

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B05
PLR-120497-22

Date:
March 10, 2023

Legend

Distributing =

Controlled =

Corp A =

Corp B =

DRE1 =

DRE 2 =

Business A =

Business B =

State A =

State B =

Country A =

Country B =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Year 7 =

Year 8 =

Date 1 =

Date 2 =

a =

b =

Dear :

This letter responds to your letter dated October 14, 2022 requesting rulings under § 355 and related provisions of the Internal Revenue Code (the “Code”) with respect to the proposed transaction described below (the “Proposed Transaction”). The material information submitted in that request is summarized below.

The rulings contained in this letter are based on the facts and representations submitted by the taxpayer and is 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, 2017-41 I.R.B. 283, regarding Transactional Rulings for Covered Transactions under section 355 of the Code. This

Office expresses no opinion as to the overall tax consequences of these transactions or as to any issue not specifically addressed by the rulings below.

This Office has made no determination regarding whether the Proposed Transaction: (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% 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. § 1.355-8 (see § 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

Summary of Facts

Corp A, a country A corporation, is the parent of a worldwide group that includes both domestic and foreign entities. Corp A owns all the stock of Corp B. Corp A and Corp B together own all the outstanding stock in Distributing. Distributing directly and indirectly owns corporations, entities disregarded as separate from their sole regarded owners under Treas. Reg. § 301.7701-3 for U.S. federal income tax purposes (“DREs”), and partnerships. Distributing and its eligible members join in the filing of a consolidated U.S. federal income tax return on a calendar year basis using the accrual method of accounting (the “Distributing Group”).

Distributing owns (i) all of the equity interests in DRE 1, and (ii) all of the outstanding stock in Controlled, a State B corporation. DRE 1, along with its lower tier DREs, is directly engaged in the operation of Business A. Since Date 1, Controlled has wholly owned DRE 2. DRE 2 and its lower tier DREs are directly engaged in the operation of Business B. Prior to Date 1, DRE 2 was a partnership of which Controlled (at the time a DRE of Distributing) owned a percent of the interests (a “significant interest” within the meaning of Rev. Rul. 2007-42, 2007-2 C.B. 44). On Date 1, Controlled acquired the remaining b percent of the partnership interests from an unrelated third party. On Date 2, in a transaction unrelated to the Proposed Transaction, Controlled converted from an LLC that was a DRE to a State B corporation.

Corp A and Corp B funded the initial acquisition and subsequent operations of Business B periodically through a series of intercompany advances from Year 1 to Year 7. Such intercompany advances were made either to Distributing (which then further provided the funds to Controlled) or directly to Controlled. As a result, there are three types of intercompany advances: (i) intercompany advances between Corp A and Distributing (the “Corp A-Distributing Advances”); (ii) intercompany advances between Corp A and Controlled (the “Corp A-Controlled Advances”); and (iii) intercompany advances between Corp B and Controlled (the “Corp B-Controlled Advances”) (collectively the “Shareholder Advances”).

Corp A-Distributing Advances were incurred in Year 1 through Year 3. Corp A-Controlled Advances were incurred in Year 1 through Year 3. Corp B-Controlled Advances were incurred in Year 4 through Year 7. None of the Shareholder Advances in Year 4 through Year 7 is evidenced by any formal documentation. In addition, no interest has accrued for book purposes, no interest has been deducted for U.S. federal income tax purposes, and no principal or interest payments have been made with respect to the Shareholder Advances.

During Year 5, the IRS Large Business and International (“LB&I”) division examined the returns of the Distributing Group for Year 1 through Year 4. The taxpayer agreed with the conclusion that the Shareholder Advances outstanding as of the end of Year 4 (the “Pre-Year 5 Shareholder Advances”) should be characterized as equity of Distributing rather than debt for U.S. federal income tax purposes and reflected the Pre-Year 5 Shareholder Advances as paid-in capital on Distributing’s returns for Year 1 through Year 4.

In Year 5 through Year 7, Corp B made additional advances to Controlled (the “Post-Year 4 Shareholder Advances”). The Post-Year 4 Shareholder Advances are the same, in both substance and form, as the Pre-Year 5 Shareholder Advances. There is no current LB&I examination of the Distributing Group for Year 5 through Year 7. The Post-Year 4 Shareholder Advances do not attach any legal rights with respect to Controlled, and Controlled did not issue equity or any similar instrument with respect to the advances. The taxpayer will take certain corrective actions with respect to the Post-Year 4 Shareholder Advances consistent with the treatment of the Pre-Year 5 Shareholder Advances as paid-in capital contributions.

Distributing will rely on Business A and Controlled will rely on Business B to satisfy the active trade or business requirements of section 355(b) with regards to the Proposed Transaction. Financial information has been submitted in accordance with Rev. Proc. 2017-52 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 engage in the following transaction (the “Separation”) to separate Business B from Business A:

1. Effective at least one day before Step 3, Corp B will file a “check-the-box” election pursuant to Treas. Reg. § 301.7701-3(c)(1) to be treated as a DRE for U.S. federal income tax purposes.

2. Corp A, Corp B, and Distributing will enter into an agreement, under which Corp A instructs Distributing to transfer all of the Controlled stock that Corp A would have received from Distributing, directly to Corp B.
3. Distributing will distribute all of the Controlled stock to Corp B (the "Distribution").

Representations

With respect to the Separation, except as otherwise set forth below, Distributing has made all of the representations in section 3 of the Appendix to Rev. Proc. 2017-52.

1. Distributing has made the following alternative representations: 3(a), 8(b), 11(a), 15(a), 31(a), and 41(a).
2. Distributing has not made the following representations, which do not apply to the Separation: 7, 17, 18, 19, 20, 22, 24, 25, 26, 35, and 39.
3. Representation 34 has been modified as follows: Distributing and Controlled each will pay its own expenses, if any, incurred in connection with the Distribution except that Distributing and its affiliates may pay certain corporate-level expenses that are solely and directly related (within the meaning of Rev. Rul. 73-54, 1973-1 C.B. 187) to the Distribution (such as legal, accounting, and other advisory fees and administrative expenses incurred in connection with the Distribution).

Rulings

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

1. No gain or loss will be recognized by Corp A upon receipt of the Controlled stock in the Separation. Section 355(a).
2. No gain or loss will be recognized by Distributing on the distribution of Controlled stock in the Separation. Section 355(c)(1).
3. The aggregate basis of the Distributing stock and the Controlled stock in the hands of Corp A immediately after the Distribution will be the same as Corp A's basis in the Distributing stock immediately before the Distribution, allocated between the Distributing stock and the Controlled stock in proportion to the fair market value of each immediately following the Distribution. Section 358(b)(2) and (c); Treas. Reg. § 1.358-2(a)(2)(v).
4. The holding period of the Controlled common stock received by Corp A in the Separation will include the holding period of the Controlled stock held by

Distributing with respect to which the Separation will be made, provided that such Controlled stock is held as a capital asset on the date of Separation. Section 1223(1).

5. Earnings and profits of Distributing, if any, will be allocated between Distributing and Controlled in accordance with section 312(h), Treas. Reg. § 1.312-10(b) and Treas. Reg. § 1.1502-33(e)(3).

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 this letter.

Procedural Statements

This ruling is directed only to the taxpayers 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 the 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 the letter ruling.

Pursuant to the power of attorney on file in this matter, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Mark Weiss

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

cc: