

REDACTED

ALS



US TAX COURT  
FILED  
SEATTLE  
NOV 12 2014

AMAZON.COM, INC. & SUBSIDIARIES  
Petitioner(s)

PAPER FILED

v.

Docket No. 31197-12

COMMISSIONER OF INTERNAL REVENUE,  
Respondent

STIPULATION FOR TRIAL - GOLDCREST TRANSACTION STEPS  
FACTS

U. S. TAX COURT  
FILED AT  
Seattle  
NOV 12 2014

UNITED STATES TAX COURT

AMAZON.COM, INC. )  
AND SUBSIDIARIES, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
COMMISSIONER OF )  
INTERNAL REVENUE, )  
 )  
Respondent. )

Docket No. 31197-12  
Hon. Albert G. Lauber

~~SECOND AMENDED~~ STIPULATION FOR TRIAL -  
GOLDCREST TRANSACTION STEPS FACTS (Redacted)

**SECOND AMENDED STIPULATION FOR TRIAL -  
GOLDCREST TRANSACTION STEPS FACTS**

In accordance with T.C. Rule 91(e), the parties stipulate and agree that, for the purpose of this case, the following statements are accepted as facts. Each party, however, may introduce other and further evidence not inconsistent with this stipulation, and the parties may agree to supplemental stipulation of facts. The parties may not object to said stipulation or any portions thereof on any grounds unless such objection is expressly reserved herein.

All exhibits referred to herein are included in the Second Amended Stipulation for Trial - Goldcrest Exhibits lodged with the Court on November 1, 2014, and Amended Stipulation For Trial - Goldcrest Transaction Steps Exhibits and Supplemental Exhibits, lodged with the Court on November 1, 2014.

In stipulating to a label, description, or characterization of an agreement, the parties are not stipulating to the substance of that agreement for federal income tax purposes.

Headings in the stipulation have no legal effect.

**I. Glossary of Terms**

**A. Definitions**

- (a) "A9" refers to A9.com, Inc., a member of the Amazon US Group;

- (b) "ACI" refers to Amazon.com, Inc., a publicly traded corporation and common parent of the Amazon US Group;
- (c) "ACSI" refers to Amazon CS Ireland Ltd., an Irish company and wholly owned direct subsidiary of AEU;
- (d) "ADSI" refers to Amazon Data Services Ireland Ltd., an Irish company wholly owned by AEU;
- (e) "AEHT" refers to Amazon Europe Holding Technologies SCS, a Luxembourg limited partnership treated as a corporation for U.S. federal income tax purposes;
- (f) "AEU" refers to Amazon EU Sarl, a Luxembourg company wholly owned by AEHT;
- (g) "AII" refers to Amazon Int'l, Inc., a Delaware corporation and wholly owned direct subsidiary of ACI;
- (h) "AIM" refers to Amazon.com Int'l Marketplace, Inc., a Delaware corporation and wholly owned direct subsidiary of ACI, formerly known as Amazon.com International Auctions, Inc. or "AIA;"
- (i) "AIS" refers to Amazon.com Int'l Sales, Inc., a Delaware corporation and wholly owned direct subsidiary of ACI;

- (j) "AMEU" refers to Amazon Media EU Sarl, a Luxembourg company wholly owned by AEU;
- (k) "AOH" refers to Amazon Overseas Holdings, Inc., a Delaware corporation and wholly owned direct subsidiary of ACI;
- (l) "ASE" refers to Amazon Services Europe Sarl, a Luxembourg company wholly owned by AEU;
- (m) "ASEU" refers to Amazon Sales EU, Inc., a Delaware corporation and wholly owned direct subsidiary of ACI;
- (n) "ATI" refers to Amazon Technologies, Inc., a Delaware corporation and wholly owned direct subsidiary of ACI;
- (o) "Amazon" refers to all or some members of the worldwide group of controlled corporations of which ACI is the common parent;
- (p) "Amazon.co.uk" refers to the website with the domain name "Amazon.co.uk;"
- (q) "Amazon.co.uk Ltd." refers to a company organized under the laws of England and Wales;
- (r) "Amazon.com" refers to the website with the domain name "Amazon.com;"
- (s) "Amazon.com Spain S.L." refers to a company organized under the laws of Spain;

- (t) "Amazon.de" refers to the website with the domain name "Amazon.de;"
- (u) "Amazon.de GmbH" refers to a company organized under the laws of Germany;
- (v) "Amazon.fr" refers to the website with the domain name "Amazon.fr;"
- (w) "Amazon.fr Holdings SAS" refers to a company organized under the laws of France;
- (x) "Amazon.fr Sarl" refers to a French company wholly owned by Amazon.fr Holdings SAS;
- (y) "Amazon CS Ireland" refers to Amazon CS Ireland Limited, a company organized under the laws of Ireland;
- (z) "Amazon (Jersey) Limited" refers to a company organized under the laws of Jersey, Channel Islands;
- (aa) "Amazon (Jersey) Sales Limited" refers to a company organized under the laws of Jersey, Channel Islands;
- (bb) "Amazon Logistik GmbH" refers to a German company wholly owned by Amazon.de GmbH;
- (cc) "Amazon Logistique SAS" refers to a French company wholly owned by Amazon.fr Holdings SAS;

- (dd) "Amazon US Group" refers to the affiliated group of corporations that join in filing a consolidated U.S. federal income tax return with ACI as common parent;
- (ee) "Amazon.com Spain S.L." refers to Amazon.com Spain S.L., a Spanish company;
- (ff) "Associates Program" refers to Amazon's use of third parties who link their websites to Amazon's and who earn fees when customers enter an Amazon website through the referring third-party website and complete a purchase;
- (gg) "Business Transfer Date" refers to May 1, 2006, the date upon which operation of the European Websites Business was commenced by the entities formed under the laws of Luxembourg that had elected to be disregarded as separate from AEHT for U.S. federal income tax purposes;
- (hh) "EU Holdco" refers to Amazon Europe Holding, Inc., a Delaware corporation and wholly owned direct subsidiary of ACI;
- (ii) "European Retail Business" refers to Amazon's business of selling products online through the websites having European country-code top-level

domain names, such as the websites *Amazon.co.uk*,  
*Amazon.de* or *Amazon.fr*;

- (jj) "European Websites Business" refers to the European Retail Business and the European 3PS Business;
- (kk) "Gibco" refers to ACI Holdings Limited, a Gibraltar limited liability company;
- (ll) "Holdings" refers to Amazon.com Holdings, Inc., a Delaware corporation and wholly owned direct subsidiary of AGR;
- (mm) "NV" refers to NV Services, Inc., a Delaware corporation and wholly owned direct subsidiary of Holdings; and
- (nn) "3PS Business" refers to Amazon's business of providing third parties with a set of e-commerce platforms, services, or tools for the sale of the third party's goods and services.

**EU Website Business Prior to Reorganization**

300. Effective December 1, 1999, Amazon.co.uk Ltd. sold its rights, title, and interest in certain assets, including the catalog, content, customer database, inventory and the lease to the UK distribution center,



to AIS, then a newly formed, wholly owned U.S. subsidiary of ACI.<sup>1</sup>

301. Effective December 1, 1999, Amazon.de GmbH sold its customer database and inventory, and its rights to catalogs and content to AIS.<sup>2</sup>

302. Amazon Logistik GmbH provided the storage and fulfillment with respect to inventory owned by AIS.<sup>3</sup>

303. AIM was the sole shareholder in ASE, a Luxembourg company formed on or about July 1, 2003. ASE was formed for the purpose of functioning as a commissionaire in connection with the 3PS Business. ASE contracted with third-party sellers in its own name but for the benefit of the principal AIM.

#### **The Reorganization**

304. The following paragraphs describe steps in Amazon's European reorganization. The references to "Step" numbers are taken from Exhibit C-45-J.

#### **The Reorganization Steps - 2004 Transactions**

305. **Step 1 - Formation of EU Holdco and ASEU.** On February 27, 2004, ACI formed EU Holdco, a Delaware corporation, to function as a holding company. On May

---

<sup>1</sup> Exhibit 164-J.

<sup>2</sup> Exhibit 165-J.

<sup>3</sup> Exhibit 166-J.

28, 2004, ACI formed ASEU to sell CD/DVDs to UK customers ("Jersey Business").

306. **Step 2 - Formation of AEHT.** On June 7, 2004, AEHT was formed.<sup>4</sup> AIM and AIS served as limited partners holding 49 and 50 of the 100 outstanding voting shares, respectively. EU Holdco served as general partner holding one voting share. Pursuant to an election under Treas. Reg. § 301.7701-3, AEHT was treated as a corporation for U.S. federal income tax purposes from the date of its formation.

307. **Step 3 - Contribution of Shares of ASE to AEHT.** By agreement dated June 7, 2004 ("Share Contribution Agreement between AIM and AEHT"), AIM agreed to contribute shares of ASE and cash to AEHT. EU Holdco and AIS contributed cash to AEHT.<sup>5</sup>

308. **Step 4 - Formation of AEU.** On June 8, 2004, AEHT formed AEU, a Luxembourg entity, agreeing to contribute cash and shares of ASE. Pursuant to an election under Treas. Reg. § 301.7701-3, AEU was disregarded as separate from its owner for U.S. federal income tax purposes from the date of its formation. Pursuant to an election under Treas. Reg.

---

<sup>4</sup> Exhibit 167-J.

<sup>5</sup> Exhibit 168-J.

§ 301.7701-3, ASE became disregarded as separate from its owner for U.S. federal income tax purposes effective June 10, 2004.

309. **Step 5 - Formation of Jersey Business.** On July 23, 2004, ASEU formed Amazon (Jersey) Limited, to serve as sales commissioner for the benefit of ASEU.
310. **Step 6 - Formation of ADSI.** On September 2, 2004, AEU formed ADSI to hold Amazon's EU data center. Pursuant to an election under Treas. Reg. § 301.7701-3, ADSI was disregarded as separate from its owner for U.S. federal income tax purposes from the date of its formation.
311. **Step 7 - Check-the-Box Elections for Lower-Tier German and French Subsidiaries.** Pursuant to elections under Treas. Reg. § 301.7701-3, Amazon Logistik GmbH, became disregarded as separate from its owner, Amazon.de GmbH, and Amazon Logistique SAS and Amazon.fr Sarl became disregarded as separate from their common owner, Amazon.fr Holdings SAS, effective November 1, 2004.
312. **Step 8 - AIS Enters Into Service Agreement with ADSI.** As detailed in the Second Amended Stipulation for Trial - Goldcrest Facts, ¶ 25, AIS and ADSI entered into a service agreement (the "AIS-ADSI Services

Agreement"), effective November 1, 2004, pursuant to which ADSI provided certain services in connection with the European Retail Business.<sup>6</sup>

313. **Step 9 - ADSI Enters into Capital Equipment Note.** On December 1, 2004, AIS loaned ADSI \$600,000 to acquire equipment and facilities for systems and networks operations center and data center.<sup>7</sup>

314. **Step 10 - Issuance of Notes between AIS and NV.** On December 17, 2004, AIS issued an interest bearing note ("Note A") to NV in exchange for a note ("Share Premium Note-I") containing the same principal amount of \$155,000,000 and terms and conditions as Note A.<sup>8</sup>

315. **Step 11 - Transfer of Spain Shares to Amazon.com.** On December 17, 2004, AOH, a wholly owned subsidiary of ACI, transferred its shares in Amazon.com Spain S.L. to ACI pursuant to a share transfer agreement ("Share Transfer Agreement (Spain) by and between AOH and ACI").<sup>9</sup>

316. **Step 12 - Formation of Gibco.** On December 21, 2004, AIS formed Gibco by contributing £200 and Share

---

<sup>6</sup> Exhibit 38-J.

<sup>7</sup> Exhibit 169-J.

<sup>8</sup> Exhibit 170-J;  
Exhibit 171-J; and  
Exhibit 172-J.

<sup>9</sup> Exhibit 173-J.

Premium Note-I pursuant to a contribution and subscription agreement ("Contribution and Subscription Agreement between AIS and Gibco").<sup>10</sup> Pursuant to an election under Treas. Reg. § 301.7701-3, Gibco was disregarded as separate from its owner, AIS, for U.S. federal income tax purposes from the date of its formation.

317. **Step 13 - A9 Assigns Intangible Property to AEHT.** As detailed in the Second Amended Stipulation for Trial - Goldcrest Facts, ¶ 37, in December 2004, A9 and AEHT entered into an "A9 Intellectual Property Assignment Agreement" with a stated effective date of November 15, 2004.<sup>11</sup>

318. **Step 14 - Contribution/Sale of Intangible Property to ATI.** On December 31, 2004, Holdings, AIS, and AII assigned certain intellectual property to ATI pursuant to three intellectual property assignment agreements: "Intellectual Property Assignment Agreement between ATI and AIS;" "Intellectual Property Assignment

---

<sup>10</sup> Exhibit 174-J;  
Exhibit 175-J; and  
Exhibit 176-J.

<sup>11</sup> Exhibit 52-J.

Agreement between ATI and Holdings;" and "Intellectual Property Assignment Agreement between ATI and AII."<sup>12</sup>

**319. Step 15 - Filing of Luxembourg Consolidated Group.**

Amazon filed an application for AEU and ASE to file fiscal unity in Luxembourg effective January 1, 2005. Approval was granted on January 28, 2005.<sup>13</sup>

**320. Step 16 - AEHT Enters into Cost Sharing Agreement.** As detailed in the Second Amended Stipulation for Trial - Goldcrest Facts, ¶ 36, in December 2004, A9, a member of the Amazon US Group, and AEHT entered into an "Agreement to Share Costs and Risks of Intangible Development" with a stated effective date of June 7, 2004 (the "2004 A9 Cost Sharing Agreement").<sup>14</sup>

**The Reorganization Steps - 2005 Transactions**

**321. Step 1 - Assignment and Exclusive Licensing of Certain Intangible Property to ATI.** Effective January 1, 2005, AIS and ATI entered into an assignment agreement ("Intellectual Property Assignment Agreement between ATI and AIS").<sup>15</sup> In consideration for the contribution of the intangible property, ATI agreed to transfer ATI

---

<sup>12</sup> Exhibit 177-J;  
Exhibit 178-J; and  
Exhibit 179-J.

<sup>13</sup> Exhibit 180-J.

<sup>14</sup> Exhibit 51-J.

<sup>15</sup> Exhibit 181-J.

shares to AIS on July 12, 2005 pursuant to Step 9 (¶ 329 below) of the 2005 Transactions.

**322. Step 2 - AEU Enters Into Service Agreement with AIS.**

As detailed in the Second Amended Stipulation for Trial - Goldcrest Facts, ¶ 26, AIS entered into a service agreement with AEU with an effective date of January 1, 2005, pursuant to which AEU provided certain services in connection with the European Retail Business.<sup>16</sup>

**323. Step 3 - AEHT Enters into Amended and Restated Cost Sharing and License Agreements.**

(a) As detailed in the Second Amended Stipulation for Trial - Goldcrest Facts, ¶ 38, AEHT and ATI entered into an "Amended and Restated Agreement to Share Costs and Risks of Intangible Development" (the "2005 Cost Sharing Agreement"), with a stated effective date of January 1, 2005: (1) adding ATI as a party; (2) expanding the scope of development to include developing and otherwise enhancing the value of ATI's, A9's, and

---

<sup>16</sup> Exhibit 39-J.

AEHT's intellectual property; and (3) adding additional terms and conditions.<sup>17</sup>

(b) As detailed in the Second Amended Stipulation for Trial - Goldcrest Facts, ¶ 40, On January 11, 2005, AEHT and ATI entered into a "License Agreement For Preexisting Intellectual Property with ATI" (the "License Agreement") with a stated effective date of January 1, 2005, in which ATI granted AEHT "certain intellectual property rights for the use of Amazon Intellectual Property," other than certain "Excluded Intellectual Property."<sup>18</sup> The License Agreement included A9's intellectual property, which ATI had the right to transfer under a cross license agreement, effective October 31, 2003, between ATI and A9.<sup>19</sup>

**324. Step 4 - Gibco Transfers Share Premium Note-I to AEHT.**

Effective January 17, 2005, Gibco contributed Share Premium Note-I in the principal amount of \$155 million, £200, and liabilities to AEHT in exchange for a limited partnership interest of 900 limited shares

---

<sup>17</sup> Exhibit 53-J.

<sup>18</sup> Exhibit 55-J.

<sup>19</sup> Exhibit 19-J.



of AEHT pursuant to an assignment of a promissory note ("Assignment of Promissory Note by Gibco to AEHT").<sup>20</sup>

325. **Step 5 - AEHT Exchanges Share Premium Note-I with AIS for Cash.** Effective January 18, 2005, AEHT agreed to exchange Share Premium Note-I with AIS for cash of \$155 million plus accrued interest pursuant to an assignment agreement ("Assignment of Promissory Note by AEHT in favor of AIS and the related Notification of Assignment of Promissory Note from AEHT to AIS").<sup>21</sup>
326. **Step 6 - AEHT Made License Agreement and Cost Sharing Payments.**

- (a) Petitioner made journal entries recording a payment from AEHT to ATI of \$70,220,000 for 2005 under the License Agreement and a cost sharing payment from AEHT to A9 of \$3,062,000 for 2004.
- (b) By Promissory Note with an effective date of January 19, 2005, AEHT agreed to loan AEU €61,544,812.09, an amount equal to \$155 million

---

<sup>20</sup> Exhibit 182-J; and  
Exhibit 183-J; and  
Exhibit 184-J.

<sup>21</sup> Exhibit 185-J; and  
Exhibit 186-J.

less the payment of \$70,220,000 and the cost sharing payment of \$3,062,000.<sup>22</sup>

(c) By Amendment to the Promissory Note dated December 31, 2005, and effective January 19, 2005, AEHT and AEU agreed to amend the Promissory Note with respect to the interest payable on the principal.<sup>23</sup>

**327. Step 7 - Return of Share Premium Note-I by AIS to NV.**

Effective February 1, 2005, AIS transferred the Share Premium Note-I back to NV in exchange for Note A and both notes were cancelled pursuant to the "Cross-Receipt and Note Cancellation Agreement."<sup>24</sup>

**328. Step 8 - Transfer Associates Program to AEU.**

Effective January 1, 2004, the German and UK Associates Programs operated by Amazon.de GmbH and Amazon.co.uk Ltd. were transferred to AIS pursuant to the service agreements between AIS and Amazon.de GmbH and AIS and Amazon.co.uk Ltd. The French Associates Program was operated by AIS until April 1, 2005.

Under the service agreement between AIS and AEU with an effective date of January 1, 2005, the German, UK

---

<sup>22</sup> Exhibit 187-J.

<sup>23</sup> Exhibit 188-J.

<sup>24</sup> Exhibit 189-J.

and French Associates Programs were transferred to AEU by AIS as of April 1, 2005. The service agreements between AIS and Amazon.de GmbH and Amazon.co.uk Ltd. are stipulated in the Second Amended Stipulation for Trial - Goldcrest Facts, ¶ 23. The service agreement between AIS and AEU is stipulated at Second Amended Stipulation for Trial - Goldcrest Facts, ¶ 26.

329. **Step 9 - Physical Delivery of ATI Shares.** Effective July 12, 2005, ATI delivered shares to ACI, Holdings, and AIS as consideration for the property each such corporation transferred to ATI on December 31, 2004, and January 1, 2005.
330. **Step 10 - AEHT Enters Into Assignment Agreement.** As detailed in the Second Amended Stipulation for Trial - Goldcrest Facts, ¶ 42, in July 2005, AEHT and ATI entered into an "Assignment Agreement for Preexisting Intellectual Property" with a stated effective date of January 1, 2005, in which ATI assigned AEHT "certain intellectual property rights for the use of Amazon Intellectual Property" (the "Assignment Agreement").<sup>25</sup> The intellectual property assigned in the Assignment Agreement was intended to comprise the "Excluded

---

<sup>25</sup> Exhibit 56-J.

Intellectual Property" as defined in the License Agreement as of the Business Transfer Date.

331. **Step 11 - Quarterly Cost Sharing Payment.** Beginning on January 1, 2005, AEHT agreed to make quarterly cost sharing payments to A9 and ATI pursuant to the 2005 Cost Sharing Agreement.<sup>26</sup>

332. **Step 12 - Formation of New Luxembourg Media Subsidiary.** On October 26, 2005, AEU formed AMEU to sell CDs and DVDs to UK customers. Pursuant to an election under Treas. Reg. § 301.7701-3, AMEU was disregarded as separate from its owner for U.S. federal income tax purposes from the date of its formation.

333. **Step 13 - Prepare and Analyze Required Funding for February and May 2006 Cost Sharing, and 2006 License and Assignment Payments.** In November 2005, Amazon intended to prepare and analyze the cash funding required for the February and May 2006 cost sharing payments and the 2006 License and Assignment Agreements.

---

<sup>26</sup> Exhibit C-190-J; C-221-J.

334. **Step 14 - Formation of Jersey Sales Company.** On

December 7, 2005, ASEU formed Amazon (Jersey) Sales Ltd.

335. **Step 15 - Issuance of Notes Between AIS and Domestic**

**Affiliate NV.** Effective December 15, 2005, AIS issued an interest bearing note ("Note B") to NV in exchange for an identical note ("Share Premium Note-II") containing the same face amount and terms and conditions as Note B.<sup>27</sup> Exhibit C-45-J states that the principal amount of both Note B and the Share Premium Note-II was to equal the estimated amount of cash needed by AEHT to make its February and May 2006 cost sharing and 2006 License and Assignment Agreement payments.

336. **Step 16 - Transfer of German, French and UK Shares to**

**Amazon.com.** On December 23, 2005, AIS transferred the shares of Amazon.de GmbH, Amazon.co.uk Ltd., and Amazon.fr Holdings SAS to ACI.

**Reorganization Steps - 2006 Transactions**

337. **Step 1 - Formation of Ireland Customer Call Center.**

On January 4, 2006, AEU formed ACSI, a subsidiary in

---

<sup>27</sup> Exhibit 191-J; and  
Exhibit 192-J; and  
Exhibit 193-J.

Ireland, to serve as the EU customer call center.<sup>28</sup>  
The IRS approved ACSI's election to be treated as disregarded as separate from its owner for U.S. federal income tax purposes effective on its date of formation.<sup>29</sup>

338. **Step 2 - Contribution of Share Premium Note-II to Gibco.** Effective January 10, 2006, AIS contributed Share Premium Note-II to Gibco in exchange for shares in Gibco pursuant to an assignment agreement ("AIS's Assignment of Promissory Note and Notification of Assignment of Promissory Note") and a contribution and subscription agreement ("Contribution and Subscription Agreement between AIS and Gibco").<sup>30</sup>

339. **Step 3 - Contribution of Share Premium Note-II to AEHT.** On February 6, 2006, Gibco contributed Share Premium Note-II, existing shares in AEHT, and liabilities to AEHT in exchange for 1,993 limited shares in AEHT pursuant to a contribution agreement

---

<sup>28</sup> Exhibit 194-J.

<sup>29</sup> Exhibit 195-J; and  
Exhibit 196-J.

<sup>30</sup> Exhibit 197-J; and  
Exhibit 198-J.

("Contribution of All Assets and Liabilities Agreement between Gibco and AEHT").<sup>31</sup>

340. **Step 4 - ACI Transfers EU Shares to AEHT in Exchange for Shares of AEHT and Cash D Note.** ACI transferred the shares of Amazon.de GmbH, Amazon.co.uk Ltd. and Amazon.fr Holdings SAS to AEHT at a stated value of \$195,690,000 in exchange for shares of AEHT with a stated value of \$1,017,240 and a promissory note ("Cash D Note") for the remaining balance of \$194,672,760,<sup>32</sup> pursuant to three share transfer agreements ("ACI and AEHT Share Transfer Agreement (Amazon.de GmbH);" "ACI and AEHT Share Transfer Agreement (Amazon.fr Holdings SAS);" and "ACI and AEHT Share Transfer Agreement (Amazon.co.uk Ltd.)") and a share contribution agreement ("ACI and AEHT Share Contribution Agreement with respect to shares of Amazon.fr Holdings SAS"), each with stated effective dates of February 6, 2006.<sup>33</sup> The share transfer

---

<sup>31</sup> Exhibit 199-J.

<sup>32</sup> Exhibit 200-J. The Cash D Note in the amount of \$194,672,760 was subsequently split into three separate notes:  
Exhibit 201-J;  
Exhibit 202-J; and  
Exhibit 203-J.

<sup>33</sup> Exhibit 204-J;  
Exhibit 205-J;  
Exhibit 206-J;

agreements set forth a purchase price of \$24,220,000 for the shares of Amazon.fr Holdings SAS; \$96,560,000 for the shares of Amazon.de GmbH and \$74,910,000 for the shares of Amazon.co.uk Ltd.

341. **Step 5 - AEHT Transfers EU Shares to AEU.** AEHT transferred 85 percent of the Amazon.de GmbH, Amazon.co.uk Ltd. and Amazon.fr Holdings SAS shares to AEU in exchange for a note ("EU Share Note")<sup>34</sup> and contributed the remaining 15 percent of the shares of those companies to AEU pursuant to share transfer and share contribution agreements with stated effective dates of February 7, 2006.<sup>35</sup> Pursuant to elections under Treas. Reg. § 301.7701-3, each of Amazon.de GmbH, Amazon.co.uk Ltd. and Amazon.fr Holdings SAS was disregarded as separate from its owner effective February 8, 2006.<sup>36</sup> The share transfer and contribution agreements set forth a purchase price for

---

Exhibit 207-J; and  
Exhibit 208-J.

<sup>34</sup> Exhibit 209-J.

<sup>35</sup> Exhibit 210-J;

Exhibit 211-J;

Exhibit 212-J;

Exhibit 213-J; and

Exhibit 214-J.

<sup>36</sup> Exhibit 215-J;

Exhibit 216-J; and

Exhibit 217-J.



the shares of Amazon.fr Holdings SAS, Amazon.de GmbH and Amazon.co.uk Ltd. that was the same as the purchase price set forth in the share transfer agreements from ACI to AEHT described in paragraph 340 above, although in a different currency.

342. ACI reported the steps described in paragraphs 340 and 341 as reorganizations described in Internal Revenue Code Section 368(a)(1)(D) on its 2006 federal income tax return.

343. **Step 6 - AEHT Exchanges Share Premium Note-II with AIS for Marketable Securities.** Effective February 7, 2006, AEHT exchanged Share Premium Note-II with AIS for marketable securities pursuant to a note purchase agreement ("Note Purchase Agreement between AIS and AEHT").<sup>37</sup>

344. **Step 7 - AEHT Loans Marketable Securities to AEU.** Effective February 7, 2006, AEHT loaned marketable securities worth \$55 million to AEU.<sup>38</sup> Exhibit C-45-J states that the securities were to be used to fund a payment to ATI under the License Agreement and cost sharing payments to A9 and ATI.

---

<sup>37</sup> Exhibit 218-J; and  
Exhibit 219-J.

<sup>38</sup> Exhibit 220-J.

345. **Step 8 - AEHT Makes License Agreement and Cost Sharing Payments Due in February 2006.** Petitioner made journal entries recording payments on February 15, 2006, from AEHT to ATI under the License Agreement and cost sharing payments to A9 and ATI.<sup>39</sup>
346. **Step 9 - ACI Transfers Shares of Amazon.com Spain S.L. to AIS.** ACI contributed shares of Amazon.com Spain S.L. to AIS.
347. **Step 10 - Prepare and Analyze Required Funding for August 2006 Cost Sharing Payments.** On March 15, 2005, AEHT was to prepare and analyze cash funding required for the August 15, 2006 cost sharing payments.
348. **Step 11 - Return of Share Premium Note-II by AIS to NV.** Effective March 31, 2006, AIS transferred the Share Premium Note-II back to NV in exchange for Note B and both notes were cancelled pursuant to the "Cross Receipt and Note Cancellation Agreement dated March 31, 2006."<sup>40</sup>
349. **Step 12 - Issuance of Notes between AIS and Domestic Affiliate.** Effective April 7, 2006, AIS issued a promissory note ("Note C") to NV with face amount of \$210,000,000.00 in exchange for a promissory note

---

<sup>39</sup> Exhibit C-221-J.

<sup>40</sup> Exhibit 222-J.

("Share Premium Note-III") with the same face amount and terms and conditions as Note C.<sup>41</sup>

350. **Step 13 - Contribution of Share Premium Note-III to Gibco.** Effective April 10, 2006, AIS contributed the Share Premium Note-III to Gibco in exchange for shares of Gibco pursuant to a contribution and subscription agreement ("Contribution and Subscription Agreement between AIS and Gibco").<sup>42</sup>

351. **Step 14 - Assignment and Exclusive Licensing of Certain Intangible Property to ATI.** As detailed in the Second Amended Stipulation for Trial - Goldcrest Facts, ¶¶ 16 and 17, ACI and ATI entered into an Amazon.com, Inc. parent-subsi-diary agreement with an effective date of October 31, 2003 (the "Parent Subsidiary Agreement").<sup>43</sup> ACI and ATI entered into an amended and restated Amazon.com, Inc. parent-subsi-diary agreement with a stated effective date of April 13, 2006 (the "Amended Parent Subsidiary Agreement").<sup>44</sup>

---

<sup>41</sup> Exhibit 223-J;  
Exhibit 224-J; and  
Exhibit 225-J.

<sup>42</sup> Exhibit 226-J; and  
Exhibit 227-J.

<sup>43</sup> Exhibit 17-J.

<sup>44</sup> Exhibit 18-J.

352. **Step 15 - Contribution of Share Premium Note-III to AEHT.** Effective April 28, 2006, Gibco contributed Share Premium Note-III and the remainder of its assets and liabilities to AEHT in exchange for shares of AEHT pursuant to a contribution and subscription agreement ("Contribution of All Assets and Liabilities Agreement between Gibco and AEHT").<sup>45</sup>
353. **Step 16 - Assignment/License of EU Trademark, Domain Name and Editorial Content.** Amazon.fr Sarl, Amazon.de GmbH and Amazon.co.uk Ltd. agreed to transfer certain trademarks, domain names, and editorial content to AEHT pursuant to an assignment and license agreement ("Intellectual Property Assignment & License Agreement," also referred to as the "Four Party Agreement") with a stated effective time and date of 23:59:59, Central European time on April 30, 2006.<sup>46</sup>
354. **Step 17 - Execution of Intangible Property Sub-Licensing Agreements.** As detailed in the Second Amended Stipulation for Trial - Goldcrest Facts, ¶¶ 58-60, effective April 30, 2006, AEHT and AEU entered into a license agreement (the "AEHT and AEU

---

<sup>45</sup> Exhibit 118-J (AMZCOM00034294 - AMZCOM00034300); and Exhibit 228-J.

<sup>46</sup> Exhibit 229-J.

Intellectual Property License Agreement"), AEU and ASE entered into a license agreement (the "AEU and ASE Intellectual Property License Agreement"), and AEU and AMEU entered into a license agreement (the "AEU and AMEU Intellectual Property License Agreement").<sup>47</sup>

**355. Step 18 - Execution of Commissionaire and**

**Participation Agreements.** As detailed in the Second Amended Stipulation for Trial - Goldcrest Facts, ¶ 51, On May 1, 2006, AIS, as successor to ASEU, assigned to AMEU the sales commissionaire agreement between ASEU and Amazon (Jersey).<sup>48</sup>

**356. Step 19 - Sale of EU Inventory to AEU & AMEU.**

Effective April 30, 2006, and as more fully described below in (a) through (c), AIS sold its EU inventory to AEU in exchange for notes; ASEU sold its inventory to AMEU in exchange for a note; and AIM terminated the ASE service commissionaire agreement.

**(a) AIS and AEU Inventory Sale Agreement**

AIS and AEU entered into an Inventory Sale Agreement (the "Inventory Sale Agreement between AIS and AEU") with an effective date and time of April 30, 2006, 23:59:59 "in the time zone applicable to such Amazon EU Website," pursuant to which

---

<sup>47</sup> Exhibit 75-J.

<sup>48</sup> Exhibit 58-J.

AIS agreed to sell and transfer, and AEU agreed to purchase and acquire, "the inventory and inventory-related assets used in the EU Retail Business, together with certain related liabilities," in a series of related transactions, in exchange for three promissory notes (the "AEU Inventory Notes").<sup>49</sup>

**(b) ASEU and AMEU Inventory Sale Agreement**

ASEU and AMEU entered into an Inventory Sale Agreement (the "Inventory Sale Agreement between ASEU and AMEU") with an effective date and time of April 30, 2006, 23:59:59 hours Greenwich Mean time, pursuant to which ASEU agreed to sell and transfer, and AMEU agreed to purchase and acquire, "the inventory and inventory-related assets used in the Jersey Business, together with certain related liabilities," in exchange for a promissory note (the "AMEU Inventory Note").<sup>50</sup>

**(c) AIM and ASE Termination Agreement**

As detailed in the Second Amended Stipulation for Trial - Goldcrest Facts, ¶ 53, effective April 30, 2006, AIM terminated the Service Commissionaire Agreement with ASE.<sup>51</sup>

---

<sup>49</sup> Exhibit 230-J;  
Exhibit 231-J;  
Exhibit 232-J;  
Exhibit 233-J; and  
Exhibit 234-J. These three Promissory Notes are collectively referred to as the "AEU Inventory Notes".

<sup>50</sup> Exhibit 235-J; and

Exhibit 236-J.

<sup>51</sup> Exhibit 67-J.

**357. Step 20 - AIM & ASEU Merge into AIS under State Law.**

Effective May 1, 2006, AIM and ASEU merged into AIS under governing state law, with AIS as the surviving entity AIS, pursuant to an agreement of merger (the "Agreement of Merger by and among AIS, AIM, and ASEU").<sup>52</sup>

**358. Step 21 - AIS Transfers EU Business and Certain Shares to AEHT in Exchange for Share Premium Note-III.**

Effective May 1, 2006, AIS transferred all of its assets (other than bank and investment accounts and, with the exception of certain transferred cash, the cash and securities contained in the bank and investment accounts) related to the European Websites Business, including the AEU Inventory Notes, the AMEU Inventory Note, and the shares of Amazon.com Spain S.L., Amazon (Jersey) Limited and Amazon (Jersey) Sales Limited to AEHT in exchange for Share Premium Note-III pursuant to a business transfer agreement between AIS and AEHT (the "Business Transfer Agreement between AIS and AEHT").<sup>53</sup>

---

<sup>52</sup> Exhibit 237-J; and  
Exhibit 238-J.

<sup>53</sup> Exhibit 239-J;  
Exhibit 118-J (AMZCOM00034281 - AMZCOM00034287).

359. **Step 22 - AEHT Transfers EU Business and Certain Shares to AEU.** Effective May 2, 2006, 00:00:01 hours, Central European Time, AEHT agreed to sell and transfer, and AEU agreed to acquire and purchase the "Businesses," as defined in the Business Transfer Agreement between AEHT and AEU (including the AEU Inventory Notes and the AMEU Inventory Note) pursuant to a business transfer agreement (the "Business Transfer Agreement between AEHT and AEU").<sup>54</sup>
360. **Step 23 - AEU Contributes Services Business to ASE.** Effective May 3, 2006, 00:00:01 hours, Greenwich Mean Time, AEU agreed to sell and transfer, and ASE agreed to acquire and purchase the "Business" (including the "Assets" and "Liabilities") pursuant to a business transfer agreement (the "Business Transfer Agreement between AEU and ASE").<sup>55</sup>
361. **Step 24 - AEU Contributes Jersey Business to AMEU.** Effective May 3, 2006, 00:00:01 hours, Central European Time, AEU agreed to sell and transfer, and AMEU agreed to acquire and purchase the Jersey

---

<sup>54</sup> Exhibit 240-J;  
Exhibit 241-J;  
Exhibit 242-J; and  
Exhibit 118-J (AMZCOM00034281 - AMZCOM00034287).

<sup>55</sup> Exhibit 243-J.



Business (including the AMEU Inventory Note) pursuant to a business transfer agreement (the "Business Transfer Agreement between AEU and AMEU").<sup>56</sup>

362. Effective May 3, 2006, elections under Treas. Reg. § 301.7701-3(c) were made to treat each of Amazon (Jersey),<sup>57</sup> Amazon (Jersey) Sales Limited<sup>58</sup> and Amazon.com Spain S.L.<sup>59</sup> as disregarded as separate from its owner for U.S. federal income tax purposes.
363. **Step 25 - Return of Share Premium Note-III by AIS to NV.** Effective May 31, 2006, AIS transferred Share Premium Note-III back to NV in exchange for Note C and both notes were cancelled pursuant to the "Cross Receipt and Note Cancellation Agreement."<sup>60</sup>
364. ACI reported the series of transactions (the "European Business Contribution") described above in paragraphs 349-50, 352, 356-59, 361-63 as an I.R.C. § 351(a) transfer of assets of the European Retail Business and European 3PS Business (the "Contributed European Business Assets"), from AIS to AEHT in exchange for stock of AEHT on ACI's 2006 federal income tax return.

---

<sup>56</sup> Exhibit 244-J.

<sup>57</sup> Exhibit 245-J.

<sup>58</sup> Exhibit 246-J.

<sup>59</sup> Exhibit 247-J.

<sup>60</sup> Exhibit 248-J.

365. On its 2006 federal income tax return, ACI reported the section 351 transfer on Form 926 and in statements filed pursuant to Treas. Reg. § 1.351-3(a) and Temp. Treas. Reg. § 1.6038B-IT.<sup>61</sup> Supporting statements for its filing were subsequently produced to Respondent in this litigation.<sup>62</sup>

366. ACI reported the transfers of the stock of each of Amazon (Jersey), Amazon (Jersey) Sales Limited and Amazon.com Spain S.L. to AEHT, and the elections to treat each of those entities as disregarded as separate from its owner, as described in paragraphs 349-52, 358-59, and 362-63 above, as transfers of the assets of each of Amazon (Jersey), Amazon (Jersey) Sales Limited, and Amazon.com Spain S.L. to AEHT in reorganizations described in I.R.C. § 368(a)(1) on ACI's 2006 federal income tax return.<sup>63</sup>

367. **Step 26 - AEHT Makes Assignment Agreement and Cost Sharing Payments due in May 2006.** Petitioner made journal entries recording payments from AEHT to ATI

---

<sup>61</sup> Exhibit 249-J;  
Exhibit 250-J; and  
Exhibit 251-J.

<sup>62</sup> Exhibit 252-J.

<sup>63</sup> Exhibit 253-J;  
Exhibit 254-J;  
Exhibit 255-J; and  
Exhibit 256-J.

under the Assignment Agreement and cost sharing payments from AEHT to A9 and ATI pursuant to the Amended and Restated Cost Sharing Agreement on May 15, 2006.

**Memoranda Related to Goldcrest**

368. In connection with the reorganization, two memoranda and an agenda regarding intellectual property were authored by an Amazon employee, Jocelyn Krabbenschmidt, with the assistance of advisors at Deloitte & Touche LLP. Ms. Krabbenschmidt also collaborated with other sources, including intellectual property attorneys at Amazon, in drafting the memoranda and agenda. The memoranda and agenda were maintained in the files of Amazon and produced in this litigation.<sup>64</sup> Petitioner stipulates to the authenticity of Exhibit 259-R (DT 00706-10), but Petitioner otherwise reserves all objections to these documents.

---

<sup>64</sup> Exhibits 259-R and C-146-R are copies of the memorandum dated June 8, 2004, and October 5, 2004, respectively. Exhibit C-144-R is a copy of an agenda entitled "EU IP Meeting Finalize Approach and Valuation" dated June 9, 2004.

Respectfully lodged, this 1st day of November, 2014.

*John B. Magee/cm*

JOHN B. MAGEE  
Counsel for Petitioner  
Tax Court Bar No. MJ0060  
Bingham McCutchen LLP  
2020 K Street, N.W.  
Washington, D.C. 20006  
(202) 373-6229

Date: 11/1/14

WILLIAM J. WILKINS  
Chief Counsel  
Internal Revenue Service *AM0291*

By: *Melina Lang for*  
JILL A. FRISCH  
Counsel for Respondent  
Special Trial Attorney  
Tax Court Bar No. FJ0677  
Newark Center  
15<sup>th</sup> Floor  
1065 Raymond Blvd  
Newark, NJ 07102  
(973) 645-3710, ext. 207

Date: 11/1/14