

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201232014**
Release Date: 8/10/2012
Index Number: 368.04-00, 355.01-00

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact: _____, ID No. _____
Telephone Number: _____

Refer Reply To:
CC:CORP:B01
PLR-122628-11
Date:
February 16, 2012

LEGEND

Distributing =

StateA =

ABusiness =

ProductA =

ProductB =

LocationA =

CountryA =

BBusiness =

EntityA =

EntityB =

CBusiness =

Date1 =

Controlled =
Date2 =
A\$ =
B\$ =
C\$ =
D\$ =
E\$ =
F\$ =
ForcoA =

Dear :

This letter responds to your authorized representative's letter dated May 26, 2011, requesting rulings under sections 355 and 368 and related provisions with respect to a proposed transaction described 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 the Distribution (defined below): (i) satisfies the business purpose requirement of §1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or controlled corporation or both (see section 355(a)(1)(B) of the Internal Revenue 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 controlled corporation (see section 355(e) and §1.355-7).

SUMMARY OF FACTS

Distributing is a widely held, publicly traded StateA corporation with a single class of common stock outstanding (Distributing Common Stock). Distributing is the common parent of a group of corporations, including a U.S. group filing a consolidated federal income tax return and numerous foreign subsidiaries.

Within Distributing's worldwide operations, Distributing operates the ABusiness. The ABusiness produces ProductA and ProductB products that are sold in major markets around the world including LocationA and CountryA (the "BBusiness"). Most of the assets and entities related to the ABusiness, including certain foreign subsidiaries (the "ProductA Sub Creditors"), are owned directly or indirectly by EntityA, the predecessor to "Controlled" (as defined below), which is a disregarded entity owned by EntityB, which is a disregarded entity owned by Distributing.

Distributing also operates the CBusiness.

Financial information has been submitted which indicates that the BBusiness and the CBusiness, as currently conducted, have had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past 5 years.

PROPOSED TRANSACTION

For what are represented to be valid business reasons, Distributing proposes to undertake the following series of transactions pursuant to a plan of reorganization (the "Proposed Transaction") (references to "the Distribution" are as defined below in step 8):

1. EntityA elects to be treated as a corporation for U.S. federal income tax purposes as of Date1 (the "Controlled Formation") and changes its name and form of incorporation to Controlled effective Date2.
2. Controlled distributes, sells, or otherwise transfers the assets unrelated to the ABusiness to Distributing and Controlled undertakes certain restructuring transactions so that the entity conducting the BBusiness is directly held by Controlled at the time of the Distribution.
3. Distributing issues up to approximately A\$ aggregate principal amount of New Distributing Securities ("NDS") to third party investors in one or more issuances effected at least five days before the declaration date of the Distribution and at least fourteen days prior to the Distribution.
4. Distributing contributes all of the "Contributed Assets" (which includes both the assets and outstanding membership interests and stock in entities of the ABusiness that it holds directly and certain additional assets and entities that were not deemed contributed to Controlled in the Controlled Formation, and also the assets deemed

contributed in the Controlled Formation) to Controlled in exchange for up to B\$ in cash (the "Cash Amount"), the assumption of certain liabilities, Controlled Common Stock, and approximately C\$ of general, senior, unsecured obligations of Controlled (the "Controlled Securities") (the contribution of the Contributed Assets, including in the Controlled Formation, the "Contribution").

5. Controlled negotiates and enters into an agreement with third party lenders to borrow approximately D\$ (the "Special Dividend Borrowing" and the proceeds of such borrowing, the "Special Dividend Borrowing Proceeds"). Controlled will not draw funds down under the Special Dividend Borrowing until after the Distribution, but it is expected that the only condition to the closing of the Special Dividend Borrowing will be the occurrence of the Distribution.

6. Distributing declares the dividend of Controlled Common Stock at least five days after the issuance of the NDS.

7. Approximately ten days prior to the Distribution, the board of directors of Controlled declares a E\$ per share special dividend to the shareholders of record of Controlled Common Stock as of the date of the Distribution immediately following the Distribution (the "Controlled Special Dividend"). The Controlled Special Dividend will be conditioned upon the occurrence of the Distribution and the closing of the Special Dividend Borrowing.

8. At least fourteen days after the issuance of NDS, Distributing will distribute Controlled Common Stock to an independent exchange agent on behalf of Distributing's Common Stock shareholders ("the Distribution"). Distributing will not actually distribute fractional shares of Controlled Common Stock in the Distribution, but will transfer such interests on behalf of such holders to the independent exchange agent. Controlled will redeem such fractional shares for cash by delivering the payment to the independent exchange agent for the benefit of the Controlled shareholders. To the extent that Distributing determines not to effect the Exchange (described below) the independent exchange agent will (1) distribute the Controlled Common Stock to Distributing's Common Stock shareholders and (2) aggregate and sell any fractional shares of Controlled Common Stock and distribute the net proceeds of the sale to the beneficial owners of Distributing Common Stock that otherwise would have received fractional shares of Controlled Common Stock.

9. Substantially contemporaneous with the Distribution and as part of the plan of reorganization and in any event at least fourteen days after any issuance of NDS, Distributing will deliver up to A\$ of Controlled Securities to investors in satisfaction of the NDS and approximately F\$ of Controlled Securities to the ProductA Sub Creditors in satisfaction of loans (the "ProductA Sub Loans") on which Distributing is the obligor outstanding at the time of the Distribution between Distributing and the ProductA Sub Creditors (collectively, the "Debt Exchange").

10. The Special Dividend Borrowing is funded and Controlled will receive the Special Dividend Borrowing proceeds.

11. Within three days, and likely within one day following the Distribution, Controlled will pay the Controlled Special Dividend to the shareholders of record of Controlled Common Stock as of the date of the Distribution immediately following the Distribution by delivering the payment to the independent exchange agent for the benefit of the Controlled shareholders.

12. Following the Distribution and as part of the plan of reorganization, Distributing will distribute the full amount of the Cash Amount to its creditors to repay or redeem outstanding Distributing indebtedness. Distributing intends to effect such repayments or redemptions as promptly as practicable following the Distribution, consistent with sound business practices, and in any event not later than the first anniversary of the Distribution.

13. Prior to the Distribution and to the extent Distributing has previously determined to undertake the "Exchange" (as described herein), Controlled or designated incorporators will form ForcoA (which will be treated as a corporation for U.S. federal income tax purposes) with minimal capital, and ForcoA will form MergerCo (a domestic corporation). After the Distribution and the distribution of the Controlled Special Dividend to the independent exchange agent for the benefit of the Controlled shareholders, to the extent Distributing has previously determined to do so, for good and valid business purposes, in a transaction intended to qualify as a reorganization under section 368, the following will occur (the "Exchange"). MergerCo will merge with and into Controlled with Controlled surviving. All shares of Controlled Common Stock held by the independent exchange agent on behalf of the Controlled shareholders will be exchanged for ForcoA Common Stock and: (1) Controlled shareholders will receive stock of ForcoA and the cash attributable to the Controlled Special Dividend and any fractional shares redeemed by Controlled held by the independent exchange agent and (2) ForcoA will receive all of the common shares of Controlled. The nominal shares in ForcoA held by Controlled will be canceled. It is expected that the Controlled Common Stock shareholders will recognize any realized gain under section 367(a) with respect to their exchange of Controlled Common Stock for ForcoA Common Stock in the Exchange.

REPRESENTATIONS

The taxpayer makes the following representations regarding the Proposed Transaction:

(a) Distributing and Controlled and the shareholders of Distributing will pay their respective expenses, if any, incurred in connection with the Proposed Transaction.

(b) Indebtedness, if any, owed by Controlled to Distributing after the Distribution will not constitute stock or securities.

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

(d) No part of the consideration to be distributed by Distributing in the Distribution will be received by a security holder as an employee, or in any capacity other than that of a security holder of Distributing.

(e) Distributing and Controlled will treat all members of their respective separate affiliated groups (as defined in section 355(b)(3)(B)) ("SAG") as one corporation in determining whether the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.

(f) The five years of financial information submitted on behalf of the CBusiness is representative of the business's present operation, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(g) The five years of financial information submitted on behalf of the BBusiness that will be transferred to Controlled is representative of the business's present operation, and with regard to the BBusiness, there have been no substantial operational changes since the date of the last financial statements submitted.

(h) The Distributing SAG neither acquired the CBusiness nor acquired control of an entity conducting the CBusiness during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the Distribution, the Distributing SAG has been the principal owner of the goodwill and significant assets of the CBusiness and will continue to be the principal owner following the Distribution.

(i) The Distributing SAG neither acquired the BBusiness nor acquired control of an entity conducting the BBusiness during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the Distribution, the Distributing SAG has been the principal owner of the goodwill and significant assets of the BBusiness and the Controlled SAG will continue to be the principal owner following the Distribution.

(j) Following the Distribution, each of the Distributing SAG and the Controlled SAG will continue the active conduct of the CBusiness and the BBusiness, respectively, independently and with separate employees.

(k) The Distribution is being carried out for the following corporate business purposes and is motivated, in whole or substantial part, by one or more of these corporate business purposes: (1) enhancing the ability of each of Distributing and Controlled to use its stock as acquisition currency, as a means of raising capital and for employee compensation, (2) creating two “pure-play” companies, which is expected to enhance the ability of each of Distributing and Controlled to obtain coverage from equity research analysts, to attract new investors, and to capitalize on appropriate growth opportunities, (3) permitting each of Distributing and Controlled to independently optimize its capital structure, and (4) enabling the management of each of Distributing and Controlled to focus exclusively on the strategic, capital structure and operational issues facing their respective businesses without having to divert human and financial resources to the other business or being constrained by limitations imposed by a board and corporate management responsible for overseeing both the ABusiness and the CBusiness. Distributing has substantial non-tax business purposes for effecting the Distribution without regard to the Exchange.

(l) Taking into account the exchange of Controlled Common Stock for ForcoA Common Stock in the Exchange (including the resulting Section 367(a) gain recognition), the Distribution is not being used principally as a device for the distribution of earnings and profits of any of Distributing, ForcoA, or Controlled.

(m) There is no plan or intention by Distributing, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the Distribution, other than through stock purchases meeting the requirements of section 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696, except that such repurchases may be effected through open market purchases, block purchases, accelerated share repurchase transactions, Dutch auction tender offers, or some combination thereof.

(n) There is no plan or intention by Controlled or ForcoA, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the Distribution, other than through stock purchases meeting the requirements of section 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696, except that such repurchases may be effected through open market purchases, block purchases, accelerated share repurchase transactions, Dutch auction tender offers, or some combination thereof.

(o) The total adjusted basis and the fair market value of the assets transferred to Controlled in the Contribution will equal or exceed the sum of (i) the total amount of any liabilities assumed (as determined under section 357(d)) by Controlled and (ii) the total amount of any money and the fair market value of any other property (within the

meaning of section 361(b)) received by Distributing and transferred to its creditors in connection with the reorganization.

(p) No investment credit determined under section 46 has been (or will be) claimed with respect to any property contributed to Controlled by Distributing in connection with the Distribution.

(q) The Distribution does not involve and will not result in a situation in which one party recognizes income but another party recognizes the deductions associated with such income or one party owns property but another party recognizes the income associated with such property.

(r) Consistent with the satisfaction of the ProductA Sub Loans with Controlled Securities in the Debt Exchange, no intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution.

(s) 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 (including, without limitation, §§1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 C.B. 147, and as currently in effect as published by T.D. 8597). Distributing's excess loss account with respect to the Controlled stock, if any, will be included in income immediately before the Distribution.

(t) Payments made in connection with all continuing transactions 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 or with respect to transitional services not inconsistent with any Business Purpose or the Device Requirement.

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

(v) The Distribution 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 (other than ForcoA) will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of section 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).

(w) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.

(x) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.

(y) Immediately after the distribution, either (i) no person will hold a 50 percent or greater interest (within the meaning of section 355(g)(3)) in either Distributing or Controlled or (ii) neither Distributing nor Controlled is or will be a disqualified investment corporation for purposes of section 355(g).

(z) The total fair market value of the assets transferred to Controlled in the Contribution will be equal to or exceed the aggregate adjusted basis of those assets so transferred.

(aa) The fair market value of the assets transferred by Distributing to Controlled will equal or exceed the sum of: (a) the amount of any liabilities assumed (within the meaning of section 357(d)) by Controlled in the transaction, (b) the amount of any liabilities owed to Distributing by Controlled (if any) that are discharged or extinguished in connection with the Contribution, and (c) the amount of any cash and the fair market value of any property (other than stock and securities permitted to be received under section 361(a) without the recognition of gain) received by Distributing from Controlled in connection with the Contribution. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.

(bb) The Controlled Securities will constitute "securities" for purposes of sections 355 and 361.

(cc) The amount of NDS and ProductA Sub Loans exchanged for Controlled Securities in the Debt Exchange will not exceed the average of Distributing's outstanding third party indebtedness at the end of each of the four calendar quarters preceding the date on which the separation of the ABusiness and the CBusiness was first presented to Distributing's Board of Directors.

(dd) The entire amount of the Controlled Special Dividend will be paid out of Controlled's earnings and profits, and thus the full amount of the Controlled Special Dividend will be treated as a distribution taxable as a dividend under section 301(c)(1).

(ee) Distributing has no knowledge or belief that any shareholder of Distributing will have a plan or intention to sell, exchange, transfer by gift or otherwise dispose of its

stock in Distributing or Controlled after the Distribution other than in exchange for stock in ForcoA in the Exchange and in connection with the redemption or sale of any fractional shares, ordinary market trading or readjustments consistent with the relevant indices by shareholders that are index funds.

(ff) Distributing has no knowledge or belief that any shareholder of Distributing will have a plan or intention to sell, exchange, transfer by gift or otherwise dispose of its stock in ForcoA, whether on account of the section 367(a) gain recognition that occurs pursuant to the Exchange or otherwise (other than in connection with ordinary market trading or readjustments consistent with the relevant indices by shareholders that are index funds).

(gg) The Distribution and the Exchange are not being effected for the purpose of or with a view to facilitating any sales of stock of ForcoA by the shareholders after the Exchange, including by causing them to recognize gain upon the Exchange.

RULINGS

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

1. The Contribution followed by the Distribution will qualify as a reorganization within the meaning of section 368(a)(1)(D). See §301.7701-3(g)(1)(iv) and (2). Distributing and Controlled will each be "a party to the reorganization" within the meaning of section 368(b).
2. Distributing will recognize no gain or loss on the Contribution. Section 357(a) and section 361(a) and (b).
3. Controlled will recognize no gain or loss on the Contribution. Section 1032(a).
4. Controlled's basis in each asset received in the Contribution will be the same as the basis of the asset in the hands of Distributing immediately before the Contribution. Section 362(b).
5. Controlled's holding period in each asset received in the Contribution will include the period during which Distributing held such asset. Section 1223(2).
6. Distributing will recognize no gain or loss on the Distribution. Section 361(c).
7. Distributing will not recognize any income, gain, loss, or deduction with respect to the Controlled Securities, other than any (i) deductions attributable to the fact that NDS or the ProductA Sub Loans may be redeemed at a premium, (ii) income attributable to the

fact that NDS or the ProductA Sub Loans may be redeemed at a discount, (iii) and interest expense accrued with respect to the NDS or ProductA Sub Loans. Section 361(c).

8. No gain or loss will be recognized by (and no amount will be included in the income of) the Distributing shareholders upon the receipt of the Controlled Common Stock in the Distribution. Section 355(a)(1).

9. The aggregate basis of the Distributing Common Stock and the Controlled Common Stock in the hands of each Distributing shareholder (including any fractional share interest in Controlled Common Stock to which the shareholder may be entitled) immediately after the Distribution will equal the aggregate basis of the Distributing Common Stock held by such Distributing shareholder immediately before the Distribution, allocated in the manner described in §1.358-2. Section 358(a)(1), (b) and (c); §1.358-1(a).

10. Each Distributing shareholder's holding period in the Controlled Common Stock received in the Distribution (including any fractional share interest in Controlled Common Stock to which the shareholder may be entitled) will include the holding period of the Distributing Common Stock with respect to which the Distribution is made, provided that the shareholder holds such Distributing Common Stock as a capital asset on the date of the Distribution. Section 1223(1).

11. A shareholder who receives cash in lieu of fractional shares of Controlled Common Stock will recognize gain or loss measured by the difference between the basis of the fractional share received, as determined in ruling 9, and the amount of cash received. Section 1001. Any gain or loss will be treated as capital gain or loss, provided such fractional shares of stock will be held as capital assets on the date of the Distribution. Sections 1221 and 1222.

12. Earnings and profits (if any) will be allocated between Distributing and Controlled in accordance with section 312(h) and §§1.312-10(a) and 1.1502-33.

CAVEATS

We express no opinion about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that is not specifically covered by the above rulings. In particular, we express no opinion regarding:

(i) whether the Proposed Transaction 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 the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) and §1.355-2(d));

(iii) whether the Proposed Transaction is part of a plan (or series of related transactions) under §355(e)(2)(A)(ii); and

(iv) whether the transfer of Controlled Securities in the Debt Exchange will give rise to deductions, income or interest expense.

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer who requested 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 this letter ruling.

In accordance with a power of attorney on file in this office, a copy of this ruling letter is being sent to your authorized representative.

Sincerely,

Thomas I. Russell
Senior Counsel, Branch 1
Office of Associate Chief Counsel (Corporate)

cc: