

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **201949014**  
Release Date: 12/6/2019

Third Party Communication: None  
Date of Communication: Not Applicable

Index Number: 355.01-00, 355.00-00,  
361.00-00, 361.02-00,  
368.00-00, 368.04-00

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:CORP:2  
PLR-106631-19

Date:  
September 04, 2019

Legend

Distributing =

Controlled =

Foreign Parent =

FDRE1 =

FDRE2 =

FSub1 =

FSub2 =

FSub3 =

FSub4 =

FSub5 =

Sub1 =

Sub2 =

Sub3 =

Sub4 =

Sub5 =

Sub6 =

Sub7 =

Sub8 =

DRE1 =

DRE2 =

PRS1 =

Country A =

Country B =

Country C =

a =

b =

Business A =

Business B =

Services 1 =

Services 2 =

Dear :

This letter responds to your letter dated March 25, 2019, requesting rulings on certain federal income tax consequences of a proposed transaction (the "Proposed Transaction"). The material information provided in that letter and in subsequent correspondence is summarized below.

The rulings contained in this letter are based upon 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.

This letter is issued pursuant to Rev. Proc. 2017-52, 2017-42 I.R.B. 283, regarding a “Covered Transaction” under §§ 355 and 368 of the Internal Revenue Code (the “Code”). This Office expresses no opinion as to any issue not specifically addressed by the rulings below.

This office has made no determination regarding whether the Distribution (as defined below): (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) 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 § 355(a)(1)(B) and Treas. Reg. § 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, or any predecessor or successor of the distributing corporation or the controlled corporation, within the meaning of Treas. Reg. § 1.355-8T (see § 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

### **Summary of Facts**

Foreign Parent is a privately-owned, Country A entity that is treated as a corporation for federal income tax purposes. Foreign Parent is the parent of a worldwide group of entities that is engaged in Business A and Business B through direct and indirect domestic and foreign subsidiaries (the “Foreign Parent Worldwide Group”).

Foreign Parent owns all of the outstanding stock of FSub1 and FSub2, each of which is a Country A entity treated as a corporation for federal income tax purposes. Foreign Parent also wholly owns FDRE1, an entity that is treated as separate from its owner for US federal income tax purposes (a “disregarded entity”).

FDRE1 owns all of the outstanding stock of FDRE2, a disregarded entity. FDRE2 owns all of the outstanding stock of FSub5.

FSub5 directly owns all of the outstanding stock of Distributing, the common parent of an affiliated group of corporations whose includible corporations join in filing a consolidated federal income tax return (the “Distributing Consolidated Group”). Distributing wholly owns Sub1, Sub2, Sub3, Sub4, Sub5, Sub6, and Sub7. Sub1 wholly and directly owns Sub8. Each of Sub1, Sub2, Sub3, Sub4, Sub5, Sub6, Sub7, and Sub8 are members of the Distributing Consolidated Group.

Sub7 owns all of the interests in DRE1 and DRE2, each a disregarded entity. DRE1 owns a% of PRS1 (an amount constituting ownership of a significant amount of the interests of PRS1). The remaining interests in PRS1 are owned by an unrelated person.

Distributing is engaged in Business A and Business B through the Distributing Consolidated Group. Business A is conducted by DRE1, DRE2, PRS1, Sub5, and Sub6. Business B is conducted by Sub1, Sub2, Sub3, Sub4, and Sub8.

Financial information has been received indicating that Business A and Business B, as conducted by the Distributing Consolidated Group have had gross receipts and operating expenses representing the active conduct of a trade or business for at least the past five years.

### **Proposed Transaction**

For what are represented to be valid business purposes, Foreign Parent proposes to engage in the following transactions, some of which has been consummated, to separate Business A and Business B (such steps comprise the “Proposed Transaction”):

- (i) Foreign Parent formed FSub4, an entity organized under the laws of Country C and treated as a corporation for federal income tax purposes. FSub4 will form FSub3, an entity organized under the laws of Country A and treated as a corporation for federal income tax purposes.
- (ii) Distributing will form Controlled and will contribute the stock of Sub1, Sub2, Sub3, and Sub4 to Controlled in exchange for all of the stock of Controlled (the “Contribution”).
- (iii) Distributing will distribute all of the Controlled stock to FSub5 (the “Distribution”).
- (iv) FSub5 will distribute all of the Controlled stock to FDRE2.
- (v) Foreign Parent will borrow approximately \$b from FSub1.
- (vi) Foreign Parent will purchase all of the Controlled stock from FDRE2 in exchange for \$b.
- (vii) Foreign Parent will contribute all of the Controlled stock to FSub4.
- (viii) FSub4 will contribute all of the Controlled stock to FSub3.
- (ix) FDRE2 will transfer the \$b of proceeds from Step 6 to partially repay a debt it owes to FSub1.

Following the Proposed Transaction, one employee of DRE1 will provide Services 1 to the members of Controlled’s affiliated group (in addition to the individual’s performance of Services 1 to the members of Distributing’s affiliated group), at arm’s length pricing.

In addition, Sub8 will provide Services 2 to Sub5 and Sub6 upon terms, conditions, and pricing consistent with those arrived at by parties bargaining at arm's length.

### **Representations**

With respect to the Proposed Transaction, Distributing has made all of the representations in § 3 of the Appendix to Rev. Proc. 2017-52, 2017-41 I.R.B. 283, except as set forth below.

Distributing has made the following alternative representations:

Representations 3(a), 8(a), 11(a), 15(a), 22(a), 31(a), and 41(a).

Distributing has not made the following representations, which do not apply to the Distribution:

Representations 7, 19, 20, 24, 25, and 35.

Distributing has made the following modified representation:

Representation 44: The Distribution is not part of a plan (or series of related transactions) resulting in a foreign corporation being treated as a surrogate foreign corporation or a domestic corporation pursuant to § 7874(a)(2)(B) or (b).

### **Rulings**

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

- (1) The Contribution together with the Distribution will qualify as a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled will each be a "party to a reorganization" within the meaning of § 368(b).
- (2) Distributing will not recognize gain or loss in the Contribution. § 361(a).
- (3) Controlled will not recognize gain or loss in the Contribution. § 1032(a).
- (4) Controlled's basis in each asset received from Distributing in the Contribution will be the same as Distributing's basis in that asset immediately before the Contribution. § 362(b).
- (5) Controlled's holding period in each asset received from Distributing in the Contribution will include the period during which Distributing held such asset. § 1223(2).

- (6) Distributing will not recognize gain or loss upon the Distribution. § 361(c)(1); Treas. Reg. § 1.367(e)-1(c).
- (7) FSub5 will not recognize gain or loss (and no amount will be included in its income) upon its receipt of Controlled stock in the Distribution. § 355(a)(1).
- (8) FSub5's basis in its Distributing stock and Controlled stock immediately after the Distribution will be the same as its basis in its Distributing stock immediately before the Distribution, allocated between its Distributing stock and Controlled stock in proportion to the fair market value of each immediately following the Distribution in accordance with Treas. Reg. § 1.358-2(a)(2). § 358(b)(2), (c).
- (9) FSub5's holding period in its Controlled stock will include the holding period of its Distributing stock with respect to which the Distribution is made, provided FSub5 holds the Distributing stock as a capital asset on the date of the Distribution. § 1223(1).
- (10) The earnings and profits of Distributing will be allocated between Distributing and Controlled in accordance with § 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33.
- (11) Following the Distribution, Controlled will not be a successor of Distributing for purposes of § 1504(a)(3). Therefore, Controlled and its direct and indirect subsidiaries that are "includible corporations" under § 1504(b) and satisfy the ownership requirements of § 1504(a)(4) will be members of an affiliated group of corporations eligible to file a consolidated U.S. federal income tax return with Controlled as the common parent.

### **Caveats**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transaction under any provision of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the Proposed Transaction that is not specifically addressed by the above rulings.

### **Procedural Matters**

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 representatives.

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.

Sincerely,

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Mark J. Weiss  
Chief, Branch 2  
(Office of Associate Chief Counsel (Corporate))

cc: