

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Date:
September 30, 2009

LEGEND:

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Distributing =

Controlled =

Partnership =

a =

b =

c =

d =

e =

f =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Business A =

Business B =

Country A =

Territory A =

Territory B =

Dear

This letter responds to your May 6, 2009 request for rulings as to the federal income tax consequences of a proposed transaction. The information submitted for consideration in that letter and in later correspondence is summarized below.

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.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the proposed transaction (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 the distributing corporation or the controlled corporation or both (see §355(a)(1)(B) of the Internal Revenue Code, as amended (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 the distributing corporation or the controlled corporation (see §355(e) and §1.355-7).

SUMMARY OF FACTS

Parent, a publicly-traded corporation, is the common parent of an affiliated group of corporations that files a consolidated U.S. federal income tax return, including Sub 1 and Sub 2. Parent wholly owns Sub 1. Sub 1 wholly owns Sub 2. Sub 2 (the "Shareholder") wholly owns Distributing. Distributing, a corporation formed under the laws of Country A, is a controlled foreign corporation ("CFC") as defined in §957. Distributing wholly owns Controlled.

Shareholder acquired its shares of Distributing on different dates. In Date 1, Sub 3, a former wholly-owned subsidiary of Shareholder, acquired a percent of the shares of Distributing as a result of its b percent investment in Partnership. Prior to Date 2 Sub 3 purchased c percent of the shares in Distributing. On Date 3, Shareholder purchased d percent of the shares in Distributing. On Date 4, Shareholder purchased the remaining e percent interest in Partnership, thereby causing all of the interests in Partnership to be owned within the Parent group. Partnership in turn owned f percent of the shares in Distributing. The remaining Distributing shares were owned by the public. Shareholder acquired the majority of the Distributing shares upon the liquidations of Partnership and Sub 3, which occurred on Date 5 and Date 6, respectively. The taxpayer has

represented that the liquidation of Sub 3 qualified as a complete liquidation under §332. After Date 6, Shareholder acquired the remaining shares of Distributing in a series of purchases from the public.

The Distributing shares are comprised of both registered shares and unregistered bearer shares. Shareholder is unable to specifically identify the shares by reference to share certificates or otherwise and must designate which shares were involved in these transactions.

Distributing and members of its separate affiliated group, as defined in §355(b)(3)(B) (the "Distributing SAG"), conduct Business A and Business B. Following the Exchange (described below), (i) the Distributing SAG will conduct Business A and Business B in Territory A, and (ii) Controlled and members of its separate affiliated group, as defined in §355(b)(3)(B) (the "Controlled SAG"), will conduct Business A in Territory B.

Financial information has been received indicating that 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 corporate business purposes, Distributing will distribute all of the outstanding shares of Controlled to Shareholder in exchange for a portion of Shareholder's shares of Distributing (the "Exchange").

REPRESENTATIONS

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

- (a) The fair market value of the Controlled stock to be received by Shareholder will be equal to the fair market value of the Distributing stock surrendered in the Exchange.
- (b) No part of the consideration to be distributed by Distributing will be received by Shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (c) The five years of financial information submitted on behalf of Business A and Business B (as conducted by the Distributing SAG) is representative of the present operations of Business A and Business B, and there have been no

- substantial operational changes since the date of the last financial statements submitted.
- (d) Following the transaction, Distributing and Controlled will continue the active conduct of their respective businesses, independently and with their own employees.
 - (e) The transaction is being carried for the following corporate business purposes: (i) to reduce the regulatory burdens associated with foreign ownership in a domestic corporation; including, most significantly, eliminating capital restraints placed upon Controlled by the foreign regulatory system; (ii) to enhance the success of the business by enabling the business to resolve management, systemic, and other problems that have been exacerbated by the current ownership structure; and (iii) to reduce administrative costs associated by virtue of foreign ownership in a domestic corporation. The proposed transaction is motivated in whole or substantial part, by one or more of these corporate business purposes.
 - (f) The transaction is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
 - (g) Distributing neither accumulated its receivables nor made an extraordinary payment of its payables in anticipation of the transaction.
 - (h) No intercorporate debt will exist between Distributing and Controlled at the time of or subsequent to the proposed transaction.
 - (i) 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 arm's length.
 - (j) No two parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
 - (k) The Exchange 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 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 corporation).
 - (l) Neither Distributing nor Controlled will be a disqualified investment corporation within the meaning of §355(g)(2).

- (m) Shareholder will designate that each share of stock of Controlled is received in exchange for all or a portion of the c percent and d percent blocks of Distributing shares.
- (n) The allocation of basis under §358 will not result in the Controlled stock having a higher basis than it had immediately before the Exchange.
- (o) Controlled has not been a United States real property holding corporation as defined in §897(c) at any time during the 5-year period ending on the date of the distribution, and will not be a United States real property holding corporation immediately thereafter.
- (p) Distributing will be a controlled foreign corporation, within the meaning of §957(a), immediately before and after the distribution.
- (q) Shareholder will be a §1248 shareholder, within the meaning of §1.367(b)-2(b), with respect to Distributing immediately before and after the distribution.
- (r) Distributing will not be a passive foreign investment company ("PFIC") within the meaning of §1297(a) immediately before or after the distribution.

RULINGS

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

- (1) No gain or loss will be recognized by Distributing on the Exchange (§355(c)).
- (2) No gain or loss will be recognized by (and no amount will be otherwise included in the income of) Shareholder upon its receipt of the Controlled stock (§355(a)).
- (3) The basis of the Controlled stock received by Shareholder immediately after the Exchange will equal the basis of the Distributing shares surrendered in exchange therefor (§ 358(a)(1)). Shareholder will specifically designate a portion of the c percent and d percent blocks of Distributing shares as the shares exchanged for the shares of Controlled stock, in accordance with §§1.358-2(a)(2)(i) and 1.358-2(a)(2)(vii).
- (4) The Exchange will be a distribution to which §§1.367(b)-1(c), 1.367(b)-5(a), and 1.367(b)-5(c) apply. If Shareholder's postdistribution amount (as defined in §1.367(b)-5(e)(2)) with respect to Distributing or Controlled is less than Shareholder's predistribution amount (as defined in §1.367(b)-5(e)(1)) with respect to Distributing or Controlled, then Shareholder's basis in such stock

immediately after the distribution must be reduced by the amount of the difference. However, Shareholder's basis in such stock must not be reduced below zero, and to the extent the foregoing reduction would reduce basis below zero, then Shareholder must instead include such amount in income as a deemed dividend from such corporation. If Shareholder reduces its basis in the stock of Distributing or Controlled (or has an inclusion with respect to such stock), then Shareholder shall increase its basis in the stock of the other corporation to the extent provided in §1.367(b)-5(c)(4).

- (5) Shareholder's holding period in the Controlled stock received will include the holding period of the Distributing stock exchanged therefor, provided that the Distributing stock is held as a capital asset on the date of the Exchange (§1223(1)).
- (6) Distributing and Controlled will allocate their earnings and profits in accordance with §312(h) and §1.312-10(b).

CAVEATS

No opinion is expressed about the tax treatment of the Exchange under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Exchange that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the distribution satisfies the business purpose requirement of §1.355-2(b); (ii) whether the proposed transaction is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see §355(a)(1)(B) and §1355-2(d)); and (iii) whether the proposed transaction is part of a plan (or series of related transactions) under §355(e)(2)(A)(ii). Additionally, no opinion is expressed regarding the following:

- (1) The adjustments to earnings and profits or deficits in earnings and profits, if any, in any of the transactions to which §§367(a) or (b) apply.
- (2) To the extent not otherwise specifically ruled upon above, any other consequences under §367 or any internal restructuring transaction in this ruling letter.

PROCEDURAL STATEMENTS

A copy of this 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 letter.

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.

Sincerely,

Mark Weiss
Assistant to the Chief, Branch 1
Office of Associate Chief Counsel (Corporate)