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Department of the Treasury

Washington, DC 20224

[Third Party Communication:

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PLR-121713-23

Date:

February 9, 2024

Legend

Distributing =

Distributing 1 =

Controlled =

Controlled 1 =

Business B  
HoldCo =

Remaining  
Businesses  
HoldCo =

FSub 1 =

FSub 2 =

FSub 3 =

Sub 1 =

Sub 2 =

Sub 3 =

Domestic  
Business B  
HoldCo =

Foreign  
Business B  
HoldCo =

FDRE 1 =

FDRE 2 =

FDRE 3 =

FDRE 4 =

Trust =

LLC =

Business A =

Business B =

Business C =

Domestic  
Business A =

Foreign  
Business A =

Domestic  
Business B =

Foreign  
Business B =

Country A =

Country B =

Country C =

Country D =

Country E =

State A =

State B =

Domestic  
Business B  
HoldCo  
Securities =

Historic  
Distributing  
Group Debt =

a =

b =

c =

d =

Date 1 =

Dear :

This letter responds to your letter dated October 20, 2023, as supplemented by subsequent information and documentation, requesting rulings on certain U.S. federal income tax consequences of a series of proposed transactions (collectively, the "Proposed Transaction").

This letter is issued pursuant to Rev. Proc. 2017-52, 2017-41 I.R.B. 283, regarding one or more "Covered Transactions" under sections 355 and 368 of the Internal Revenue Code (the "Code"). This office expresses no opinion as to any issue not specifically addressed by the rulings below.

The rulings contained in this letter are based upon information 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 either the Controlled 1 Distribution (as defined below) or the Distribution (as defined below): (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) and Treas. Reg. § 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 the distributing corporation or the controlled corporation, or any predecessor or successor of the distributing corporation or the controlled corporation, 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, a Country A publicly traded corporation, is the ultimate parent of a worldwide group that includes corporations, partnerships, and entities disregarded for U.S. federal income tax purposes from the sole regarded owner under Treas. Reg. § 301.7701-3 (each, a “DRE”) (collectively, the “Distributing Group”). The Distributing Group’s business operations consist of Business A, Business B, and Business C (Business A and Business C are collectively referred to as the “Remaining Businesses”). The operations associated with Business A are conducted in Country A, Country B, and Country C. The operations associated with Business B and Business C are conducted in Country A and Country B.

Distributing has one class of common stock outstanding (the “Distributing Common Stock”) and a separate series of preferred stock outstanding (the “Distributing Preferred Stock”).

Distributing owns all of the Distributing 1 common stock (the “Distributing 1 Common Stock”).

Distributing 1 owns all the stock of (i) Business B HoldCo, a Country A entity classified as a corporation for U.S. federal income tax purposes (the “Business B HoldCo Common Stock”), (ii) Remaining Businesses HoldCo, a State A corporation, (iii) FDRE 1, a Country A entity classified as a DRE, and (iv) directly and indirectly, the equity of corporations, partnerships, and DREs that conduct the Remaining Businesses.

Distributing 1 also owns all the voting trust units of Trust, a Country A trust classified as a DRE. Trust facilitates third-party financing arrangements for the Distributing Group.

FDRE 1 owns all the stock of FSub 1, a Country A entity classified as a corporation for U.S. federal income tax purposes. FSub 1 owns all the equity interests of FDRE 2, a Country A entity classified as a DRE. FDRE 2 owns all the equity interests of FDRE 3, a Country D LLC classified as a DRE, and FDRE 4, a Country E entity classified as a DRE.

Business B HoldCo owns, directly and indirectly, the equity of corporations, partnerships, and DREs that conduct Business B. Business B HoldCo owns all of (i) the equity interests of Domestic Business B HoldCo, a State B LLC classified as a corporation for U.S. federal income tax purposes, (ii) the stock of Foreign Business B HoldCo, a Country A entity classified as a corporation for U.S. federal income tax purposes, (iii) the stock of FSub 2, a Country A entity classified as a corporation for U.S. federal income tax purposes, and (iv) the stock of FSub 3, a Country A entity classified as a corporation for U.S. federal income tax purposes. Foreign Business B HoldCo, FSub 2 and FSub 3, own, directly and indirectly, equity interests in partnerships that conduct the Country A portion of Business B (the “Business B Partnerships”).

Domestic Business B HoldCo is (i) the parent company of a U.S. group of entities that includes corporations, partnerships, and DREs (collectively, the “Domestic Business B Group”), and (ii) the common parent of an affiliated group of corporations that files a consolidated U.S. federal income tax return in accordance with section 1502 (the “Business B Consolidated Group”). Domestic Business B HoldCo owns all the stock of Sub 1 and Sub 2, each of which is a State B corporation. The Domestic Business B Group conducts Domestic Business B.

Sub 2 owns, among other things, all the membership interests of Sub 3, a State B LLC classified as a corporation for U.S. federal income tax purposes.

For more than five years, the Distributing Group has conducted each of Business A and Business B. Financial information has been received indicating that Business A and B have each had gross receipts and operating expenses representing the active conduct of a trade or business for at least the past five years.

Before Date 1, in transactions unrelated to the Internal Preparatory Transactions and the Proposed Transaction (described below), Sub 2 and Sub 3 transferred business assets to a member of the consolidated group engaged in one of the Remaining Businesses. Sub 2 and Sub 3 recognized losses under section 311 (as modified by Treas. Reg. § 1.1502-13) as a result of intercompany distributions (the deferred intercompany transactions or “DITs”).

### **Internal Preparatory Transactions**

To facilitate the Proposed Transaction, the Distributing Group executed certain internal preparatory transactions. Specifically, the Distributing Group undertook a number of restructuring steps to (i) separate Domestic Business B from the Domestic Remaining Businesses, and (ii) combine Domestic Business B and Foreign Business B under Business B HoldCo (collectively, the “Internal Preparatory Transactions”). Among other transactions, the Internal Preparatory Transactions include the following steps:

1. Remaining Businesses HoldCo contributed the stock of Sub 1 and Sub 2 to newly formed Domestic Business B HoldCo in exchange for (i) Domestic Business B HoldCo stock, (ii) the assumption of liabilities, and (iii) the Domestic Business B HoldCo Securities.
2. Remaining Businesses HoldCo transferred the Domestic Business B HoldCo Securities to FDRE 3 in repayment of indebtedness in the amount of d.
3. Remaining Business HoldCo distributed all the stock of Domestic Business B HoldCo to Distributing 1.
4. Distributing 1 contributed its equity interests in the Business B Partnerships to newly formed Foreign Business B HoldCo in exchange for debt and equity of Foreign Business B HoldCo.
5. Distributing 1 contributed the following to newly formed Business B HoldCo in exchange for all the Business B HoldCo Common Stock: (i) the stock of FSub 2 and FSub 3, (ii) the stock of Foreign Business B HoldCo, and (iii) the stock of Domestic Business B HoldCo.
6. Prior to Transaction 1 (described below), (i) Domestic Business B HoldCo may make a distribution of cash to Business B HoldCo, and, in such case, (ii) Business B HoldCo would make a distribution of cash to Distributing 1. Any such distributions will be treated as section 301 distributions.

### **Proposed Transaction**

For what are represented to be valid corporate business purposes (the “Corporate Business Purposes”), the Distributing Group proposes to separate Business B from the Remaining Businesses into Controlled, a separate, newly formed Country A publicly traded corporation (the “Separation”). Specifically, Distributing proposes to engage in the following steps to achieve the Separation—*i.e.*, the Proposed Transaction:

1. FDRE 3 will transfer the Domestic Business B HoldCo Securities to Distributing 1.
2. Distributing 1 will use the Domestic Business B HoldCo Securities to repay a portion of its third-party debt.
3. Distributing 1 will file Articles of Amendment to create and authorize the issuance of (i) an unlimited number of new shares of Distributing 1 Common Stock, and (ii) an unlimited number of Distributing 1 preferred shares. The existing shares of Distributing 1 Common Stock held by Distributing will be exchanged for (i) new shares of Distributing 1 Common Stock and (ii) Distributing 1 preferred shares

with a redemption value equal to the value of Business B HoldCo (the “Distributing 1 Special Shares”).

4. Distributing will transfer the Distributing 1 Special Shares to Controlled 1, a newly formed Country A corporation, in exchange for all the common stock of Controlled 1 (the “Controlled 1 Common Stock”).
5. Distributing 1 will transfer all of the Business B HoldCo Common Stock to Controlled 1 in exchange for Controlled 1 preferred shares with a redemption value equal to the value of Business B HoldCo (the “Controlled 1 Special Shares”).
6. Distributing 1 and Controlled 1 will each redeem their respective Special Shares in exchange for promissory notes of Distributing 1 and Controlled 1, respectively (“Transaction 1 Promissory Notes”), in payment of the redemption price of their respective Special Shares.
7. Transaction 1 Promissory Notes will then be set off against each other and cancelled.

Steps 3 through 7 are collectively referred to as “Transaction 1.”

8. Under Country A law, Distributing will undergo a reorganization of capital whereby the holders of Distributing Common Stock will exchange their existing Distributing Common Stock for (i) new shares of Distributing Common Stock and (ii) Distributing preferred shares with a redemption value equal to the value of Controlled 1 (the “Distributing Special Shares”).

In addition, under the laws of Country A, the following Steps 9 through 12 will also occur.

9. Holders of Distributing Common Stock will transfer the Distributing Special Shares to Controlled, a newly formed Country A corporation, in exchange for all the common stock of Controlled (the “Controlled Common Stock”).
10. Distributing will transfer all of the Controlled 1 Common Stock to Controlled in exchange for Controlled preferred shares with a redemption value equal to the value of Controlled 1 (the “Controlled Special Shares”).
11. Distributing and Controlled will each redeem their respective Special Shares in exchange for promissory notes of Distributing and Controlled, respectively (“Transaction 2 Promissory Notes”), in payment of the redemption price of their respective Special Shares.



12. Transaction 2 Promissory Notes will then be set off against each other and cancelled.

Steps 8 through 12 are collectively referred to as “Transaction 2.”

13. Foreign Business B HoldCo and Domestic Business B HoldCo, and their affiliates, will borrow approximately b from third-party lenders and will use such proceeds to repay the Historic Distributing Group Debt. All or a portion of these borrowings may occur prior to, or contemporaneous with, the other steps of the Proposed Transaction.

In connection with the Proposed Transaction, it is anticipated that Distributing and Controlled (and their respective affiliates, as applicable) will enter into certain agreements that will address continuing arrangements between Distributing and Controlled (and their respective affiliates, as applicable) following the Separation (collectively, the “Continuing Arrangements”). All of the Continuing Arrangements will be based on arm’s-length terms and conditions, including arm’s-length pricing, except with respect to certain payments made pursuant to the transition services agreement that may be priced on a cost or cost-plus basis for a period not to exceed c years, other than as required to complete work orders or similar arrangements agreed during the initial period.

Following the Proposed Transaction, Distributing and Controlled will operate as independent companies having separate boards of directors.

### **Representations**

Distributing has made the following representations with respect to the Proposed Transaction.

#### Transaction 1

With respect to Transaction 1, except as otherwise set forth below, Distributing makes all of the representations in Section 3 of Appendix A to Rev. Proc. 2017-52. Distributing makes each of the representations with the understanding that for U.S. federal income tax purposes, Transaction 1 will be treated as if (i) Distributing 1 contributed all the Business B HoldCo Common Stock to Controlled 1 in exchange for all the Controlled 1 Common Stock (the “Controlled 1 Contribution”), and (ii) Distributing 1 distributed all the Controlled 1 Common Stock to Distributing (the “Controlled 1 Distribution”). As such, the Controlled 1 Contribution and Controlled 1 Distribution should be deemed transactions for U.S. federal income tax purposes. Therefore, Distributing hereby modifies all representations it makes in section 3 of the Appendix to Rev. Proc. 2017-52 regarding the Controlled 1 Distribution and Controlled 1 Contribution to include the language “deemed” where applicable.

Distributing has made the following alternative representations:

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

Distributing has not made the following representations, which do not apply to Transaction 1:

Representations 7, 17, 19, 20, 24, 25, 35, 36, 38, 39, and 40.

Distributing has made the following modified representations:

Representation 32: Except for amounts payable under the Continuing Arrangements or liabilities arising in the ordinary course of business, no intercorporate debt will exist between Distributing 1 and Controlled 1 (and their respective affiliates, as applicable) at the time of, or subsequent to, the Controlled 1 Distribution (as defined below).

Representation 33: Except pursuant to the Continuing Arrangements, payments made in connection with all continuing transactions between Distributing 1 and Controlled 1 (or their respective affiliates) after the Controlled 1 Distribution (as defined below) will be for fair market value based on arm's-length terms.

## Transaction 2

With respect to Transaction 2, except as otherwise set forth below, Distributing makes all of the representations in Section 3 of Appendix A to Rev. Proc. 2017-52. Distributing makes each of the representations with the understanding that for U.S. federal income tax purposes, Transaction 2 will be treated as if (i) Distributing contributed all the Controlled 1 Common Stock to Controlled in exchange for all the Controlled Common Stock (the "Contribution"), and (ii) Distributing distributed all the Controlled Common Stock to the holders of Distributing Common Stock (the "Distribution"). As such, the Contribution and Distribution should be deemed transactions for U.S. federal income tax purposes. Therefore, Distributing hereby modifies all representations it makes in section 3 of the Appendix to Rev. Proc. 2017-52 regarding the Distribution and Contribution to include the language "deemed" where applicable.

Distributing has made the following alternative representations:

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

Distributing has not made the following representations, which do not apply to Transaction 2:

Representations 7, 17, 19, 20, 24, 25, 35, 36, 38, 39, and 40.

Distributing has made the following modified representations:

Representation 32: Except for amounts payable under the Continuing Arrangements or liabilities arising in the ordinary course of business, no intercorporate debt will exist between Distributing and Controlled (and their respective affiliates, as applicable) at the time of, or subsequent to, the Distribution (as defined below).

Representation 33: Except pursuant to the Continuing Arrangements, payments made in connection with all continuing transactions between Distributing and Controlled (or their respective affiliates) after the Distribution (as defined below) will be for fair market value based on arm's-length terms.

Representation 37: Except for the DITs, there is no loss subject to Treas. Reg. § 1.1502-13 that will be taken into account as a result of a transaction related to the distribution.

### **Rulings**

Based solely on the information submitted and the representations made, we rule as follows with respect to the Proposed Transaction:

#### Transaction 1

1. For U.S. federal income tax purposes, Transaction 1 will be treated as if (i) Distributing 1 contributed all the Business B HoldCo Common Stock to Controlled 1 in exchange for all the Controlled 1 Common Stock (i.e., the Controlled 1 Contribution), and (ii) Distributing 1 distributed all the Controlled 1 Common Stock to Distributing (i.e., the Controlled 1 Distribution) (Rev. Rul. 77-191, 1971-1 C.B. 94; Rev. Rul. 57-311, 1957-2 C.B. 243).
2. The Controlled 1 Contribution, together with the Controlled 1 Distribution, will be a reorganization under section 368(a)(1)(D). Distributing 1 and Controlled 1 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 in the Controlled 1 Contribution (section 361(a)).
4. No gain or loss will be recognized by Controlled 1 in the Controlled 1 Contribution (section 1032(a)).

5. The basis in each asset received by Controlled 1 in the Controlled 1 Contribution will be the same as the basis of that asset in the hands of Distributing 1 immediately before the Controlled 1 Contribution (section 362(b)).
6. The holding period in each asset received by Controlled 1 in the Controlled 1 Contribution will include the period during which Distributing 1 held that asset (section 1223(2)).
7. Distributing will recognize no gain or loss (and no amount will be includible in income) upon the receipt of Controlled 1 stock in the Controlled 1 Distribution (section 355(a)).
8. Distributing 1 will recognize no gain or loss upon the Controlled 1 Distribution (section 361(c)).
9. The holding period of the Controlled 1 Common Stock received by Distributing in the Controlled 1 Distribution will include the holding period of the Distributing 1 Common Stock with respect to which the distribution of Controlled 1 Common Stock will be made in the case of the Controlled 1 Distribution, provided that the Distributing 1 Common Stock is held as a capital asset on the date of the distribution (section 1223(1)).
10. Earnings and profits, if any, will be allocated between Distributing 1 and Controlled 1 in accordance with section 312(h) and Treas. Reg. § 1.312-10(a).

### Transaction 2

11. For U.S. federal income tax purposes, Transaction 2 will be treated as if (i) Distributing contributed all the Controlled 1 Common Stock to Controlled in exchange for all the Controlled Common Stock (*i.e.*, the Contribution), and (ii) Distributing distributed all the Controlled Common Stock to the holders of Distributing Common Stock (*i.e.*, the Distribution) (Rev. Rul. 77-191, 1971-1 C.B. 94; Rev. Rul. 57-311, 1957-2 C.B. 243).
12. The Contribution, together with the Distribution, will be a reorganization under section 368(a)(1)(D). Distributing and Controlled will each be a “party to a reorganization” within the meaning of section 368(b).
13. No gain or loss will be recognized by Distributing in the Contribution (section 361(a)).
14. No gain or loss will be recognized by Controlled in the Contribution (section 1032(a)).

15. The basis in each asset received by Controlled in the Contribution will be the same as the basis of that asset in the hands of Distributing immediately before the Contribution (section 362(b)).
16. The holding period in each asset received by Controlled in the Contribution will include the period during which Distributing held that asset (section 1223(2)).
17. Holders of Distributing Common Stock will recognize no gain or loss (and no amount will be includible in income) upon receipt of Controlled Common Stock in the Distribution (section 355(a)).
18. Distributing will recognize no gain or loss upon the Distribution (section 361(c)).
19. The aggregate basis of the Distributing Common Stock and the Controlled Common Stock in the hands of the holders of Distributing Common Stock immediately after the Distribution will be the same as the aggregate basis of the Distributing Common Stock held by holders of Distributing Common Stock immediately before the Distribution allocated between Distributing Common Stock and Controlled Common Stock in proportion to the fair market value of each immediately following the Distribution (Treas. Reg. § 1.358-2(a)(2); section 358(b)(2) and (c)).
20. The holding period of the Controlled Common Stock received by the Distributing shareholders in the Distribution will include the holding period of the Distributing Common Stock with respect to which the distribution of Controlled Common Stock will be made in the case of the Distribution, provided that the Distributing Common Stock is held as a capital asset on the date of the distribution (section 1223(1)).
21. Earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with section 312(h) and Treas. Reg. § 1.312-10(a).

### **Caveats**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transaction under any provision of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the Proposed Transaction that is not specifically covered by the above rulings. In addition, no opinion is expressed or implied concerning the tax treatment of the Internal Preparatory Transactions including the distribution of the stock or securities of Domestic Business B HoldCo (as well as any subsequent transfers of such securities).

**Procedural Statements**

The 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.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their returns that provides the date on and control number (PLR-121713-23) of the letter ruling.

Pursuant to a Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Gerald B. Fleming  
Senior Technician Reviewer, Branch 2  
(Corporate)

cc: