

Sub 5 =

Sub 6 =

Business A =

Business B =

Date C =

Country D =

a =

b =

Dear :

This letter responds to your authorized representative's letter dated September 19, 2011, requesting rulings under sections 355 and 368 and related provisions with respect to the Proposed Transaction (defined below). The information submitted in that request and in subsequent correspondence is summarized below.

The rulings contained in this letter are based on information 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. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether Distribution 1 and Distribution 2 (each defined below): (i) satisfy the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) are used principally as a device for the distribution of the earnings and profits of Distributing 1, Distributing 2, Controlled 1, or Controlled 2 or any combination thereof (see § 355(a)(1)(B) of the Internal Revenue Code and § 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 Distributing 1, Distributing 2, Controlled 1, or Controlled 2 (see § 355(e) and § 1.355-7).

Facts

Parent (a foreign corporation) is the parent of a corporate group that includes domestic and foreign corporations engaged in Business A and Business B.

Parent wholly owns Sub 3 and Distributing 2. Distributing 2 is the common parent of an affiliated group of corporations that joins in the filing of a consolidated U.S. federal income tax return (collectively, the “Distributing 2 Group”).

Distributing 2 wholly owns Distributing 1. Distributing 1 wholly owns Sub 4, Sub 5, Sub 6, and Controlled 1. Distributing 1 may sell Sub 6 prior to the Proposed Transaction.

As of Date C, Distributing 2 had borrowed approximately \$a from Sub 3 (the “Sub 3 Debt”) and approximately \$b from Distributing 1 (the “Distributing 1 Debt”).

Certain members of the Distributing 2 Group conduct Business A and Business B. The taxpayer has submitted financial information indicating that Business A directly conducted by Sub 5 and Business B directly conducted by Controlled 1 each 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 reasons, the taxpayer proposes to undertake the following series of transactions (the “Proposed Transaction”):

- (i) Distributing 1 will contribute all the stock of Sub 4 and the Distributing 1 Debt to Controlled 1 (“Contribution 1”). If Distributing 1 does not sell Sub 6 prior to the Proposed Transaction, Sub 6 will also be contributed to Controlled 1 as part of Contribution 1.
- (ii) Distributing 1 will distribute Controlled 1 to Distributing 2 (“Distribution 1”).
- (iii) Distributing 2 will refinance the Sub 3 Debt into multiple tranches to apportion such debt between Business A and Business B.
- (iv) Distributing 2 will form Controlled 2 as a domestic corporation and contribute all the stock of Distributing 1 to Controlled 2 in exchange for Controlled 2 stock and the assumption of a portion of Distributing 2’s existing liabilities (“Contribution 2”).
- (v) Distributing 2 will distribute Controlled 2 to Parent (“Distribution 2”).

Following the Proposed Transaction, an entity owned, directly or indirectly, by Controlled 2 will provide administrative services to all U.S. entities owned by Distributing 2 and Controlled 2. The parties to the Proposed Transaction will execute an initial transitional services agreement (the "Transitional Services Agreement") with a term no longer than 24 months that will provide for recharging costs with a mark-up of five percent. No later than 24 months following the Proposed Transaction, these services will be provided at fair market value prices consistent with third party pricing.

Representations

Contribution 1 and Distribution 1

The taxpayer makes the following representations regarding Contribution 1 and Distribution 1:

(a1) The indebtedness, if any, owed by Controlled 1 to Distributing 1 after Distribution 1 will not constitute stock or securities.

(b1) No part of the consideration to be distributed by Distributing 1 in Distribution 1 will be received by Distributing 2 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.

(c1) In applying § 355(b)(2)(A) regarding the active trade or business requirement, Distributing 1 will treat all members of its separate affiliated group (the "Distributing 1 SAG") as defined in § 355(b)(3)(B), as one corporation.

(d1) The five years of financial information submitted on behalf of Sub 5 is representative of the present operations, and with regard to such operations, there have been no substantial operational changes since the date of the last financial statements submitted.

(e1) Neither Business A nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of Distribution 1 in a transaction in which gain or loss was recognized (or treated as recognized under proposed § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of Distribution 1, Sub 5 has been the principal owner of the goodwill and significant assets of Business A and will continue to be the principal owner following Distribution 1.

(f1) Following Distribution 1, the Distributing 1 SAG will continue the active conduct of Business A, independently and with its separate employees.

(g1) The five years of financial information submitted on behalf of Controlled 1 is representative of the present operations, and with regard to such operations, there

have been no substantial operational changes since the date of the last financial statements submitted.

(h1) Neither Business B, nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of Distribution 1 in a transaction in which gain or loss was recognized (or treated as recognized under proposed § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of Distribution 1, Controlled 1 has been the principal owner of the goodwill and significant assets of Business B and will continue to be the principal owner following Distribution 1.

(i1) Following Distribution 1, Controlled 1 will continue the active conduct of Business B, independently and with its separate employees.

(j1) Distribution 1 is being carried out for the corporate business purpose of facilitating Distribution 2. Distribution 1 is motivated, in whole or substantial part, by this corporate business purpose.

(k1) Distribution 1 is not being used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled 1 or both. See § 355(a)(1)(B).

(l1) For purposes of § 355(d), immediately after Distribution 1, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing 1 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 Distribution 1.

(m1) For purposes of § 355(d), immediately after Distribution 1, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 1 stock that was either (i) 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 Distribution 1 or (ii) attributable to distributions on Distributing 1 stock or securities 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 Distribution 1.

(n1) Distribution 1 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 1 or Controlled 1 (including any predecessor or successor of any such corporation).

(o1) Immediately after the transaction (taking into account § 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of § 355(g)(3)) in the stock of Distributing 1 or Controlled 1 who did not hold such an interest immediately before the transaction or (ii) neither Distributing 1 nor Controlled 1 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

(p1) The total adjusted bases and the fair market value of the assets transferred to Controlled 1 by Distributing 1 will equal or exceed the sum of the liabilities assumed (as determined under § 357(d)) by Controlled 1 plus any liabilities to which the transferred assets are subject.

(q1) The liabilities assumed, if any, (as determined under § 357(d)) by Controlled 1 were incurred in the ordinary course of business and are associated with the assets being transferred.

(r1) The total fair market value of the assets transferred by Distributing 1 to Controlled 1 in Contribution 1 will exceed the sum of: (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 1 in connection with the exchange, (ii) the amount of any liabilities owed to Controlled 1 by Distributing 1 that are discharged or extinguished in connection with the exchange, and (iii) the amount of cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing 1 in connection with the exchange. The fair market value of the assets of Controlled 1 will exceed the amount of its liabilities immediately after the exchange.

(s1) No intercorporate debt will exist between Distributing 1 and Controlled 1 at the time of, or subsequent to, Distribution 1.

(t1) Immediately before Distribution 1, 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 publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). At the time of Distribution 1, Distributing 1 will not have an excess loss account in the Controlled 1 stock.

(u1) Apart from payments for certain services that may be rendered under the Transitional Services Agreement, payments made in connection with all continuing transactions between Distributing 1 and Controlled 1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(v1) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(w1) Distributing 1 and Controlled 1 each will pay its own expenses, if any, incurred in connection with Distribution 1.

Contribution 2 and Distribution 2

The taxpayer makes the following representations regarding Contribution 2 and Distribution 2:

(a2) The indebtedness, if any, owed by Controlled 2 to Distributing 2 after Distribution 2 will not constitute stock or securities.

(b2) No part of the consideration to be distributed by Distributing 2 in Distribution 2 will be received by Parent as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.

(c2) In applying § 355(b)(2)(A) regarding the active trade or business requirement, Distributing 2 will treat all members of its separate affiliated group (the "Distributing 2 SAG") as defined in § 355(b)(3)(B), as one corporation.

(d2) The five years of financial information submitted on behalf of Controlled 1 is representative of the present operations, and with regard to such operations, there have been no substantial operational changes since the date of the last financial statements submitted.

(e2) Neither Business B, nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of Distribution 2 in a transaction in which gain or loss was recognized (or treated as recognized under proposed § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of Distribution 2, Controlled 1 has been the principal owner of the goodwill and significant assets of Business B and will continue to be the principal owner following Distribution 2.

(f2) Following Distribution 2, the Distributing 2 SAG will continue the active conduct of Business B, independently and with its separate employees.

(g2) In applying § 355(b)(2)(A) regarding the active trade or business requirement, Controlled 2 will treat all members of its separate affiliated group (the "Controlled 2 SAG") as defined in § 355(b)(3)(B), as one corporation.

(h2) The five years of financial information submitted on behalf of Sub 5 is representative of the present operations, and with regard to such operations, there have been no substantial operational changes since the date of the last financial statements submitted.

(i2) Neither Business A nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of Distribution 2 in a transaction in which gain or loss was recognized (or treated as recognized under proposed § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of Distribution 2, Sub 5 has been the principal owner of the goodwill and significant assets of Business A and will continue to be the principal owner following Distribution 2.

(j2) Following Distribution 2, the Controlled 2 SAG will continue the active conduct of Business A, independently and with its separate employees.

(k2) Distribution 2 is being carried out for the following corporate business purposes: (i) reducing litigation risk, (ii) aligning each business' organizational structure to match its corporate governance and management reporting functions, and (iii) resolving Country D tax uncertainty. Distribution 2 is motivated, in whole or substantial part, by one or more of these corporate business purposes.

(l2) Distribution 2 is not being used principally as a device for the distribution of the earnings and profits of Distributing 2 or Controlled 2 or both. See § 355(a)(1)(B).

(m2) For purposes of § 355(d), immediately after Distribution 2, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing 2 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 Distribution 2.

(n2) For purposes of § 355(d), immediately after Distribution 2, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 2 stock that was either (i) 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 Distribution 2 or (ii) attributable to distributions on Distributing 2 stock or securities 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 Distribution 2.

(o2) Distribution 2 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 2 or Controlled 2 (including any predecessor or successor of any such corporation).

(p2) Immediately after the transaction (taking into account § 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of

§ 355(g)(3)) in the stock of Distributing 2 or Controlled 2 who did not hold such an interest immediately before the transaction or (ii) neither Distributing 2 nor Controlled 2 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

(q2) The total adjusted bases and the fair market value of the assets transferred to Controlled 2 by Distributing 2 will equal or exceed the sum of the liabilities assumed (as determined under § 357(d)) by Controlled 2 plus any liabilities to which the transferred assets are subject.

(r2) The liabilities assumed, if any, (as determined under § 357(d)) by Controlled 2 were incurred in the ordinary course of business and are associated with the assets being transferred.

(s2) The total fair market value of the assets transferred by Distributing 2 to Controlled 2 in Contribution 2 will exceed the sum of: (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 2 in connection with the exchange, (ii) the amount of any liabilities owed to Controlled 2 by Distributing 2 that are discharged or extinguished in connection with the exchange, and (iii) the amount of cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing 2 in connection with the exchange. The fair market value of the assets of Controlled 2 will exceed the amount of its liabilities immediately after the exchange.

(t2) No intercorporate debt will exist between Distributing 2 and Controlled 2 at the time of, or subsequent to, Distribution 2.

(u2) Immediately before Distribution 2, 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 publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing 2's excess loss account, if any, with respect to the Controlled 2 stock will be included in income immediately before Distribution 2 (see § 1.1502-19).

(v2) Apart from payments for certain services that may be rendered under the Transitional Services Agreement, payments made in connection with all continuing transactions between Distributing 2 and Controlled 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(w2) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(x2) Distributing 2 and Controlled 2 each will pay its own expenses, if any, incurred in connection with Distribution 2.

Rulings

Contribution 1 and Distribution 1

Based solely on the information and representations submitted, we rule as follows on Contribution 1 and Distribution 1:

(1) Contribution 1 followed by Distribution 1 will be a reorganization within the meaning of § 368(a)(1)(D). Distributing 1 and Controlled 1 will each be “a party to a reorganization” within the meaning of § 368(b).

(2) Distributing 1 will recognize no gain or loss on Contribution 1 (§§ 357(a) and 361(a)).

(3) Controlled 1 will recognize no gain or loss on Contribution 1 (§ 1032(a)).

(4) Controlled 1's basis in each asset received in Contribution 1 will be the same as the basis of the asset in the hands of Distributing 1 immediately before Contribution 1 (§ 362(b)).

(5) Controlled 1's holding period for each asset received in Contribution 1 will include the period during which Distributing 1 held such asset (§ 1223(2)).

(6) Distributing 1 will recognize no gain or loss on Distribution 1 (§ 361(c)(1)).

(7) Distributing 2 will recognize no gain or loss (and no amount will be includible in its income) on the receipt of Controlled 1 stock in Distribution 1 (§ 355(a)(1)).

(8) The aggregate basis of the Distributing 1 stock and the Controlled 1 stock in the hands of Distributing 2 immediately after Distribution 1 will be the same as the aggregate basis of the Distributing 1 stock held by Distributing 2 immediately before Distribution 1, allocated between the stock of Distributing 1 and Controlled 1 in proportion to the fair market value of each in accordance with § 1.358-2(a) (§ 358(a), (b), and (c)).

(9) Distributing 2's holding period in the Controlled 1 stock received in Distribution 1 will include the holding period of the Distributing 1 stock on which Distribution 1 is made, provided that Distributing 2 holds such Distributing 1 stock as a capital asset on the date of Distribution 1 (§ 1223(1)).

(10) Earnings and profits will be allocated between Distributing 1 and Controlled 1 in accordance with § 312(h) and § 1.312-10(a).

Contribution 2 and Distribution 2

Based solely on the information and representations submitted, we rule as follows on Contribution 2 and Distribution 2:

(11) Contribution 2 followed by Distribution 2 will be a reorganization within the meaning of § 368(a)(1)(D). Distributing 2 and Controlled 2 will each be “a party to a reorganization” within the meaning of § 368(b).

(12) Distributing 2 will recognize no gain or loss on Contribution 2 (§§ 357(a) and 361(a)).

(13) Controlled 2 will recognize no gain or loss on Contribution 2 (§ 1032(a)).

(14) Controlled 2’s basis in each asset received in Contribution 2 will be the same as the basis of the asset in the hands of Distributing 2 immediately before Contribution 2 (§ 362(b)).

(15) Controlled 2’s holding period for each asset received in Contribution 2 will include the period during which Distributing 2 held such asset (§ 1223(2)).

(16) Distributing 2 will recognize no gain or loss on Distribution 2 (§ 361(c)(1)).

(17) Parent will recognize no gain or loss (and no amount will be includible in its income) on the receipt of Controlled 2 stock in Distribution 2 (§ 355(a)(1)).

(18) The aggregate basis of the Distributing 2 stock and the Controlled 2 stock in the hands of Parent immediately after Distribution 2 will be the same as the aggregate basis of the Distributing 2 stock held by Parent immediately before Distribution 2, allocated between the stock of Distributing 2 and Controlled 2 in proportion to the fair market value of each in accordance with § 1.358-2(a) (§ 358(a), (b), and (c)).

(19) Parent’s holding period in the Controlled 2 stock received in Distribution 2 will include the holding period of the Distributing 2 stock on which Distribution 2 is made, provided that Parent holds such Distributing 2 stock as a capital asset on the date of Distribution 2 (§ 1223(1)).

(20) Earnings and profits will be allocated between Distributing 2 and Controlled 2 in accordance with § 312(h) and §§ 1.312-10(a) 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 on 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, this office has not reviewed any information pertaining to and has made no determination regarding:

- (i) Whether Distribution 1 and Distribution 2 satisfy the business purpose requirement of § 1.355-2(b);
- (ii) Whether Distribution 1 and Distribution 2 are used principally as a device for the distribution of the earnings and profits of Distributing 1, Distributing 2, Controlled 1, or Controlled 2 or any combination thereof (see § 355(a)(1)(B) and § 1.355-2(d)); and
- (iii) Whether Distribution 1 and Distribution 2 and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii).

Procedural Statements

This ruling is directed only to the taxpayer requesting 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 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 the letter ruling.

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,

Marie C. Milnes-Vasquez
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel (Corporate)