

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201228002**

Release Date: 7/13/2012

Index Number: 355.01-00, 1502.75-10

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B06

PLR-103324-12

Date:

March 30, 2012

Legend

Foreign Parent =

Distributing =

Controlled =

Sub 1 =

Country X =

Business A =

Business B =

xx payable =

Dear :

This letter responds to your letter dated January 12, 2012, in which you requested rulings regarding certain Federal income tax consequences of a Proposed Transaction (as defined below). The material information submitted for consideration is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. Moreover, this office has not reviewed any information pertaining to, and has made no determination regarding whether the Distribution (as defined below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) is being used principally as a device for the distribution of the earnings and profits of any distributing corporation or controlled corporation (see § 355(a)(1)(B) of the Internal Revenue Code (the "Code") and § 1.355-2(d)), or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in any distributing corporation or controlled corporation (see § 355(e) and § 1.355-7).

SUMMARY OF FACTS

Foreign Parent, a publically traded Country X corporation, owns all of the outstanding stock of Distributing. Distributing is the common parent of an affiliated group of corporations that file a consolidated Federal income tax return (the "Distributing Group"). Distributing owns all the stock of Controlled, a member of the Distributing Group.

Distributing is engaged in Business A and Controlled is directly and indirectly engaged in Business B, through members of its separate affiliated group, as defined in §355(b)(3)(B) (the "Controlled SAG").

Financial information has been submitted that indicates each of Business A and Business B has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

PROPOSED TRANSACTION

For what are represented to be valid business purposes the following transactions have been proposed (collectively, the "Proposed Transaction"):

- (i) Foreign Parent will form Sub 1, by contributing its shares of Distributing to Sub 1 in exchange for all of the shares of Sub 1 (the "Exchange"). Sub 1 will have only one class of stock issued and outstanding.
- (ii) Distributing will distribute all of the stock of Controlled to Sub 1 (the "Distribution").

Following the Distribution, Sub 1, Controlled and Distributing will file a U.S. federal consolidated income tax return with Sub 1 as the new common parent.

REPRESENTATIONS

The following representations have been made in connection with the Exchange:

- (a) Distributing will remain in existence as a separate corporate entity controlled by Sub 1.
- (b) The Exchange will constitute a reorganization within the meaning of § 368(a)(1)(B) or a transfer qualifying under § 351.
- (c) The shareholders of Distributing (immediately before the Exchange), as a result of their ownership of Distributing stock, will own (immediately after the Exchange) more than 50 percent of the fair market value of the outstanding stock of Sub 1.

The following representations have been made in connection with the Distribution:

- (d) The indebtedness owed by Controlled to Distributing after the Distribution will not constitute stock or securities.
- (e) No part of the consideration to be distributed by Distributing in the Distribution will be received by Sub 1 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

- (f) The five years of financial information submitted for Business A is representative of the present operations, and there have been no substantial operational changes since the date of the last financial statements submitted.
- (g) The five years of financial information submitted for Business B is representative of the present operations, and there have been no substantial operational changes since the date of the last financial statements submitted.
- (h) Following the Distribution, Distributing will continue the active conduct of Business A, independently and with its separate employees.
- (i) Following the Distribution, Controlled (through its SAG) will continue the active conduct of Business B, independently and with its separate employees.
- (j) The Distribution will be carried out for the corporate business purpose of separating the legal risks of Distributing and Controlled. The Distribution is motivated, in whole or substantial part, by this corporate business purpose.
- (k) The Distribution will not be used principally as a device for distributing the earnings and profits of Distributing or Controlled or both.
- (l) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.
- (m) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote or 50 percent or more of the total value of shares of all classes of Controlled stock that was

either (1) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution or (2) attributable to distributions on Distributing stock that were acquired by purchase (as defined in §§355(d)(5) and (8)) during the five-year period (determined after applying §355(d)(6)) ending on the date of the Distribution.

- (n) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Distribution.
- (o) Except for a \$xx payable, and intercorporate debt related to transactions entered into between Distributing and Controlled in the ordinary course of business including tax sharing payments and other payments described in rep (r), no intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution.
- (p) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597).
- (q) Immediately before the Distribution, Distributing will not have an excess loss account (within the meaning of § 1.1502-19(a)(2)) with respect to Controlled stock.
- (r) Payments made in connection with all continuing transactions between Distributing (and its subsidiaries) and Controlled (and its subsidiaries) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length or as provided by applicable regulatory authorities governing such transactions.
- (s) No parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (t) Following the Distribution, either (1) no person will hold a 50-percent or greater interest (within the meaning of § 355(g)(3)) in the stock of Distributing or Controlled who did not hold such an investment immediately before the transaction, or (2) neither Distributing nor Controlled will be a disqualified investment corporation (within the

meaning of § 355(g)(2)).

- (u) The Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons (other than persons described in § 355(e)(2)(C)) will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (v) Distributing did not acquire Business A or control of any entity conducting Business A during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Reg. § 1.355-3) in whole or in part, excluding acquisitions that constitute an expansion of Business A. Throughout the five-year period ending on the date of the Distribution, Distributing will have been the principal owner of the goodwill and significant assets of Business A, and it will continue to be the principal owner following the Distribution.
- (w) Neither Controlled nor any member of the Controlled SAG acquired Business B or control of any entity conducting Business B during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Reg. § 1.355-3) in whole or in part, excluding acquisitions that constitute an expansion of Business B. Throughout the five-year period ending on the date of the Distribution, Controlled and/or members of the Controlled SAG will have been the principal owner(s) of the goodwill and significant assets of Business B, and it will continue to be the principal owner(s) following the Distribution.

RULINGS

Based solely on the information submitted and the representations set forth above, we rule as follows on the Exchange:

- (1) The Exchange will constitute a “reverse acquisition” within the meaning of § 1.1502-75(d)(3). As a result, the Distributing group will remain in existence with Sub 1 becoming the common parent of such group (§ 1.1502-75(d)(3)(i)). The consolidated return for the first taxable year ending after the date of the Exchange to be filed by Sub 1 will use as its taxable year the taxable year of Distributing (§ 1.1502-75(d)(3)(v)(a)).

- (2) Taxable years of the members of the Distributing Group ending on or before the Exchange shall not be treated as separate return limitation years (unless they were so treated immediately before the Exchange (§ 1.1502-1(f)(3)).
- (3) For purposes of §§ 1.1502-31 and 1.1502-33, the Exchange will qualify as a “group structure change” (§ 1.1502-33(f)(1)). Sub 1's basis in Distributing stock immediately after the group structure change will be Distributing's net asset basis as determined under § 1.1502-31(c), subject to the adjustments described in § 1.1502-31(d) (§ 1.1502-31(b)(2)).
- (4) The earnings and profits of Sub 1 will be adjusted immediately after Sub 1 becomes the new common parent to reflect the earnings and profits of Distributing immediately before Distributing ceases to be the common parent (§ 1.1502-33(f)(1)).

Based solely on the information submitted and the representations set forth above, we rule as follows on the Distribution:

- (5) Distributing will not recognize any gain or loss on the Distribution (§ 355(c)).
- (6) Sub 1 will not recognize any gain or loss (and will not otherwise include any amount in income) on the Distribution (§ 355(a)(1)).
- (7) The basis of the stock of Distributing and Controlled in the hands of Sub 1 after the distribution will be the same as the basis of the Distributing stock held immediately before the Distribution, allocated in proportion to the fair market value of Distributing and Controlled in accordance with § 358(a)(1) and § 1.358-2(a)(2) (§ 358(b)(2), (c)).
- (8) The holding period of the Controlled stock received by Sub 1 in the Distribution will include the holding period of the Distributing stock with respect to which the Distribution was made, provided that the Distributing stock is held as a capital asset on the date of the Distribution (§ 1223(1)).
- (9) Earnings and profits will be allocated between Distributing and Controlled in accordance with the rules set for in § 312(h)(1) and §§ 1.312-10(b) and 1.1502-33(e).

CAVEATS

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations or the tax treatment of any

conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings.

In particular, we express no opinion regarding: (i) whether the Distribution satisfies the business purpose requirement of § 1.355-2(b); (ii) whether the Distribution is being used principally as a device for the distribution of the earnings and profits of the distributing corporation, the controlled corporation, or both (see § 355(a)(1)(B) and § 1.355-2(d)); and (iii) whether the Distribution is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

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.

PROCEDURAL MATTERS

This ruling letter is directed only to the taxpayer who requested 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 return for which it is relevant. Alternatively, any taxpayer filing its return electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of this letter ruling.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Mark J. Weiss
Reviewing Attorney
(Corporate)

cc: