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Date:
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Legend

Distributing Parent =

Distributing 1 =

Distributing 2 =

External Controlled =

Controlled =

DCorp1 =

DE1 =

DE2 =

DE3 =

DE4 =

DE5 =

DE6 =

DE7 =

DE8 =

DE9 =

DE10 =

DE11 =

DE12 =

FCorp1 =

FCorp2 =

Country A =

Country B =

Country C =

Country D =

State A =

Business A =

Business B =

Continuing
Arrangements =

a =

b =

c =

d =

e =

f =

g =

h =

i =

i =

k =

l =

m =

n =

Dear

This letter responds to your letter dated November 19, 2019, submitted on behalf of Distributing Parent, its affiliates, and its shareholders, requesting rulings (the “Ruling Request”) on certain federal income tax consequences of a series of proposed transactions (the “Proposed Transactions,” as defined below). The material information submitted in that request and subsequent correspondence is summarized below.

This letter is issued pursuant to Rev. Proc. 2017-52, 2017-41 I.R.B. 283, as amplified and modified by Rev. Proc. 2018-53, 2018-43 I.R.B. 667, regarding one or more Covered Transactions under section 355 and/or section 368 of the Internal Revenue Code (the “Code”) and pursuant to section 6.03(2) of Rev. Proc. 2019-1, 2019-01 I.R.B. 1, regarding one or more significant issues under section 355 of the Code that only address one or more discrete legal issues involved in the transaction.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials 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.

This office has made no determination regarding whether the Proposed Transactions: (i) satisfy the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) are used principally as a device for the distribution of the earnings and profits of the distributing corporations or the controlled corporation or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); or (iii) are 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, or any predecessor or successor of the distributing corporations or the controlled corporations, within the meaning of Treas. Reg. § 1.355-8 (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

Summary of Facts

Distributing Parent, a publicly traded Country A corporation, is the parent company of a worldwide group of foreign and domestic affiliates (the “Distributing Parent Worldwide Group”). At the time of the Proposed Transactions, Distributing Parent had a single class of voting common stock issued and outstanding. The Distributing Parent Worldwide Group is engaged in Business A and Business B both on a domestic and global basis.

Ownership Structure - Domestic Separation

The following summary describes the relevant ownership structure of the Distributing Parent Worldwide Group immediately prior to steps 1-7 of the Proposed Transactions

(the “Domestic Separation”). DE1 through DE12, as described below, are all treated as disregarded entities for U.S federal income tax purposes.

Distributing Parent owns all of the membership interests of DE1, a Country A entity. DE1 owns a percent of the membership interests of DE2, a Country A entity. Distributing Parent owns the remaining b percent of the membership interests of DE2.

DE2 owns all of the membership interests of DE3, a Country A entity. DE3 owns all of the membership interests of DE4, a Country C entity. DE4 owns all of the membership interests of DE5, a Country C entity. DE5 owns all of the membership interests of DE6, a Country D entity, and Distributing 2, a State A corporation.

Distributing 2 is the common parent of an affiliated group of corporations whose includible corporations join in the filing of a consolidated U.S. federal income tax return (the “Distributing 2 Group”). The Distributing 2 Group is engaged in Business A and Business B. Distributing 2 owns all of the stock of DCorp1, a State A corporation. DCorp1 owns c percent of the stock of Distributing 1, a State A corporation. Distributing 2 owns the remaining d percent of the stock of Distributing 1.

Distributing 1 is engaged in Business A and Business B. Distributing 1 owns all of the membership interests of DE7, a State A single member limited liability company.

Ownership Structure - Global Separation

The following summary describes the relevant ownership structure of the Distributing Parent Worldwide Group immediately prior to steps 8-14 of the Proposed Transactions (the “Global Separation”).

Distributing Parent owns all of the membership interests of (i) DE8, a Country A entity, (ii) DE9, also a Country A entity, (iii) FCorp2, a Country A entity that is treated as a corporation for U.S. federal income tax purposes, and (iv) DE10, a Country A entity. DE9 is a general partner in DE10 for local law purposes and has no economic interest in its assets.

DE8 owns e percent of the membership interests of DE11, a Country A entity. DE10 owns f percent of the membership interests of DE11. DE6 owns the remaining g percent of DE11.

DE11 owns all of the membership interests of DE12, a Country C entity, and h percent of the stock of FCorp1, a Country B entity that is treated as a corporation for U.S. federal income tax purposes. The remaining stock of FCorp1 is owned by an unrelated third party. DE11 directly and indirectly owns all the assets related to, and legal entities operating global Business A (including the assets related to and legal entities operating domestic Business A following the Domestic Separation).

Distributing Parent has submitted financial information indicating that Business A and Business B have each had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

The Proposed Transactions

For what are represented to be valid business reasons, Distributing Parent proposes to undertake the following Proposed Transactions in the order listed below to separate Business A from Business B. Steps 1-11 of the Proposed Transactions have already been completed.

Domestic Separation

Step 1: Distributing 1 formed Controlled as a State A limited liability company (“LLC”) that is treated as a disregarded entity for U.S. federal income tax purposes.

Step 2: Distributing 1, contributed assets related to, and legal entities operating Business A, including DE7, to Controlled.

Step 3: DCorp1 merged with and into Distributing 1, with Distributing 1 surviving.

Step 4: Distributing 1 distributed all of the membership interests of Controlled to Distributing 2 (the “First Internal Distribution”).

Step 5: Effective after the date of the First Internal Distribution, Controlled made a check-the-box election (“CTB Election”) to be treated as a corporation for U.S. federal income tax purposes (the “Controlled Election”).

Step 6: Distributing 2 distributed all of the stock of Controlled to DE5 (the “Second Internal Distribution”).

Step 7: DE5 sold all of the stock of Controlled to DE12 in exchange for fair market value consideration.

Global Separation

Step 8: Distributing Parent formed External Controlled, a Country A entity that is treated as a corporation for U.S. federal income tax purposes.

Step 9: FCorp2 made a CTB Election to be treated as a disregarded entity for U.S. federal income tax purposes (“DE13”).

Step 10: DE8 converted into a Country A limited partnership under Country A law with DE13 as the sole general partner for local law purposes with no economic interest in the assets of DE8.

Step 11: DE8 made an initial CTB Election to be treated as a disregarded entity for U.S. federal income tax purposes.

Step 12: DE6 will dispose of its g percent interest in DE11 to one or more of the disregarded entities that will be contributed to External Controlled in the External Controlled Contribution (defined below) for fair market value consideration.

Step 13: Pursuant to a reorganization under Country A law, Distributing Parent will transfer directly and indirectly assets related to, and legal entities operating Business A to External Controlled, with the possible exception of j percent of the stock in FCorp1 (discussed below). These assets consist of (i) all of the membership interests of DE10, (ii) all of the membership interests of DE8, (iii) all of the membership interests of DE9, and (iv) all of the membership interests of DE13 (the "External Controlled Contribution"). Certain disregarded entities of Distributing Parent contributed by Distributing Parent to External Controlled will have obligations owed to Distributing Parent or its non-transferred, disregarded entities at the time of the External Controlled Contribution (the "Springing Liabilities"). All the Springing Liabilities will relate to the business activities of the entities transferred and will have arisen in the ordinary course of business.

Step 14: External Controlled will issue new common shares pro rata directly to Distributing Parent's shareholders (the "External Distribution").

In connection with the External Distribution, Distributing Parent and External Controlled, collectively with their affiliates, will enter into certain agreements that will continue after the completion of the External Distribution in order to effect an orderly transition of External Controlled to a standalone public company, including research and development, intellectual property, transition services, and other commercial arrangements (i.e., the Continuing Arrangements).

Following the External Distribution, each of Distributing Parent and External Controlled will have an executive board and supervisory board. Distributing Parent's supervisory board will consist of j members, and External Controlled's supervisory board will consist of k members. Distributing Parent anticipates that there will be l overlapping members on each supervisory board. The members of each supervisory board are elected for a term of m years and are eligible for re-election. None of the l overlapping members will be an officer or employee involved in the day-to-day operations of Distributing Parent or External Controlled, and the total number of overlapping members will constitute a minority of each board after the External Distribution.

Further, in the External Controlled Contribution, Distributing Parent will indirectly contribute h percent of the stock of FCorp1, which is engaged in Business A, to External Controlled. Distributing Parent may own the remaining i percent of the stock of FCorp1 on the date of the External Distribution. If Distributing Parent holds such interest, Distributing Parent will enter into a binding commitment before the External Distribution

to sell its i percent interest in the stock of FCorp1 to External Controlled or an unrelated third party within n months of the External Distribution.

Representations

Except as set forth below, Distributing 1, Distributing 2, and Distributing Parent have made all the representations provided in section 3 of the Appendix to Rev. Proc. 2017-52, 2017-41 I.R.B. 283, with respect to the First Internal Distribution, Second Internal Distribution, and External Distribution, respectively.

First Internal Distribution

Distributing 1 has made the following alternative representations set forth in section 3 of the Appendix to Rev. Proc. 2017-52:

Representations 3(a), 8(a), 11(a), 15(b), 22(a), 31(a), and 41(a).

Distributing 1 has not made the following representations, which do not apply to the First Internal Distribution:

Representations 7, 20, 24, 25, 32, 35, and 39.

Distributing 1 has not made the following representation, but provided the required explanation:

Representation 40.

Second Internal Distribution

Distributing 2 has made the following alternative representations set forth in section 3 of the Appendix to Rev. Proc. 2017-52:

Representations 3(a), 8(a), 11(a), 15(b), 22(a), 31(a), and 41(a).

Distributing 2 has not made the following representations, which do not apply to the Second Internal Distribution:

Representations 7, 17-20, 24, 25, 35, and 39.

External Distribution

Distributing Parent has made the following alternative representations set forth in section 3 of the Appendix to Rev. Proc. 2017-52:

Representations 3(a), 8(a), 11(a), 15(b), 22(a), 31(a), and 41(a).

Distributing Parent has not made the following representations, which do not apply to the External Distribution:

Representations 7, 20, 24, 25, 32, 35, 39, and 40.

Distributing Parent has not made the following representation, but provided the required explanation:

Representation 43.

Distributing Parent has made the following modified representation:

Representation 19: Any Other Property issued or transferred by External Controlled to Distributing Parent except for the Springing Liabilities deemed assumed by External Controlled in pursuance of the plan of reorganization, will be transferred by Distributing Parent to its shareholders in pursuance of the plan of reorganization or to its creditors in connection with the reorganization.

Except as set forth below, Distributing 1 and Distributing Parent have made all the representations provided in section 3.04 of Rev. Proc. 2018-53, 2018-43 I.R.B. 667, with respect to the First Internal Distribution and External Distribution, respectively.

First Internal Distribution

Distributing 1 has not made the following representations, but provided the required explanation:

Representations 2 and 4.

Distributing 1 has not made the following representation which does not apply to the First Internal Distribution:

Representation 6.

External Distribution

Distributing Parent has not made the following representations but provided the required explanation:

Representations 2 and 4.

Distributing Parent has not made the following representation which does not apply to the External Distribution:

Representation 6.

Rulings

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

First Internal Distribution

1. For U.S. federal income tax purposes, the Controlled Election and the First Internal Distribution will be treated as if: (i) Distributing 1 contributed the Business A assets, including DE7, to Controlled in exchange for all of Controlled's stock (the "Deemed Contribution"); and (ii) Distributing 1 distributed all of the stock of Controlled to Distributing 2. See Rev. Ru. 77-191, 1971-1 C.B. 94; Rev. Rul. 57-311, 1957-2 C.B. 243.
2. The Deemed Contribution together with the First Internal Distribution will qualify as tax-free reorganization within the meaning of section 368(a)(1)(D). Distributing 1 and Controlled will each be a "party to a reorganization" within the meaning of section 368(b).
3. No gain or loss will be recognized by Distributing 1 upon the Deemed Contribution. Sections 357(a) and 361(a).
4. No gain or loss will be recognized by Controlled upon the Deemed Contribution. Section 1032(a).
5. Controlled's basis in each asset received in the Deemed Contribution will be equal to the basis of that asset in the hands of Distributing 1 immediately before the Deemed Contribution. Section 362(b).
6. The holding period in each asset received by Controlled in the Deemed Contribution will include the period during which such asset was held by Distributing 1. Section 1223(2).
7. No gain or loss will be recognized by (and no amounts will be included in the income of) Distributing 2 upon the receipt of the Controlled stock in the First Internal Distribution. Section 355(a).
8. No gain or loss will be recognized by Distributing 1 on its distribution of the Controlled stock to Distributing 2. Section 361(c).
9. The holding period of the Controlled stock received by Distributing 2 will include the holding period of the Distributing 1 stock with respect to which the distribution of the Controlled stock was made, provided that the Distributing 1 stock is held as a capital asset on the date of the First Internal Distribution. Section 1223(1).

10. Earnings and profits (“E&P”) will be allocated between Distributing 1 and Controlled in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33.

Second Internal Distribution

11. The Second Internal Distribution will qualify as a tax-free distribution under section 355.

12. No gain or loss will be recognized by Distributing 2 on its distribution of the Controlled stock to Distributing Parent. Section 355(c)(1).

13. No gain or loss will be recognized by (and no amount will be included in the income of) Distributing Parent on its receipt of Controlled stock in the Second Internal Distribution. Section 355(a).

14. The aggregate basis of the Distributing 2 stock and the Controlled stock in the hands of Distributing Parent after the Second Internal Distribution will equal the aggregate adjusted basis of the Distributing 2 stock held by Distributing Parent immediately before the Second Internal Distribution, allocated in the manner described in Treas. Reg. § 1.358-2(a)(2). Section 358(b).

15. The holding period of the Controlled stock received by Distributing Parent in the Second Internal Distribution will include the holding period of the Distributing 2 stock with respect to which the distribution of the Controlled stock was made, provided that the Distributing 2 stock is held as a capital asset on the date of the Second Internal Distribution. Section 1223(1).

16. The E&P of Distributing 2 and Controlled will be adjusted in accordance with section 312(h) and Treas. Reg §§ 1.312-10(b) and 1.1502-33.

External Distribution

17. The External Controlled Contribution together with the External Distribution will qualify as a tax-free reorganization within the meaning of sections 368(a)(1)(D) and 355. Distributing Parent and External Controlled will each be a “party to a reorganization” within the meaning of section 368(b).

18. The Springing Liabilities will be treated as “other property” for purposes of section 361(b).

19. The Springing Liabilities will be allocated to each of the assets transferred in the External Controlled Contribution in proportion to each asset’s relative fair market value under the principles of Rev. Rul. 68-55, 1968-1 C.B. 140. Distributing Parent will

recognize gain, but not loss, to the extent of the amount of Springing Liabilities allocated to each asset up to the amount of built-in gain in such asset.

20. No gain or loss will be recognized by Distributing Parent upon the External Controlled Contribution except for the gain recognized as a result of the assumption by External Controlled of the Springing Liabilities. Sections 357(a) and 361(a).

21. No gain or loss will be recognized by External Controlled upon the External Controlled Contribution. Section 1032(a).

22. External Controlled's basis in each asset received in the External Controlled Contribution will be equal to the basis of that asset in the hands of Distributing Parent immediately before the External Controlled Contribution increased by the amount of gain recognized by Distributing Parent with respect to such asset in the External Controlled Contribution. Section 362(b).

23. The holding period in each asset received by External Controlled in the External Controlled Contribution will include the period during which such asset was held by Distributing Parent. Section 1223(2).

24. No gain or loss will be recognized by (and no amounts will be included in the income of) the shareholders of Distributing Parent upon the receipt of the External Controlled stock in the External Distribution. Section 355(a).

25. No gain or loss will be recognized by Distributing Parent on its distribution of the External Controlled stock to its shareholders. Section 361(c).

26. The aggregate basis of the Distributing Parent stock and the External Controlled stock in the hands of each shareholder after the External Distribution will equal the aggregate adjusted basis of the Distributing Parent stock held by each shareholder immediately before the External Distribution, allocated in the manner described in Treas. Reg. § 1.358-2(a)(2). Section 358(b).

27. The holding period of the External Controlled stock received by each shareholder will include the holding period of the Distributing Parent stock with respect to which the distribution of the External Controlled stock was made, provided that the Distributing Parent stock is held as a capital asset on the date of the External Distribution. Section 1223(1).

28. E&P will be allocated between Distributing Parent and External Controlled in accordance with section 312(h) and Treas. Reg. § 1.312-10(a).

Caveats

No opinion is expressed or implied about the tax treatment of the Proposed Transactions under any other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings.

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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

A copy of this ruling letter must be attached to any federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this ruling letter.

Sincerely,

Brian R. Loss
Office of Associate Chief Counsel (Corporate)
Senior Technician Reviewer, Branch 4

cc: