

LLC 3 =

Corporation 1 =

Foreign Parent =

FCorp 1 =

FCorp 2 =

FCorp 3 =

FCorp 4 =

FCorp 5 =

FSub 1 =

FSub 2 =

FSub 3 =

FSub 4 =

FSub 5 =

FSub 6 =

FSub 7 =

FSub 8 =

FSub 9 =

Date 1 =

State A =

Country A =

Country B =

Country C =

Country D =

Country E =

Business A =

Business A1 =

Business B =

Business B1 =

Business C =

a =

b =

c =

d =

e =

f =

Dear

This letter responds to your August 23, 2013, letter requesting rulings on certain federal income tax consequences of a series of proposed transactions (the “Proposed Transactions”, as defined herein). The material information provided in that request and in subsequent correspondence is summarized below.

The rulings contained in this letter are based upon the 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. Moreover, this office has not reviewed any information pertaining to, and has made no determination regarding, whether any distribution occurring as part of the Proposed Transactions and for which qualification under section 355 of the Internal Revenue Code (the “Code”) is sought will (i) satisfy the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) be 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) be 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 section 355(e) and Treas. Reg. § 1.355-7).

SUMMARY OF FACTS

Except where noted, all entities are domestic corporations. Distributing is the common parent of an affiliated group of corporations that files a consolidated federal income tax return with its eligible affiliates (the “Distributing Group”). The authorized and outstanding capital stock of Distributing consists of one class of common stock that is wholly owned indirectly by Foreign Parent, a Country A corporation and the parent of a multi-national group of corporations that operates Business A, Business B, and Business C, among other businesses (the “Foreign Parent Group”). The stock of Foreign Parent is widely held and publicly traded.

Distributing will form Controlled for purposes of the Proposed Transactions. At its formation, Controlled will have one class of stock outstanding, all of which will be owned by Distributing.

Foreign Parent wholly owns FCorp 1, a Country A entity. FCorp 1 wholly owns FCorp 2, a Country A entity. FCorp 2 wholly owns FCorp 3, a Country B entity. FCorp 3 wholly owns FCorp 4, a Country B entity. FCorp 4 wholly owns FSub 1, a Country B entity that wholly owns FSub 2, a Country A entity, and FSub 3, a Country B entity.

FSub 1, FSub 2, and FSub 3 own a percent, b percent, and c percent, respectively, of the Distributing stock. Each FSub and FCorp in this and later paragraphs is classified as a corporation for federal income tax purposes under Treas. Reg. § 301.7701-3 immediately prior to the Proposed Transactions.

Distributing wholly owns Sub 1, LLC 1, and LLC 2. LLC 2 wholly owns LLC 3 and Sub 2, which wholly owns Sub 3. LLC 1 conducts Business C, and LLC 3 conducts Business A1. LLC 2 also wholly owns FSub 4, a Country C entity that conducts Business A and Business B. Distributing, Sub 1, LLC 2, Sub 2, and Sub 3 together conduct Business B1. Each LLC in this and later paragraphs is a limited liability company disregarded as separate from its regarded owner for federal income tax purposes under Treas. Reg. § 301.7701-3 (each, a “disregarded entity”) immediately prior to the Proposed Transactions.

FSub 1 wholly owns FSub 5, a Country A entity that will directly and indirectly conduct Business C in the Foreign Parent Group following the Proposed Transactions. FSub 1 also wholly owns FCorp 5, a Country E entity. FCorp 5 wholly owns FSub 6, a Country D entity, which in turn wholly owns FSub 7, a Country D entity, and several other non-United States entities classified as corporations for federal income tax purposes. FSub 7 wholly owns Corporation 1. FSub 7 and Corporation 1 conduct Business A in the Foreign Parent Group.

Trade payables arising in the ordinary course of business between and among members of the Distributing Group and other non-United States entities in the Foreign Parent Group and having minimal balances are settled between the parties on a monthly basis. Among these is an intercompany payable from FSub 1 to Distributing for certain services performed by Distributing (the “FSub 1 Payable”).

Distributing and members of its "separate affiliated group", as defined in section 355(b)(3)(B) (the "Distributing SAG"), conduct Business B, including Business B1. Controlled, as a result of the Proposed Transactions, will conduct Business A, including Business A1. Financial information has been received indicating that each of Business A1 and Business B1 has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing has decided to separate Business A, Business B, and Business C from one another (the “Separation”) for the following corporate business purpose: to optimize the potential of each business by allowing its managers to focus on the business for which they are responsible and consequently pursue a business strategy, and establish a capital structure and financial policies, aligned solely with that business (together, the “Corporate Business Purpose”).

PROPOSED TRANSACTIONS

To achieve the Corporate Business Purpose, Distributing has proposed and

partially completed the following series of transactions, which will occur in the order listed (collectively, the “Proposed Transactions”):

- (i) On Date 1, Distributing sold all of the ownership interests in LLC 1 to FSub 5 in exchange for \$d (“LLC 1 Sale”).
- (ii) Effective immediately after the LLC 1 Sale, LLC 1 made an entity classification election under Treas. Reg. § 301.7701-3 to be treated as an association taxable as a corporation for federal income tax purposes.
- (iii) All intercompany payables and receivables between and among Distributing, LLC 2, LLC 3, and FSub 4 will be settled through contributions and/or distributions of the intercompany receivables.
- (iv) FSub 4 will contribute all of its assets used to conduct Business B to newly formed FSub 8, a Country C entity that will be classified as a corporation for federal income tax purposes, in exchange for stock of FSub 8 and the assumption by FSub 8 of related liabilities.
- (v) FSub 4 will distribute all of the FSub 8 stock to LLC 2.
- (vi) LLC 2 will contribute all of the FSub 4 stock to LLC 3.
- (vii) LLC 2 will distribute all of the LLC 3 membership interests to Distributing.
- (viii) Distributing will form Controlled as a wholly owned subsidiary with e shares of common stock outstanding.
- (ix) FSub 2 and FSub 3 each will elect to be treated as a disregarded entity of FSub 1 with an effective date prior to the Distribution (as defined below).
- (x) LLC 3 will merge with and into Controlled, with Controlled surviving (“Contribution”).
- (xi) Distributing will distribute the Controlled stock pro rata to its shareholders, FSub 1, FSub 2, and FSub 3 (“Distribution”).
- (xii) FSub 2 and FSub 3, both disregarded entities of FSub 1, will distribute the Controlled stock received in the Distribution to FSub 1.
- (xiii) FSub 1 will contribute all of the Controlled stock to a disregarded entity of FSub 1 in exchange for membership interests in such disregarded entity.
- (xiv) Controlled will acquire the stock of Corporation 1 from FSub 7 in exchange for a promissory note bearing market terms.

- (xv) Corporation 1 will merge into Controlled, with Controlled surviving.
- (xvi) FSub 1, FSub 2, and FSub 3 will form FSub 9, a Country A entity classified as a corporation for federal income tax purposes, and will contribute the stock of Distributing to FSub 9 in exchange for common stock of FSub 9.

Following completion of the Proposed Transactions, the separation of Businesses A, B, and C from one another will be complete except for the Continuing Agreements (as defined herein) between and among Distributing, Controlled, and their respective subsidiaries designed to facilitate the separation of Business A from Business B. These agreements will include a Payroll Agreement and a Shared Services Agreement. Under the Shared Services Agreement, members of a shared services team will serve the needs of the Distributing SAG and Controlled SAG from a central location. The members of the shared services team will be employed by the Distributing SAG, and the services provided to the Controlled SAG will be reimbursed by the Controlled SAG at fair market value. In addition, certain administrative functions of the Distributing SAG and the Controlled SAG will continue to be conducted under the Payroll Agreement from a central location for a period of not more than months following the Distribution.

REPRESENTATIONS

Distributing has made the following representations for the Contribution and the Distribution:

- (a) Any indebtedness owed by Controlled (or any entity controlled directly or indirectly by Controlled) to Distributing (or any entity controlled directly or indirectly by Distributing) after the Distribution will not constitute stock or securities.
- (b) No part of the consideration to be distributed by Distributing in the Distribution will be received by any shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (c) Distributing will treat all members of its SAG (as defined in section 355(b)(3)(B)) as one corporation in determining whether the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business (Business B1) are satisfied. Controlled will conduct Business A1 directly.
- (d) The five years of financial information submitted on behalf of Business B1 (as conducted by the Distributing SAG) is representative of the present business operations of Business B1, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

- (e) The five years of financial information submitted on behalf of Business A1 (as conducted by Controlled) is representative of the present business operations of Business A1, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (f) Neither Business B1 conducted by the Distributing SAG nor control of an entity conducting this business will have been acquired 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 will have been the principal owner of the goodwill and significant assets of Business B1, and the Distributing SAG will continue to be the principal owner of the goodwill and significant assets of Business B1 following the Distribution.
- (g) Neither Business A1 to be conducted by Controlled following the Contribution nor control of an entity conducting this business will have been acquired 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 Contribution, LLC 3 will have been the principal owner of the goodwill and significant assets of Business A1, and following the Contribution and the Distribution, Controlled will be the principal owner.
- (h) Apart from transitional and administrative support services that may be provided under the Continuing Agreements, Controlled will continue the active conduct of Business A1, independently and with its separate employees, following the Distribution.
- (i) Apart from transitional and administrative support services that may be provided under the Continuing Agreements, the Distributing SAG will continue the active conduct of Business B1, independently and with its separate employees, following the Distribution.
- (j) The Distribution is being carried out to facilitate the Corporate Business Purpose. The Distribution is motivated in whole or substantial part by the Corporate Business Purpose.
- (k) The Distribution will not be used principally as a device for the distribution of the earnings and profits of Controlled or Distributing or both.
- (l) The total adjusted basis and the fair market value of the assets transferred to Controlled in the Contribution each will equal or exceed the total

liabilities (if any) to be assumed (as determined under section 357(d)) by Controlled.

- (m) Any liabilities assumed (as determined under section 357(d)) by Controlled in the Contribution will have been incurred in the ordinary course of business and will be associated with the assets transferred to Controlled in connection with the Contribution.
- (n) The total fair market value of the assets transferred to Controlled in the Contribution will exceed the sum of (i) the amount of any liabilities assumed (as determined under section 357(d)) by Controlled in connection with the Contribution, (ii) the amount of any liabilities (if any) owed to Controlled by Distributing that are discharged or extinguished in connection with the Contribution, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under section 361(a) without the recognition of gain) received by Distributing 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.
- (o) The aggregate fair market value of the assets Distributing transfers to Controlled in the Contribution will equal or exceed the aggregate adjusted basis of those assets.
- (p) No property will be transferred by Distributing to Controlled in the Contribution for which an investment credit allowed under section 46 has or will be claimed.
- (q) Distributing will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the Contribution and the Distribution.
- (r) No two parties to the Distribution are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (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 (see Treas. Reg. §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; Treas. Reg. § 1.1502-13 as published in T.D. 8597). Further, any excess loss account that Distributing has in the Controlled stock will be included in income immediately before the Distribution to the extent required by regulations (see Treas. Reg. § 1.1502-19). At the time of the Distribution, Distributing will not have an excess loss account in the stock of Controlled.

- (t) Apart from intercompany loans or other obligations that have arisen in the ordinary course of business, no intercorporate debt will exist between Controlled (or any entity controlled directly or indirectly by Controlled) and Distributing (or any entity controlled directly or indirectly by Distributing) at the time of, or after, the Distribution.
- (u) Payments made in connection with all continuing transactions, if any, between Controlled (or any entity controlled directly or indirectly by Controlled) and Distributing (or any entity controlled directly or indirectly by Distributing), including the Shared Services Agreement and Payroll Agreement (the "Continuing Agreements"), will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (v) 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.
- (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 Controlled common stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled common 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 or securities that were 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) The Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 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 section 355(d)(4)) in Controlled or Distributing (including any predecessor or successor of either corporation).
- (y) Immediately after the transaction (as defined in section 355(g)(4)), (i) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)) or (ii) no person will hold a 50-percent or greater interest in any disqualified investment corporation (within

the meaning of section 355(g)(3)) immediately after the transaction who did not so hold, directly or indirectly, such interest immediately before the transaction.

- (z) The distribution of Controlled stock to FSub 1, FSub 2, and FSub 3 in the Distribution is with respect to their ownership of Distributing stock.
- (aa) Any money, property, or stock contributed by Distributing to Controlled in the Contribution will be exchanged solely for stock or securities in Controlled.

OTHER REPRESENTATIONS

In addition, Distributing has made the following representations for other aspects of the Proposed Transactions:

- (bb) The Distribution will not result in the transfer of stock of any corporation that has been the United States transferor, the transferee foreign corporation, or the transferred corporation, or successor thereto, with respect to any unexpired "gain recognition agreement" within the meaning of Treas. Reg. §§ 1.367(a)-3, 1.367(a)-8, and 1.367(a)-8T.
- (cc) Neither Distributing nor any member of the Distributing Group, including Controlled, has incurred losses that are subject to an agreement, election, or certification filed pursuant to section 1503(d) and the regulations thereunder.
- (dd) Distributing will not have been at any time during the five-year period ending on the date of the Distribution a United States real property holding corporation, as defined under section 897(c) and Treas. Reg. § 1.897-2(b). Further, neither Distributing nor Controlled will be a United States real property holding corporation immediately after the Distribution.
- (ee) FSub 1 will establish that its interest in Distributing is not a United States real property interest, pursuant to Treas. Reg. § 1.897-2(g)(1)(i)(A), by obtaining a statement from Distributing in accordance with the provisions of Treas. Reg. § 1.897-2(g)(1)(ii).
- (ff) FSub 1 will establish that its interest in Controlled following the Distribution is not a United States real property interest by obtaining a statement from Controlled in accordance with the above provisions.
- (gg) Distributing and Controlled will provide notice to the Internal Revenue Service, pursuant to Treas. Reg. § 1.897-2(h)(2), and will provide a copy of the statements requested by FSub 1, to the Director, Ogden Service Center,

P.O. Box 409101, Ogden, UT 84409 on or before the 30th day after the requested statements are mailed to FSub 1.

- (hh) Distributing and Controlled will apply the provisions of Treas. Reg. § 1.1502-9T(c)(2), as applicable, for purposes of apportioning any Consolidated Overall Foreign Loss, Consolidated Separate Limitation Loss, or Consolidated Overall Domestic Loss, between Distributing and Controlled when Controlled ceases to be a member of the Distributing Group as a result of the Distribution.
- (ii) The steps of the Proposed Transactions for which rulings have not been requested will not affect the federal income tax consequences of the steps of the Proposed Transactions that are being ruled upon.

RULINGS

Based solely on the information submitted and the representations set forth above, and provided that (i) Distributing's distribution of Controlled stock to FSub 1, FSub 2, and FSub 3 in the Distribution is solely with respect to their ownership of Distributing stock, (ii) any money, property, or stock contributed by Distributing to Controlled in the Contribution is exchanged solely for stock or securities in Controlled, and (iii) any other transfer of stock, money, or property between Distributing, Controlled or any Distributing shareholder and any person related to Distributing, Controlled, or any Distributing shareholder is respected as a separate transaction, we rule as follows on the Contribution and the Distribution:

- (1) The Contribution together with the Distribution will qualify as a "reorganization" within the meaning of section 368(a)(1)(D). Each of Distributing and Controlled will be "a party to a reorganization" within the meaning of section 368(b).
- (2) No gain or loss will be recognized by Distributing on the Contribution (sections 361(a) and 357(a)).
- (3) No gain or loss will be recognized by Controlled on the Contribution (section 1032(a)).
- (4) The basis Controlled has in each asset received from Distributing in the Contribution will equal the basis of that asset in the hands of Distributing immediately before the Contribution (section 362(b)).
- (5) The holding period Controlled has in each asset received from Distributing in the Contribution will include the period during which Distributing held that asset. (section 1223(2)).

- (6) No gain or loss will be recognized by Distributing on its distribution of Controlled stock in the Distribution (section 361(c)(1) and Treas. Reg. §1.367(e)-1(c)).
- (7) No gain or loss will be recognized by (and no amount will be included in the income of) FSub 1 upon receipt of Controlled stock in the Distribution (section 355(a)).
- (8) The basis of the Distributing common stock and Controlled common stock in the hands of FSub 1 immediately after the Distribution will equal the basis of the Distributing stock held by FSub 1 immediately before the Distribution, (as adjusted under Treas. Reg. § 1.358-1) allocated between the stock of Distributing and Controlled in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2 (section 358(a), (b), and (c)).
- (9) The holding period of the Controlled common stock received by FSub 1 in the Distribution will include the holding period of the Distributing stock with respect to which the Distribution is made, provided the Distributing stock is held by FSub 1 as a capital asset on the date of the Distribution (section 1223(1)).
- (10) 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) and 1.1502-33(e)(3).

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. We express no opinion about the tax treatment of the Proposed Transactions under other provisions of the Code and regulations (including the international provisions) or the tax treatment of any condition existing at the time of, or effect resulting from, the Proposed Transactions that is not specifically covered by the above rulings. In particular, we express no opinion regarding:

- (i) Whether the Distribution satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b);
- (ii) Whether the Distribution is being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d));
- (iii) Whether the Distribution is part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7;

- (iv) The federal income tax treatment of the elimination of intercompany debts through repayment, distribution, assumption, or set-off, except as otherwise expressly provided;
- (v) The federal tax classification under Treas. Reg. §§ 301.7701, *et seq.*, of any of the entities involved in the Proposed Transactions, or the validity of any entity classification election made with respect to any of the entities;
- (vi) To the extent not otherwise specifically ruled on above, any other consequences under section 367 with respect to any transaction described in this letter ruling; and
- (vii) The federal income tax treatment or consequences of steps (i) through (viii), step (x), and steps (xii) through (xvi) of the Proposed Transactions, or of any other step not addressed in the Rulings portion of this letter.

PROCEDURAL MATTERS

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 ruling 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 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,

Kevin M. Jacobs
Kevin M. Jacobs
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel (Corporate)