as income effectively connected to a trade or business in Puerto Rico under the rules established in Section 1123(f) of the 1994 Code, Sub L's distributive share in such income shall not be subject to income taxation under the 2011 Code.
19. In accordance to Section 1092.02(a) of the 2011 Code, Sub L, will be subject to 10% Branch Profit Tax ("BPT") on the dividend equivalent amount.
20. Holdings and Sub L will not be required to file a Puerto Rico income tax return, due to the fact that the total Puerto Rico tax liability (including the dividend or BPT) will be withheld at the source, pursuant to Section 1092.06 of the 2011 Code.

Change of Ownership Rulings

21. All the exchanges incurred during the aforementioned steps will be considered under the "one step transaction doctrine", therefore will not have the effect of terminating the partnerships, pursuant to Section 1071.08 of the 2011 Code.

Other Rulings

22. All the rulings requested as part of the transactions described in Step 8 shall be applicable to the entities contained in this request, or any other legal entity that as part of the reorganization results in being the corporate partner. Said resulting entity shall be considered to be the successor to all the rulings set forth in this ruling (except ruling no. 16), including, the ultimate corporate partners, which are: Sub C, Sub C LuxSub, Sub I, Sub L, ABC, and ABC LuxSub.
23. The source of the resulting income from the sale of any personal property (including a partnership interest) will be determined at the partner level in accordance to Section 1035.03 of the 2011 Code.

24. The Determinations contained in this ruling shall neither contravene the Closing Agreement entered on June Year 1 between Sub LLC, Holdings, Holdings S, and this Department, nor any subsequent clarifications or amendments made to it.

III. LAW AND ANALYSIS

Section 1034.04(i) of the Code provides that if in relation to an exchange described in Section 1034.04(b)(3) and (4) of the Code a person of Puerto Rico transfers property to a foreign corporation, to determine the limit to which gain shall be recognized in such exchange, a foreign corporation shall not be considered as a corporation unless, by means of documentation to that effect, it is demonstrated to the satisfaction of the Secretary, within a period of one hundred eighty-three (183) days after such exchange is effected, that the same does not have the purpose of avoiding the payment of income taxes levied by the Government of Puerto Rico. For these purposes, the term "person of Puerto Rico" means a domestic corporation, or a resident corporation, including a foreign corporation doing business in Puerto Rico. See Section 1034.04(i)(3) of the Code.

As represented, the purpose of the Transaction is to (i) combine the operations of a Sub C-ABC joint venture formed in 2002, DZ, with CMA in order to create a premier product company, (ii) connect the strengths and capabilities of Sub U, Sub C, and ABC to benefit company customers with innovative products, services, and solutions, (iii) maintain similar tax posture and benefits for each partner after integration into the joint venture, and (iv) establish a separate chain of ownership for the foreign investment in the joint venture to facilitate future restructuring.

The exchanges described in Steps 1, 2, 4, 6(b), 7, 8(a), 9, 10, 11, 12, 13, 14, and 15 of the Transaction are not subject to Puerto Rico taxation since they occurred outside of Puerto Rico. Thus, such exchanges do not have to be documented as required by the aforementioned Section.

Section 1034.04(b)(5) of the Code states that no gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation, and immediately after the exchange such person or persons are in control of the corporation.

Based on what has been represented, the formation of Puerto Rico NewCo and capitalization of the company with the \$XXX by Holdings S will not be considered a taxable event given that the transfer of the \$XXX to Puerto Rico NewCo in exchange for its stock will give Holdings S the total control of the corporation.

Section 1034.04(g)(1)(F) of the Code provides that the term "reorganization" includes a mere change in identity, form, or place of organization of one corporation.

Section 1034.04(b)(3) of the Code states that no gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of

reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

Section 1034.04(b)(4) of the Code provides that no gain or loss shall be recognized if a corporation a party to a reorganization exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization.

Section 1034.04(o)(2) of the Code further provides that no gain or loss shall be recognized to a corporation on the receipt of money or other property in exchange for stock of a corporation that is a party to a reorganization.

Section 1034.04(g)(3) of the Code defines the term "party to a reorganization" as including a corporation resulting from a reorganization and includes both corporations in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another.

The conversion of Sub PR into an LLC pursuant to the General Corporation Law of Puerto Rico constitutes a reorganization within the meaning of Section 1034.04(g)(1)(F) of the Code and both entities (Sub PR and Sub LLC) are considered a party to a reorganization within the meaning of Section 1034.04(g)(3) of the Code. Pursuant to Section 1034.04(b)(4) and (b)(3), and 1034.04(o)(2) of the Code, no gain or loss shall be recognized by Sub PR or Sub LLC as a result of the exchanges that may be deemed to be made in connection with the conversion.

With regards to the applicable tax basis of the property deemed transferred, Section 1034.02(a)(7)(B) of the Code states that if property was acquired in a taxable year beginning after December 31, 1953 by a corporation in connection with a reorganization, then the basis shall be the same as it would be in the hands of the transferor, increased by the amount of gain, or decreased by the amount of loss, recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made. This is only applicable if the property acquired consists of stock or securities in a corporation a party to the reorganization, unless acquired by the issuance of stock or securities of the transferee (or of a corporation which is in control of the transferee, determined under Section 1034.04(h) of the Code) as the consideration in whole or in part for the transfer. With regards to the applicable holding period, Section 1034.01(g)(2) of the Code states that to determine the period for which the taxpayer has held property, however acquired, there shall be included the period during which such property was held by any other person, if under the provisions of Section 1034.02 such property has, for purposes of determining gain or loss from a sale or exchange, the same basis, in whole or in part, in his hands as it would have in the hands of such other person. Therefore, the tax basis and holding period of the assets deemed transferred in the conversion are the same as were for such assets before the conversion.

Section 1034.02(a)(6) of the Code provides that if the property was acquired after February 28, 1913, upon an exchange described in Section 1034.04(b) to (e), inclusive, or Section 1034.04(l), the basis shall be the same as in the case of the property

exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain, or decreased in the amount of loss, to the taxpayer that was recognized upon such exchange under the law applicable to the year in which the exchange was made. Thus, the basis of the membership interest of Sub LLC in the hands of Holdings will be equal to the adjusted basis of the stock of Sub PR held by Holdings immediately before the conversion. Furthermore, Section 1034.01(g)(1) of the Code states that when determining the period for which the taxpayer has held property received in an exchange, there shall be included the period during which he held the property exchanged, if under the provisions of Section 1034.02, the property received has, for purposes of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as that of the property exchanged. Therefore, since the holding period of the assets deemed transferred will be the same as it was for such assets before the exchange, the holding period of the membership interest of Sub LLC will include the period during which Holdings held the stock of Sub LLC.

Section 1034.04(t) of the Code states, in general, that in the case of the acquisition of assets of a corporation by another corporation in a transfer to which Section 1034.04(b)(4) of the Code (relating to nonrecognition of gain or loss to corporations) applies, if in connection with a reorganization under Section 1034.04(g)(1) of the Code, the acquiring corporation shall succeed to and take into account, as of the close of the day of distribution or transfer, the tax attributes of the distributor or transferor corporation, subject to the conditions or limitations specified therein. As stated in Section 1034.04(t)(3) of the Code, the tax attributes include net operating loss carryforward, earnings and profits, and other items as determined by the Secretary.

Through a series of exchanges described in Step 6, the assets of Sub LLC were transferred to Puerto Rico NewCo. The main purpose of the transaction was to separate the operations of Sub LLC, so that Puerto Rico NewCo continues the marketing, promotion and other ancillary functions of the business previously conducted by Sub LLC. As part of the transaction, Sub LLC distributed an intercompany receivable to Holdings.

Section 1034.04(g)(1)(D) of the Code defines a reorganization as a transfer by a corporation of all or a part of its assets to another corporation if, immediately after the transfer, the transferor or its shareholders (including persons that were shareholders immediately before the transfer) or any combination of these, are in control of the corporation to which the assets are transferred, and only if immediately after the transfer and as part of the plan of reorganization, stock or securities of the acquiring corporation are distributed in a transaction that qualifies under subsections (b)(3) or (s) of Section 1034.04 of the Code. In this case, the transfer of assets occurred between related entities. Sub LLC and Holdings are directly or indirectly wholly owned subsidiaries of Holdings S, which also owns all the outstanding stock of Puerto Rico New Co. All the entities are ultimately owned by Sub I, Inc. Therefore, the transaction qualifies as a reorganization under Section 1034.04(g)(1)(D) of the Code.

Section 1034.09(a) of the Code provides, in part, that the term dividend means any distribution made by a corporation to its shareholders in money or other property, from its earnings and profits accumulated after February Year 1; or from the current taxable year's

earnings and profits (computed at the close of the taxable year without reduction for any distributions made during the taxable year), without considering the amount of the earnings and profits at the time the distribution is made. Section 1034.09(a) further provides that the amount of a distribution in other property that will qualify as a dividend may not exceed the corporation's earnings and profits, irrespective of the basis of the property in the hands of the corporation.

On June Year 1 Sub LLC, Holdings, Holdings S, and the Secretary of the Treasury entered into a Closing Agreement by which a prepayment upon the estimated accumulated earnings and profits as of May Year 1 was made, and which also considered the distribution of the \$XXX of intercompany account receivable. The transaction occurred between entities of the same controlled group. Accordingly, before and after the transaction, the entities continue to be owned by the same parent company. Therefore, the distribution of Sub LLC to Holdings does not have any tax effect on the transaction and, thus, it qualifies as a tax exempt reorganization under Section 1034.04(g)(1)(D) of the Code.

Section 1010.01(a)(3)(A) of the Code provides that an LLC that for US federal income tax purposes is treated as a partnership or disregarded entity will be taxed as a partnership under the provisions of Chapter 7 of the Code. Effective May Year 2 Sub LLC filed an election to be treated as an entity disregarded as separate from its owner for US tax purposes. Prior to such election, it was taxed as a corporation under the Code.

Section 1076.01 of the Code provides the transition rules for the application of Chapter 7 of Subtitle A of the Code. This Section is generally applicable to entities that, by the application of the Code or in a voluntary manner, convert from a corporation to an LLC that elects to be taxed as partnership, and provides the applicable conversion rules.

According to Section 1076.01(b) and AD 12-04, an LLC that was taxable as a corporation, and then becomes subject to the provisions of Chapter 7, shall be considered that, on the last day of the last taxable year in which it was taxed as a corporation, it transferred its assets and liabilities to its members in liquidation of the entity in a transaction subject to the provisions of Section 1034.04(q) and that, immediately thereafter, the members contributed the assets and liabilities distributed to a "new partnership" in a transaction subject to the provisions of Section 1072.01 of the Code.

As a general rule, Section 1034.04(q)(1) provides that for purposes of the liquidating LLC, the distribution of property in a complete liquidation is treated as if the property is sold to its members at its fair market value. However, in the case of LLCs whose members include a corporation, the distribution in liquidation referred to in Section 1076.01(b) may be considered a tax-free distribution in liquidation under Section 1034.04(q)(3) if, according to section 1034.04(b)(6), no gain or loss is recognized to such corporate member by reason of its holding 80% or more of the interest in the LLC. In these cases, the "new partnership" shall receive the assets and liabilities of such corporate member covered by Section 1034.04(b)(6) (but not from any other member) with the same tax basis and holding period that the LLC deemed liquidated had at the time of the conversion. See Section 1034.02(a)(13) and 1034.01(g)(2) of the Code. Also, the

provisions of subsections (d), (e), (f), (g), and (h) of Section 1115.03, and Section 1115.08 do not apply with respect to the property distributed to the corporate member covered by Section 1034.04(b)(6) of the Code.

The tax-free treatment under Section 1034.04(b)(6) of the Code only applies if the transaction is carried out between two entities that at the time of the liquidation are taxed as a corporation for purposes of the Code. In case of a statutory liquidation of an LLC which forms part of a chain of juridical entities, for purposes of the application of Section 1034.04(b)(6) of the Code, this Department has allowed that the non- corporate entities which are part of the chain be considered as not existing, that is, those that are not duly incorporated entities nor treated as corporation under the definitions of the Code. Therefore, in these cases, the statutory liquidation shall be considered as carried out between the LLC and the first corporation that is part of the chain of entities that has direct or indirect control of the LLC. It should be noted that the aforementioned is applicable only if the corporate member is owner, directly or indirectly, of eighty (80) percent or more of the entity's interest.

According to Section 1034.04(t)(1)(A), a corporate member covered by Section 1034.04(b)(6) of the Code shall succeed to and take into consideration the tax attributes of the LLC described in Section 1034.04(t)(3), subject to the terms and conditions established therein.

The provisions of Section 1076.01(b) and AD 12-04 apply to the statutory conversion of Sub LLC, caused by its election to be treated as a disregarded entity for US federal income tax purposes effective on May Year 2. For purposes of Section 1034.04(b)(6) of the Code, the transaction will be deemed to occur between Sub LLC and its immediate corporate partner, Sub L.

As a general rule, Section 1072.01(a) of the Code states that no gain or loss shall be recognized to a partnership or to any of its partners in the case of a contribution of money or other property to the partnership in exchange for an interest in the partnership.

According to Section 1072.03 of the Code, the basis of property contributed to a partnership by a partner shall be the adjusted basis of such property to the contributing partner at the time of the contribution increased by the amount (if any) of gain recognized under section 1071.01(b) to the contributing partner at such time.

Therefore, the tax basis and the holding period of the assets deemed transferred to the "new partnership" as part of the statutory conversion shall have the same tax basis and holding period in the hands of the "new partnership" as it had in the hands of Sub LLC immediately before the transfer.

Section 1071.01 and Section 1093.01(a) of the Code provide that members of a foreign partnership engaged in trade or business in Puerto Rico will be deemed to be engaged in trade or business in Puerto Rico to the extent of their distributable share in such partnership.

Section 1071.02(a) of the Code adds that a partner in a partnership is required to take into account the partner's distributable share of the items listed therein and Section 1071.02(b) states that the nature of such items in the hands of the partner shall be treated as if realized directly from the source or in the same manner as realized by the partnership.

In accordance with Sections 1071.01, 1071.02(a), 1071.02(b), and 1093.01(a) of the Code, Sub L, Holdings and, subsequently, Sub I, and Sub L Corp., are to be treated as engaged in trade or business in Puerto Rico with respect to their distributable share of income, profit, loss, deduction and credit of Sub LLC.

Pursuant to Section 1092.02(a) of the Code, a foreign corporation that is engaged in a trade or business in Puerto Rico must pay, in addition to the regular income tax and the alternative minimum tax provided in Sections 1022.01, 1022.02, 1022.03, and 1023.03 of the Code, a 10% branch profit tax on the amount of effectively connected earnings and profits of the taxable year that are treated as a dividend equivalent amount.

Section 1092.02(f)(1) of the Code provides that the branch profit tax shall not be applicable to any taxable year in which the foreign corporation engaged in trade or business in Puerto Rico has derived at least eighty (80) percent of its gross income, during the period of three (3) taxable years ending with the close of said year (or by that part from such period that is applicable), from income sourced within Puerto Rico, or from income that is effectively connected or treated as effectively connected with the active conduct of a trade or business in Puerto Rico.

Article 1092.02(f)-1(a) of Regulation No. 8323 of January 9, 2013 provides that the aforementioned provisions shall be applicable in the case of a foreign corporation with interest in an entity that is treated as a partnership subject to the provisions of Chapter 7 of Subtitle A of the Code. In cases in which a corporation has been converted into a limited liability company that is treated as a disregarded entity for federal income tax purposes in which the income and expenses are attributed to the owner (therefore, cannot elect to be treated as a corporation) and said owner is a foreign corporation, for purposes of determining the dividend equivalent amount of the branch for the taxable year in which the conversion occurs, the assets and liabilities transferred in the conversion shall be treated by the converted branch engaged in trade or business in Puerto Rico as assets and liabilities in Puerto Rico within the meaning of said term in Section 1092.02(c)(2) of the Code, at the close of the taxable year previous to the taxable year in which the conversion occurs. The earnings and profits transferred in the conversion shall be treated as earnings and profits of the branch, effectively connected within the meaning of section 1092.02(d), at the close of the taxable year previous to the year in which the conversion occurs. Likewise, the foreign entity that is a shareholder shall be treated as if it held its distributable interest in the branch's assets and liabilities in Puerto Rico at the close of each taxable year.

In accordance with the provisions cited in the preceding paragraphs, Sub L will not be subject to the branch profit tax under Section 1092.02(a) of the Code for a taxable year if, for the three preceding taxable years period ending with the last day of such taxable

year at least 80% of Sub L's gross income constitutes income from sources within Puerto Rico or income that is effectively connected or treated as effectively connected with the active conduct of a trade or business in Puerto Rico.

In addition, for purposes of determining the dividend equivalent amount of Sub L for the taxable year in which the conversion occurs, the assets and liabilities transferred in the conversion shall be treated by Sub LLC as assets and liabilities in Puerto Rico within the meaning of said term in Section 1092.02(c)(2), at the close of the taxable year previous to the taxable year in which the conversion occurs. Likewise, the earnings and profits transferred in the conversion shall be treated as earnings and profits of Sub LLC, effectively connected within the meaning of Section 1092.02(d), at the close of the taxable year previous to the year in which the conversion occurs. Accordingly, Sub L shall be treated as if it held its distributable interest in Sub LLC's assets and liabilities in Puerto Rico at the close of each taxable year.

Section 1092.06(b) of the Code provides that foreign corporations treated as engaged in trade or business in Puerto Rico only because of Section 1071.01 of the Code may be exempted from the obligation to file the income tax return if the income tax withheld satisfies their tax liability in Puerto Rico. Therefore, if the taxes that are to be withheld by Sub LLC to Holdings satisfy the tax liability of Sub L (as ultimate corporate partner), Holdings and Sub L shall be exempted from the filing of the Puerto Rico income tax return.

Section 1071.08 of the Code states that an existing partnership shall be considered as continuing if it is not terminated. A partnership shall be considered as terminated only if no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership, or within a twelve (12) month period there is a sale or exchange of fifty (50) percent or more of the total interest in partnership's profits and capital.

The "one step transaction doctrine", a judicial doctrine in the United States, which originated from a common-law principle in *Gregory v. Helvering*, 293 U.S. 465 (1935) treats a series of formally separate steps as a single transaction if the steps are, in substance, integrated and focused towards a particular result. In the case of Sub LLC, after it had converted into a partnership, a series of transactions occurred outside of Puerto Rico that resulted in several changes in ownership. However, based on the doctrine above mentioned, all the steps herein disclosed should be considered as one transaction and, therefore, continuing the partnership as if it was not terminated.

Section 1035.03 of the Code provides that any gain, profit, or income derived from the sale or exchange of personal property by a foreign corporation or by a non-resident individual shall constitute income from sources outside of Puerto Rico. In the case of a partnership, special partnership, corporation of individuals, or limited liability company subject to the provisions of Chapter 7, the source of income shall be determined at the level of the partner, shareholder, or member, as the case may be. Therefore, if the selling partner is a foreign corporation deemed engaged in trade or business in Puerto Rico under Section 1071.01 of the Code, the income from the sale of personal property by this

entity shall be considered from sources outside Puerto Rico and should not be subject to Puerto Rico taxes.

IV. CONCLUSION

Based solely on the representations and documents submitted for our consideration, the provisions of the Code, and the applicable regulations, this Department rules as follows:

General Rulings

1. For purposes of Section 1034.04(i) of the Code, the Transactions shall not be treated as having the purpose of avoiding the payment of Puerto Rico income taxes.
2. The transactions described in Steps 1, 2, 4, 6(b), 7, 8(a), 9, 10, 11, 12, 13, 14, and 15 are not subject to Puerto Rico taxation since they occurred outside of Puerto Rico.
3. The transfer of property to Puerto Rico NewCo by Holdings S constitutes a contribution of capital qualifying as an exempt exchange under the provisions of Section 1034.04(b)(5) of the Code.

Rulings Related to Step 5 – Sub is converted to an LLC

4. The conversion of Sub PR into an LLC constitutes a reorganization within the meaning of Section 1034.04(g)(1)(F) of the Code.
5. No gain or loss shall be recognized by Sub PR or Sub LLC as a result of the conversion, pursuant to Sections 1034.04(b)(4), 1034.04(b)(3) and 1034.04(o) of the Code.
6. Sub LLC is considered the same legal entity as Sub for tax purposes. Therefore, the assets will continue to have the same basis and holding period as they had prior to the conversion, pursuant to Sections 1034.02(a)(7)(B) and 1034.01(g)(2) of the Code.
7. The basis and holding period of the membership interest of Sub LLC in the hands of Holdings will be equal to the adjusted basis of the stock of Sub held by Holdings immediately before the conversion pursuant to Sections 1034.02 (a)(6) and 1034.01(g)(1) of the Code, respectively.
8. All the tax attributes of Sub PR as described in Section 1034.04(t)(3) will carry over to Sub LLC pursuant to Section 1034.04(t)(1)(B) of the Code.

Rulings Related to Step 6 – Distribution of Sub LLC assets and the intercompany receivable.

9. The distribution of assets from Sub LLC to Puerto Rico NewCo through Holdings and Holdings S will be treated as a series of tax-free transactions within the meaning of Section 1034.04(g)(1)(D) of the Code.
10. The distribution of intercompany receivables from Sub LLC to Holdings shall be considered a nontaxable distribution under Section 1034.09(a) of the Code.

Rulings Related to Step 8 – Contribution of Holdings Holdings and SubCTB Election

11. In accordance with Section 1076.01(b) of the Code and AD 12-04, Sub LLC shall be deemed as having completely liquidated as of May Year 2 (the "Statutory Liquidation").
12. The Statutory Liquidation will be deemed to occur between Sub LLC and its immediate corporate member, Sub L.
13. The undistributed accumulated earnings and profits of Sub LLC as of the date of the Statutory Liquidation will be deemed distributed to Sub L as part of the transaction. A supplemental closing agreement shall be executed to satisfy any tax responsibility in connection with the deemed distribution.
14. Pursuant to Sections 1076.01(b) and 1034.04(b)(6) of the Code, and AD 12-04, no gain or loss shall be recognized by Sub L on the receipt of assets and liabilities upon the Statutory Liquidation.
15. Pursuant to Sections 1076.01(b) and 1034.04(q)(3) of the Code, and AD 12-04, no gain or loss shall be recognized by Sub LLC on the transfer of its assets and liabilities to Sub L upon the Statutory Liquidation.
16. In accordance with AD 12-04, the provisions of subsections (d), (e), (f), (g), and (h) of Section 1115.03, and Section 1115.08 of the Code do not apply with respect to the property deemed distributed by Sub LLC to Sub L in the Statutory Liquidation.
17. In accordance with Section 1072.01(a) of the Code, no gain or loss shall be recognized by Sub LLC and Sub L on account of the deemed contribution.
18. The tax basis and the holding period of the property deemed transferred by Sub LLC in the Statutory Liquidation, and immediately thereafter, deemed contributed by Sub L to Sub LLC as new partnership, shall be determined as provided by Sections 1034.02(a)(13), 1034.01(g)(2), and 1072.03 of the Code. Therefore, said

property shall have the same tax basis and holding period in the hands of the new partnership as it had in the hands of Sub LLC immediately before the transfer.

19. Sub L shall succeed to, and take into consideration, all the tax attributes described in Section 1034.04(t)(3) of the Code in the hands of Sub LLC as of May Year 2.
20. In accordance with Sections 1071.01, 1071.02(a), 1071.02(b), and 1093.01(a) of the Code, Holdings, Sub L and, subsequently, Sub I and Sub L Corp., shall be treated as engaged in a trade or business in Puerto Rico in connection with their distributive share in Sub LLC.
21. In accordance with Section 1092.02(f)(1) of the Code, Sub L will not be subject to the branch profit tax under Section 1092.02(a) of the Code for a taxable year if, for the three preceding taxable years period ending with the last day of such taxable year, at least 80% of Sub L's income constitutes gross income from sources within Puerto Rico under Section 1035.01 of the Code, or income that is effectively connected to Sub LLC's trade or business in Puerto Rico.
22. In accordance with Article 1092.02(f)-1(a)(3) of Regulation Number 8323 issued under the Code, for purposes of determining the dividend equivalent amount of Sub L for the taxable year in which the conversion occurs, the assets and liabilities transferred in the conversion shall be treated by Sub LLC as assets and liabilities in Puerto Rico within the meaning of said term in Section 1092.02(c)(2) of the Code, at the close of the taxable year previous to the taxable year in which the conversion occurs. Likewise, the earnings and profits transferred in the conversion shall be treated as effectively connected earnings and profits of Sub LLC, within the meaning of Section 1092.02(d) the Code, at the close of the taxable year previous to the year in which the conversion occurs. Sub L shall be treated as if it held its distributable interest in Sub LLC's assets and liabilities in Puerto Rico at the close of each taxable year.
23. Pursuant to Section 1092.06 of the Code, Holdings and Sub L will not be required to file a Puerto Rico income tax return, if the income tax withheld or paid by Sub LLC satisfies their total tax liability in Puerto Rico, including the branch profit tax under Section 1092.02(a) of the Code, in connection with their distributive share in Sub LLC.

Change of Ownership Rulings

24. All the exchanges incurred during the aforementioned steps will be considered under the "one step transaction doctrine" and, therefore, will not have the effect of terminating the partnerships, pursuant to Section 1071.08 of the Code.

Other Rulings

25. All the rulings requested as part of the transactions described in Step 8 shall be applicable to the entities contained in this ruling or to any other legal entity that, as part of the reorganization, results in being the corporate partner. Said resulting entity shall be considered to be the successor to all the rulings set forth in this ruling (except ruling no. 16), including, the ultimate corporate partners, which are: Sub C, Sub C LuxSub, Sub I, Sub L, ABC, and ABC LuxSub, provided that all other facts remain the same.
26. The source of the resulting income from the sale of any personal property (including a partnership interest) will be determined at the partner level in accordance with Section 1035.03 of the Code.
27. The Determinations contained in this ruling shall not contravene the Closing Agreement entered on June Year 1 between Sub PR, Holdings, Holdings S, and this Department.

No opinion is expressed as to the tax treatment of the above transactions under any other provision of the Code and the regulations thereunder, or as to the tax treatment of any conditions existing at the time of the transactions, or any effect resulting therefrom, that is not specifically covered by this ruling. The opinion expressed herein shall be valid only upon the continued existence of the facts as submitted for our consideration.

A copy of this ruling shall be attached to the Puerto Rico income tax return of all the parties involved in this transaction for the taxable year in which the transaction covered by this ruling is consummated. In the case that the return is filed before the issuance of this ruling letter, this requirement shall be deemed satisfied if a copy of the ruling request is submitted to the Department with the return. This ruling is issued solely to the parties stated herein, and may not be used or cited as precedent by any other taxpayer.

Cordially,

Elisa Vélez Pérez
Assistant Secretary