

**Internal Revenue Service**

Department of the Treasury  
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Person To Contact:

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Refer Reply To:  
CC:CORP:2  
PLR-121398-22

Date:  
April 13, 2023

**Legend**

Foreign Parent =

FSub1 =

FSub2 =

FSub3 =

FSub4 =

FSub5 =

Parent =

Sub1 =

Sub2 =

Sub3 =

Sub4 =

DRE =

Business A =

Business B =

Regulator =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

a =

b =

Agreement 1 =  
Agreement 2 =  
Agreement 3 =  
Agreement 4 =  
Agreement 5 =  
Continuing  
Transactions =

Dear \_\_\_\_\_ :

This letter responds to your authorized representatives' letter dated October 28, 2022, as supplemented by subsequent information and documentation, requesting rulings on certain federal tax consequences of a series of transactions (the "Proposed Transaction," as defined below). The material information submitted in that letter and subsequent correspondence is summarized below.

This letter is issued pursuant to Rev. Proc. 2017-52, 2017-41 I.R.B. 283, regarding one or more "Covered Transactions" under sections 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.

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 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.

This Office has made no determination regarding whether the First Distribution, Second Distribution, or Third Distribution (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 section 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. § 1.355-8 (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

### **Facts**

Foreign Parent acquired all the outstanding stock of FSub1 in a taxable purchase on Date 1. FSub1 wholly owns FSub2, which in turn wholly owns FSub3 and FSub4. FSub4 wholly owns FSub5. Each of Foreign Parent, FSub1, FSub2, FSub3, FSub4, and FSub5 is a foreign corporation classified as a corporation for U.S. federal income tax purposes. FSub3 wholly owns Parent.

Parent is a domestic corporation and the parent of an affiliated group of corporations that file a consolidated return for U.S. federal income tax purposes (the "Parent Group").

Parent wholly owns Sub1, a domestic corporation that qualifies as an insurance company (within the meaning of sections 816(a) and 831(c)) that is subject to tax under section 831(a). Sub1 is directly engaged in Business A. Parent also owns Sub2, a domestic corporation.

Sub1 wholly owns Sub3, a domestic corporation that qualifies as an insurance company (within the meaning of sections 816(a) and 831(c)) that is subject to tax under section 831(a). Sub3 is directly engaged in Business B. Sub1 also wholly owns Sub4, a domestic corporation, and DRE, a foreign eligible entity that is disregarded as separate from its owner for federal income tax purposes.

Historically, employees of each of Sub2 and Sub4 have provided various general services to Sub1, Sub3, and other members of the Parent Group. Likewise, employees of DRE have provided investment management services to Sub1, Sub3, and other members of the Parent Group.

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 business reasons, Parent proposes to engage in the following steps to separate Business A from Business B, some of which have been completed (collectively, the "Proposed Transaction"):

1. On Date 2, Sub2 transferred a employees dedicated to Business A to Sub1. Also on Date 2, Sub4 transferred b employees dedicated to Business A to Sub1.
2. On Date 3 and pursuant to the terms of Agreement 1, Distributing transferred all of the shares of DRE to Parent.
3. On Date 3 and pursuant to the terms of Agreement 2, certain Business B risks previously retroceded by Sub1 (the "Ceded Business B Risks") were commuted and recaptured by Sub1 (such risks, the "Commuted Risks").
4.
  - (a) On Date 3 and pursuant to the terms of Agreement 3 and Agreement 4, all Business A risks that Sub1 had retroceded to certain members of the Parent Group were transferred to Sub1 (the "Recapture Transaction"). Following the Recapture Transaction, Sub1 has retained and remained liable for all of the obligations and liabilities relating to Business A.
  - (b) On Date 3, all Ceded Business B Risks that had been assumed and retained by Sub1, including the Commuted Risks, were novated to, and assumed by, Sub3 (the "Business B Assumption"). As consideration for the Business B Assumption, Sub1 transferred a mix of assets (such assets, the "Transferred Assets") to Sub3, including market discount bonds (as defined in section 1278(a)) and the insurance in force intangible associated with the Ceded Business B Risks. Further, in connection with the Business B Assumption, (i) Sub1 covenanted to endorse, assign, and transfer all external reinsurance arrangements, to the extent that such arrangements involve the Ceded Business B Risks, and any associated collateral, to Sub3, and (ii) Sub1 assigned all recoveries and rights under the external reinsurance arrangements with respect to the Ceded Business B Risks to Sub3.
  - (c) On Date 5, Sub1 made a capital contribution to Sub3 comprised of cash and securities, including market discount bonds (as defined in section 1278(a))

(such transaction, the “Additional Capital Contribution,” and such assets, the “Additional Transferred Assets”).

5. On Date 3 and pursuant to the terms of Agreement 5, all of Sub1’s obligations and rights under an existing reinsurance agreement with another member of the Parent Group were assigned and transferred to Sub3, and all Business B risks that had been assumed and retained by Sub1 under the terms of that reinsurance agreement (the “Remaining Business B Risks”) were novated to, and assumed by, Sub3 (the “Remaining Business B Assumption”). As consideration for the Remaining Business B Assumption, Sub1 transferred to Sub3 a mix of assets (such assets, the “Remaining Business B Transferred Assets”), including the insurance in force intangible associated with the Remaining Business B Risks, to Sub3.
6. On Date 4, in satisfaction of a request made by State B Regulator, Sub1 distributed cash and other assets to Parent (the “Surplus Distribution”).
7. On Date 5, in conjunction with Step 4(b), 4(c), and 5, and with the approval of State B Regulator, Sub1 distributed all of the stock of Sub3 to Parent to redeem a portion of its stock owned by Parent (the “First Distribution”).
8. On Date 5, immediately following the First Distribution, Parent contributed the proceeds of the Surplus Distribution to Sub3.
9. Parent will distribute all of the stock of Sub1 to FSub3 to redeem a portion of its stock owned by FSub3 (the “Second Distribution”).
10. FSub3 will distribute all the stock of Sub1 to FSub2 (the “Third Distribution”).
11. FSub2 will contribute all the stock of Sub1 to FSub4.
12. FSub4 will contribute all the stock of Sub1 to FSub5.

In connection with the Proposed Transaction, Sub1 and Sub2, as well as Sub1 and DRE, will enter into certain Continuing Transactions.

As relevant the Representations and Rulings below, (i) the transactions described in Step 4(b), 4(c), and 5 above are collectively referred to as the “Business B Transfer”; (ii) the Ceded Business B Risks and the Remaining Business B Risks are collectively referred to as the “Transferred Business”; and (iii) the Transferred Assets, the Remaining Business B Transferred Assets, and the Additional Transferred Assets are collectively referred to as the “Transferred Business Assets.”

## **Representations**

First Distribution:

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

Parent has made the following alternative representations:

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

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

Representations 6, 19, 20, 24, 25, 35, and 39.

Parent has made the following modified representations:

Representation 11: Following the First Distribution, Sub1 and Sub3 each will continue, independently and with its separate employees (or with the operational employees of Sub2, Sub4, and/or DRE, respectively), the active conduct of the business on which it relies to meet the active trade or business requirement of section 355(b).

Representation 27: For purposes of section 355(d), immediately after the First Distribution, no person except for Foreign Parent will hold stock possessing 50 percent or more of the total combined voting power of all classes of Sub1 stock entitled to vote, or 50 percent or more of the total value of all classes of Sub1 stock, that was acquired by purchase during the five-year period ending on the date of the First Distribution.

The First Distribution will not increase Foreign Parent's ownership (combined direct and indirect) in Sub1.

Representation 28: For purposes of section 355(d), immediately after the First Distribution, no person except for Foreign Parent will hold stock possessing 50 percent or more of the total combined voting power of all classes of Sub3 stock entitled to vote, or 50 percent or more of the total value of all classes of Sub3 stock, that either (i) was acquired by purchase during the five-year period ending on the date of the First Distribution or (ii) was attributable to distributions on Sub1's stock or securities that were acquired by purchase during the five-year period ending on the date of the First Distribution.

The First Distribution will neither increase Foreign Parent's ownership (combined direct and indirect) in Sub3 nor provide Foreign Parent with a purchased basis in the stock of Sub3.

Second Distribution:

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

Parent has made the following alternative representations:

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

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

Representations 6, 17, 18, 19, 20, 22, 24, 25, 26, 35, and 39.

Parent has made the following modified representations:

Representation 11: Following the Second Distribution, Parent (by way of its separate affiliated group and, specifically, Sub3) and Sub1 each will continue, independently and with its separate employees (or with the operational employees of Sub2, Sub4, and/or DRE, respectively), the active conduct of the business on which it relies to meet the active trade or business requirement of section 355(b).

Representation 27: For purposes of section 355(d), immediately after the Second Distribution, no person except for Foreign Parent will hold stock possessing 50 percent or more of the total combined voting power of all classes of Parent stock entitled to vote, or 50 percent or more of the total value of all classes of Parent stock, that was acquired by purchase during the five-year period ending on the date of the Second Distribution.

The Second Distribution will not increase Foreign Parent's ownership (combined direct and indirect) in Parent.

Representation 28: For purposes of section 355(d), immediately after the Second Distribution, no person except for Foreign Parent will hold stock possessing 50 percent or more of the total combined voting power of all classes of Sub1 stock entitled to vote, or 50 percent or more of the total value of all classes of Sub1 stock, that either (i) was acquired by purchase during the five-year period ending on the date of the Second Distribution or (ii) was attributable to distributions on Parent's stock or securities were acquired by purchase during the five-year period ending on the date of the Second Distribution.



The Second Distribution will neither increase Foreign Parent's ownership (combined direct and indirect) in Sub1 nor provide Foreign Parent with a purchased basis in the stock of Sub1.

Representation 33: Except for the Continuing Transactions, payments made in connection with any other continuing transactions, if any, between Parent and Sub1 (or any of their respective affiliates) after the Second Distribution will be for fair market value based on arm's-length terms.

### Third Distribution:

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

Parent has made the following alternative representations:

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

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

Representations 7, 17, 18, 19, 20, 22, 24, 25, 26, 35, and 39.

Distributing has made the following modified representations:

Representation 11: Following the Third Distribution, FSub3 (by way of its separate affiliated group and, specifically, Sub3) and Sub1 each will continue, independently and with its separate employees (or with the operational employees of Sub2, Sub4, and/or DRE, respectively), the active conduct of the business on which it relies to meet the active trade or business requirement of section 355(b).

Representation 27: For purposes of section 355(d), immediately after the Third Distribution, no person except for Foreign Parent will hold stock possessing 50 percent or more of the total combined voting power of all classes of FSub3 stock entitled to vote, or 50 percent or more of the total value of all classes of FSub3 stock, that was acquired by purchase during the five-year period ending on the date of the Third Distribution.

The Third Distribution will not increase Foreign Parent's ownership (combined direct and indirect) in FSub3.

Representation 28: For purposes of section 355(d), immediately after the Third Distribution, no person except for Foreign Parent will hold stock possessing 50

percent or more of the total combined voting power of all classes of Sub1 stock entitled to vote, or 50 percent or more of the total value of all classes of Sub1 stock, that either (i) was acquired by purchase during the five-year period ending on the date of the Third Distribution or (ii) was attributable to distributions on FSub3's stock or securities were acquired by purchase during the five-year period ending on the date of the Third Distribution.

The Third Distribution will neither increase Foreign Parent's ownership (combined direct and indirect) in Sub1 nor provide Foreign Parent with a purchased basis in the stock of Sub1.

Representation 33: Except for the Continuing Transactions, payments made in connection with any other continuing transactions, if any, between FSub3 and Sub1 (or any of their respective affiliates) after the Third Distribution will be for fair market value based on arm's-length terms.

## **Rulings**

### First Distribution

1. The Business B Transfer and the First Distribution, together, will constitute a reorganization within the meaning of section 368(a)(1)(D). Sub1 and Sub3 will each be a "party to a reorganization" within the meaning of section 368(b). Rev. Rul. 94-45, 1994-2 C.B. 39.
2. The Business B Transfer will not be subject to the provisions of section 832. Rev. Rul. 94-45, 1994-2 C.B. 39.
3. For the taxable year in which the Business B Transfer is completed, Sub1 will include in its unpaid losses as of the close of that year, for purposes of section 832(b)(5), the balances of the unpaid losses (determined pursuant to section 846 on a discounted basis) that Sub1 held for the Transferred Business immediately before the transfer, and Sub1 will not be entitled to a deduction under section 832(b)(4)(A) for transferring assets to Sub3 in consideration for Sub3's assumption of the liabilities associated with the Transferred Business. Rev. Rul. 94-45, 1994-2 C.B. 39.
4. For the first taxable year beginning after the Business B Transfer is completed, Sub1 will not include in its unpaid losses as of the end of the preceding taxable year, for purposes of section 832(b)(5), the balances of the unpaid losses (determined pursuant to section 846 on a discounted basis) that Sub1 held for the Transferred Business immediately before the transfer. Rev. Rul. 94-45, 1994-2 C.B. 39.
5. For the taxable year in which the Business B Transfer is completed, premiums earned by Sub1 will be computed in accordance with section 832(b)(4), and Sub1 will include in its ending unearned premiums the balance of the unearned premiums

(computed at 80 percent, pursuant to section 832(b)(4)(B)) that Sub1 held for the Transferred Business immediately before the transfer. Rev. Rul. 94-45, 1994-2 C.B. 39.

6. For the first taxable year beginning after the Business B Transfer is completed, Sub1 will not include in its ending unearned premiums for the preceding taxable year the balance of the unearned premiums (computed at 80 percent, pursuant to section 832(b)(4)(B)) that Sub1 held for the Transferred Business immediately before the transfer. Rev. Rul. 94-45, 1994-2 C.B. 39.
7. For the taxable year in which the Business B Transfer is completed, Sub3 will include in its unpaid losses as of the end of the preceding taxable year, for purposes of section 832(b)(5), the balances of the unpaid losses (determined pursuant to section 846 on a discounted basis) that Sub1 held for the Transferred Business immediately before the transfer, and Sub3 will not take into premium income for purposes of section 832(b)(4) any amount with respect to the assets transferred to it in consideration for the assumption of the liabilities associated with the Transferred Business. Rev. Rul. 94-45, 1994-2 C.B. 39.
8. For the taxable year in which the Business B Transfer is completed, premiums earned by Sub3 will be computed in accordance with section 832(b)(4), and Sub3 will include in its ending unearned premiums for the preceding taxable year the balance of the unearned premiums (computed at 80 percent, pursuant to section 832(b)(4)(B)) that Sub1 held for the Transferred Business immediately before the transfer. Rev. Rul. 94-45, 1994-2 C.B. 39.
9. The realization of the value of any insurance in force transferred by Sub1 to Sub3 on account of the Business B Transfer will not be subject to the provisions of section 832, nor will Sub3 be entitled to deduct as a deferred expense, under sections 832(b)(6) or 832(c), an amount equal to that value. Rev. Rul. 94-45, 1994-2 C.B. 39.
10. Sub1 will not recognize gain or loss on the transfer of the Transferred Business Assets. Sections 357(a), 361(a), 1276(d)(1).
11. Sub3 will not recognize gain or loss on the receipt of the Transferred Business Assets. Section 1032(a).
12. Sub3's basis in each asset received in the Transferred Business Assets will be the same as the basis of the asset in the hands of the Sub1 immediately before the Transferred Business Assets. Section 362(b).
13. Sub3's holding period in each asset received in the Transferred Business Assets will include the period during which Sub1 held the asset. Section 1223(2).

14. Sub3 will determine the amount of accrued market discount with respect to any market discount bond transferred in the Business B Transfer as if Sub3 acquired such bond on the date it was acquired by Sub1 for an amount equal to Sub1's basis in such bond. Section 1276(c)(1).
15. Sub1 will not recognize gain or loss on the First Distribution. Sections 355(c), 361(c).
16. Parent will not recognize gain or loss (and no amount otherwise will be includable in its income) upon receipt of Sub3 stock in the First Distribution. Section 355(a).
17. The aggregate basis of the Sub1 stock and the Sub3 stock in the hands of Parent immediately after the First Distribution will equal Parent's aggregate basis of the Sub1 stock immediately before the First Distribution, allocated in the manner described in Treas. Reg. § 1.358-2. Treas. Reg. § 1.358-1(a). Parent's basis of the Sub3 stock immediately after the First Distribution will equal Parent's basis in the Sub1 stock surrendered in the First Distribution. Section 358(b); Treas. Reg. § 1.358-2(a)(2)(i).
18. Parent's holding period in the Sub3 stock received will include the holding period of the Sub1 stock with respect to which the First Distribution is made, provided that Parent held the Sub1 stock as a capital asset on the date of the First Distribution. Section 1223(1).
19. Earnings and profits, if any, will be allocated between Sub1 and Sub3 in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33(f)(2).

#### Second Distribution

20. Parent will not recognize gain or loss on the Second Distribution. Section 355(c).
21. FSub3 will not recognize gain or loss (and no amount otherwise will be included in its income) upon the receipt of Sub1 stock in the Second Distribution. Section 355(a).
22. The aggregate basis of the Parent stock and the Sub1 stock in the hands of FSub3 immediately after the Second Distribution will equal FSub3's aggregate basis of the Parent stock immediately before the Second Distribution, allocated in the manner described in Treas. Reg. § 1.358-2. Treas. Reg. § 1.358-1(a). FSub3's basis of the Sub1 stock immediately after the Second Distribution will equal FSub3's basis in the Parent stock surrendered in the Second Distribution. Section 358(b); Treas. Reg. § 1.358-2(a)(2)(i).
23. FSub3's holding period in the Sub1 stock will include the holding period of the Parent stock that FSub3 surrendered in the Second Distribution, provided that FSub3 held the Parent stock as a capital asset on the date of the Second Distribution. Section 1223(1).

24. The earnings and profits of Parent and Sub1 will be determined in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(b) and 1.1502-33(e)(3).

#### Third Distribution

25. FSub3 will not recognize gain or loss on the Third Distribution. Section 355(c).

26. FSub2 will not recognize gain or loss (and no amount otherwise will be included in its income) upon receipt of Sub1 stock in the Third Distribution. Section 355(a).

27. The aggregate basis of the FSub3 stock and the Sub1 stock in the hands of FSub2 immediately after the Third Distribution will equal FSub2's aggregate basis of the FSub3 stock immediately before the Third Distribution, allocated between the FSub3 stock and the Sub1 stock in proportion to the fair market value of each immediately following the Third Distribution. Section 358(b); Treas. Reg. §§ 1.358-1(a) and 1.358-2(a)(2)(iv).

28. FSub2's holding period in the Sub1 stock received will include the holding period of the FSub3 stock with respect to which the Third Distribution is made, provided that FSub2 held the FSub3 stock as a capital asset on the date of the Third Distribution. Section 1223(1).

29. The earnings and profits of FSub3 and Sub1 will be determined in accordance with section 312(h) and Treas. Reg. § 1.312-10(b).

#### **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 covered by the above rulings.

#### **Procedural Statements**

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.

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,

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Jonathan M. Kushner  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel (Corporate)

cc: