

Internal Revenue Service

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October 2, 2001

LEGEND

Foreign Parent =

Foreign Transferee =

Controlled =

Distributing =

FTSub1 =

FTSub1Sub =

Business A =

Business B =

Business C =

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Business D =

Business E =

Business D Segment 1 =

Country A =

State W =

State X =

State Y =

z =

X% =

Y% =

This letter responds to your letter dated May 30, 2001, requesting rulings on the federal income tax consequences of a proposed transaction. The information submitted in that request and in the subsequent correspondence of July 24, 2001 is substantially as set forth below.

Foreign Parent is a publicly traded, Country A z which is treated as a corporation for federal income tax purposes. Foreign Parent is engaged in Business A, Business B, Business C and Business D through its numerous subsidiaries.

Distributing, a wholly-owned subsidiary of Foreign Parent, is a domestic corporation, incorporated in State X. Distributing is the common parent of an affiliated group filing a consolidated federal income tax return. Distributing is directly engaged in Business D Segment 1. Distributing uses the accrual method of accounting.

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Controlled is a domestic corporation incorporated in State Y. Distributing owns X% of Controlled (which is greater than 80%) and Foreign Transferee owns Y% of Controlled, equaling 100%. Controlled is engaged in Business E. Controlled has no subsidiaries and uses the accrual method of accounting.

Foreign Transferee is a wholly-owned subsidiary of Foreign Parent and was formed in Country A. It is classified as a partnership for Country A purposes and is an association for United States tax purposes. Foreign Transferee is engaged in Business E directly and through its subsidiaries.

FTSub1 is a wholly owned subsidiary of Foreign Transferee. FTSub1 is a domestic corporation incorporated in State W. FTSub1 is a holding company for operating subsidiaries engaged in Business E in various countries, including the United States.

FTSub1Sub is a domestic corporation incorporated in State W. FTSub1 owns all of the stock of FTSub1Sub, which is involved in Business E.

The taxpayer has supplied information which indicates that Distributing's Business D Segment 1 and Controlled's Business E each have had gross receipts and operating expenses representative of the active conduct of such businesses for each of the past five years.

To improve the fit and focus of Controlled's business within the Foreign Parent corporate structure and enhance Controlled's performance, the taxpayer has proposed the following transaction:

- (1) Distributing will distribute to Foreign Parent all of its ownership interest, constituting X% (greater than 80%) in Controlled. Distributing will not retain any stock or securities of Controlled. No other property will be distributed to Foreign Parent and Foreign Parent will retain all its stock in Distributing.
- (2) Foreign Parent will transfer all the Controlled stock received from Distributing to Foreign Transferee in a non-recognition transaction.
- (3) Foreign Parent will continue to own all the stock of Distributing and all the stock of Foreign Transferee. Foreign Transferee will own all the stock of Controlled and all the stock of FTSub1.

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The following representations have been made in connection with the proposed transaction:

- (1) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, as an employee, or in any capacity other than that of a shareholder of the corporation.
- (2) The five years of financial information submitted on behalf of Distributing is representative of the corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- (3) The gross assets of Business D Segment 1 have a fair market value that is greater than 5% of the total fair market value of Distributing's gross assets.
- (4) The five years of financial information submitted on behalf of Controlled is representative of the corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- (5) The gross assets of Controlled's Business E have a fair market value that is greater than 5% of the total fair market value of Controlled's gross assets.
- (6) Following the transaction, Distributing and Controlled will each continue the active conduct of its business, independently and with its separate employees.
- (7) The distribution of the stock of Controlled is carried out for the following corporate business purpose: To improve the fit and focus of Controlled's business within the Foreign Parent corporate structure and enhance Controlled's performance by (a) allowing Controlled's business and Transferee's business to function as a single worldwide enterprise under common management, (b) freeing Controlled from Distributing's corporate policies and practices which are suitable for Distributing's businesses but not for Controlled's business (including policies and practices relating to management compensation, inventory management, capital spending and worker safety practices), and (c) allowing

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Controlled to install human resources software that is needed for its business but is not a priority for Distributing's businesses. The transaction is motivated, in whole or substantial part, by this corporate business purpose.

- (8) Other than the transfer of the Controlled stock to Foreign Transferee, there is no plan or intention by the shareholders or security holders of the Distributing to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in, or securities of, either Distributing or Controlled corporation after the transaction.
- (9) There is no plan or intention by either Distributing or Controlled, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the transaction, other than through stock purchases meeting the requirements of section 4.05(1)(b) of Rev. Proc. 96-30.
- (10) Except for a possible merger of FTSub1Sub with Controlled in a transaction qualifying under §368(a), there is no plan or intention to liquidate either Distributing or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the transaction, except in the ordinary course of business.
- (11) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the distribution of Controlled stock.
- (12) 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. Further, Distributing's excess loss account with respect to the Controlled stock, if any, will be included in income immediately before the distribution.
- (13) Payments made in connection with all continuing transactions, if any, between Distributing and Controlled, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arms' length.
- (14) The distribution is not part of a plan or series of related transactions, within the meaning of §355(e), pursuant to

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which one or more persons will acquire, directly or indirectly, stock possessing 50% or more of the total combined voting power of all classes of stock or either Distributing or Controlled or stock possessing 50% or more of the total value of all classes of stock or either Distributing or Controlled.

- (15) Neither Distributing nor Controlled was or will be a "United States real property holding corporation", as defined in §897(c)(2), at any time during the five-year period ending on the date of Distributing's distribution of Controlled or immediately after the distribution.

Based solely on the information submitted and on the representations set forth above, it is held as follows:

- (1) No gain or loss will be recognized by Distributing upon the distribution of its stock in Controlled to Foreign Parent (§ 355(c)(1)).
- (2) No gain or loss will be recognized by (and no amount will be included in the income of) Foreign Parent upon the receipt of the Controlled stock (§ 355(a)(1)).
- (3) The aggregate basis of the Distributing stock and of the Controlled stock in the hands of Foreign Parent after the distribution to Foreign Parent will be the same as the aggregate basis of Distributing stock in the hands of Foreign Parent immediately prior to the distribution, allocated between the Distributing stock and the Controlled stock in proportion to the fair market value of each corporation's stock in accordance with §1.358-2(a)(2) of the Income Tax Regulations (§§ 358(a)(1), (b) and (c)).
- (4) The holding period of the Controlled stock received by Foreign Parent will include the holding period of the Distributing stock held by Foreign Parent with respect to which the distribution will be made, provided that the Distributing stock is held as a capital asset on the date of the distribution (§ 1223(1)).
- (5) Proper allocation of earnings and profits between Distributing and Controlled will be made under §§ 1.312-10(b) and 1.1502-33.

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- (6) Distributing will not recognize gain under §367(e)(1) on the distribution of Controlled stock to Foreign Parent (§1.367(e)-1(c)).

No opinion is expressed or implied concerning the tax consequences of any aspect of the transaction or item not discussed or referenced in the letter. Specifically, no opinion is expressed regarding whether any or all of the foreign corporations involved in the transaction are passive foreign investment companies (within the meaning of §1297(a)). If it is determined that any of the foreign corporations are passive foreign investment companies, no opinion is expressed with respect to the application of §§1291 through 1298 to the proposed transaction. In particular, in a transaction in which gain is not otherwise recognized, regulations under §1291(f) may require gain recognition notwithstanding any other provision of the Code.

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

Each affected taxpayer should attach a copy of this letter to the taxpayer's federal income tax returns for the taxable year in which the transaction covered by this ruling is consummated.

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.

Sincerely yours,

Ken Cohen

Ken Cohen
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(Corporate)