

Internal Revenue Service

Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B04
PLR-104193-23

Date:
July 13, 2023

Distributing =

Controlled =

FSub 1 =

FSub 2 =

FSub 3 =

FSub 4 =

Sub 1 =

LLC 1 =

Business A =

Business B =

Product =

Regulatory Agency =

Country A =

Country B =

Country C =

Date A =

Continuing Arrangements =

x =

Dear :

This letter responds to your authorized representative's letter dated February 17, 2023, requesting rulings on certain federal income tax consequences of a series of transactions (the "Proposed Transaction" as described below). The material information provided in that request and subsequent correspondences is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. While the office has not verified any of the materials submitted in support of the request for ruling, it is subject to verification on examination.

The 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") and Rev. Proc. 2022-10, 2022-6 I.R.B. 473.

This office expresses no opinion as to the overall tax consequences of the Proposed Transaction described in this letter or as to any issue not specifically addressed by the rulings below.

This office has made no determination regarding whether the 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 § 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 § 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7)).

SUMMARY OF FACTS

Distributing is a publicly traded corporation engaged in non-pharmaceutical Business A and non-pharmaceutical Business B through its direct and indirect subsidiaries (the “Distributing Worldwide Group”) which includes conducting research and development activities for the production of Product. Before Product can be marketed and sold to the public, it must go through a series of steps in order to receive approval from the Regulatory Agency. The operations associated with Business A and Business B are conducted in Country B and Country C, respectively.

Distributing directly owns 100 percent of the stock of FSub 1 and FSub 2, which are each corporations organized under the laws of Country A. FSub1 and FSub 2, in turn, collectively own 100 percent of the stock of FSub 3, a corporation organized under the laws of Country B. FSub 3 owns the assets associated with Business A. Distributing acquired 100 percent of the stock of FSub 1 on Date A in a transaction intended to qualify as a tax-free reorganization under § 368(a).

Distributing owns 100 percent of the stock of FSub 4, which is organized under the laws of Country A and classified as a corporation for federal income tax purposes. FSub 4 owns 100 percent of the stock of Sub 1, a corporation organized under the laws of Country C. Sub 1 directly owns 100 percent of the equity interests in LLC1, a limited liability company organized under the laws of Country C that is classified as an entity disregarded as separate from its owner for federal income tax purposes. Sub 1 and LLC1 collectively own the assets associated with Business B.

For more than five years, the Distributing Worldwide Group’s employees have engaged in regular, continuing operational and managerial activities with respect to each of Business A and Business B. The Distributing Worldwide Group has not yet collected income associated with either Business A or Business B but submitted information in accordance with Rev. Proc. 2017-52 indicating that it had incurred substantial, continuing operating expenses representing the active conduct of a trade or business with respect to Business A and Business B for each of the past five years.

PROPOSED TRANSACTION

For what are represented to be valid business reasons, Distributing proposes to separate Business B from Business A into Controlled, a separate, publicly traded corporation (the "Separation"). Specifically, Distributing proposes to engage in the following steps to achieve the Separation (each a "step" and, collectively, the Proposed Transaction):

(1) Controlled, a Country A corporation, was incorporated with one authorized class of voting common shares (without par value) (each a "Controlled Common Share") and one authorized class of preferred shares (without par value) (each a "Controlled Preference Share"). The Controlled Preference Shares are redeemable and retractable preferred shares. No shares have been issued on incorporation.

(2) Distributing will reorganize and alter its articles of incorporation to create and authorize the issuance of two new types of shares, class A common shares (without par value) (each a "Distributing Class A Common Share") and preferred shares (without par value) (each a "Distributing Preference Share"), which are in addition to Distributing's currently outstanding common shares (each a "Distributing Common Share"). The Distributing Preference Shares will be redeemable and retractable preferred shares.

(3) Each holder of Distributing Common Shares (each a "Participating Shareholder") will transfer each issued and outstanding Distributing Common Share held by such holder to Distributing in exchange for (i) one Distributing Class A Common Share and (ii) one Distributing Preference Share. The Distributing Common Shares so exchanged will be cancelled.

(4) Each holder of Distributing Preference Shares will transfer each Distributing Preference Share that such shareholder owns (as received pursuant to Step 3 above) to Controlled in exchange for one Controlled Common Share.

(5) Distributing will transfer all of the stock of Sub 4 (as well as cash for working capital purposes and any other assets related to Business B) to Controlled in exchange for (i) Controlled Preference Shares and (ii) the assumption of liabilities, if any, related to the Business B assets transferred, if any.

(6) Distributing and Controlled will respectively redeem for cancellation all of the Distributing Preference Shares and all of the Controlled Preference Shares owned by the other and will issue to the other, in payment therefor, the "Distributing Redemption Note" and the "Controlled Redemption Note." All of the Distributing Preference Shares and all of the Controlled Preference Shares will be cancelled.

(7) Each Participating Shareholder of Distributing will transfer each Distributing Class A Common Share (received in Step 3 above) held by such holder to

Distributing in exchange for one Distributing Common Share. The aggregate amount added to the capital of the Distributing Common Shares will be equal to the paid up capital of the exchanged Distributing Class A Common Shares. The Distributing Class A Common Shares so exchanged will be cancelled.

(8) Pursuant to a settlement agreement between Distributing and Controlled: (i) Distributing will repay the Distributing Redemption Note by transferring to Controlled the Controlled Redemption Note held by it; (ii) Controlled will repay the Controlled Redemption Note by transferring to Distributing the Distributing Redemption Note held by it; and (iii) each of the Distributing Redemption Note and Controlled Redemption Note will be offset and cancelled in their entirety.

In connection with the Proposed Transaction, Distributing and Controlled, collectively with their affiliates, will enter into certain agreements that will continue after the completion of the Proposed Transaction in order to effect an orderly transition of Controlled to a standalone public company, including transition services agreements, a tax matters agreement, and other agreements (collectively, the "Continuing Arrangements"). The Continuing Arrangements will be based on arm's-length terms and conditions, except for the Transition Services Agreements, which will be on a cost or cost-plus basis during their terms.

Following the Proposed Transaction, Distributing and Controlled will operate as independent companies having separate boards of directors. The separate boards of directors will have no overlapping membership, with the possible exception of one or more directors that may serve on the board of directors of Controlled (the "Overlapping Board Member(s)"). To the extent there is any director overlap following the Proposed Transaction, such Overlapping Board Member(s) will represent a minority share of the overall composition of Distributing's and Controlled's board of directors. The Overlapping Board Member(s) will serve in this capacity to provide a sense of business continuity to Controlled as it transitions to becoming a standalone public company and will enable Controlled to continue to benefit from the expertise of such director regarding Business B. The Overlapping Board Member(s) will have less than x percent of the voting power with respect to the Controlled board.

REPRESENTATIONS

Distributing has made the following representations in connection with the Proposed Transaction:

Distributing's acquisition of 100 percent of the stock of FSub 1 on Date A qualified as a tax-free reorganization under § 368(a).

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

Distributing has made the following alternative representations:

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

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

Representations 7, 24, 25 and 40.

Distributing has made the following modified representations:

Representation 32: No intercorporate debt will exist between Distributing and Controlled (and their respective affiliates, as applicable) at the time of, or subsequent to the Distribution, except for (i) amounts arising by reason of the Continuing Arrangements and (ii) ordinary course receivables and payables.

Representation 46: Other than in connection with the plan of arrangement, Controlled will not issue stock or securities to any person other than Distributing in connection with the Proposed Transaction.

RULINGS

(1) For U.S. federal income tax purposes, the transactions that comprise the Proposed Transaction will be treated as if Distributing formed Controlled, transferred all of its assets relating to Business B, cash/cash equivalents and investment assets to Controlled in exchange for all of the outstanding Controlled stock and Controlled's assumption of debt, if any, followed by the distribution of the Controlled stock by Distributing to its shareholders. See Rev. Rul. 77-191, 1977-1 C.B. 94; Rev. Rul. 57-311, 1957-2 C.B. 243.

(2) The Proposed Transaction will be a "reorganization" within the meaning of §§ 368(a)(1)(D) and 355. Distributing and Controlled will each be "a party to a reorganization" within the meaning of § 368(b).

(3) The absence of income collection does not prevent Distributing's Business A and Business B from constituting a "trade or business" within the meaning of Treas. Reg. § 1.355-3(b)(2)(ii) for purposes of determining whether the Separation satisfies the ATB Requirement of § 355.

(4) Distributing will not recognize gain or loss upon its transfer of assets to Controlled in the Proposed Transaction. §§ 361(a) and 357(a).

(5) Controlled will not recognize any gain or loss upon its receipt of assets from Distributing in the Proposed Transaction. § 1032(a).

(6) Controlled's basis in each asset received from Distributing in the Proposed Transaction will equal the basis of that asset in Distributing's hands immediately before the transfer. § 362(b).

(7) Controlled's holding period in each asset received from Distributing will include the period during which Distributing held that asset. § 1223(2).

(8) Distributing will not recognize any gain or loss upon its distribution of Controlled's stock to its shareholder in the Proposed Transaction. § 361(c).

(9) Distributing's shareholders will not recognize any gain or loss (and will not otherwise include any amount in income) upon its receipt of Controlled stock in the Proposed Transaction. § 355(a).

(10) The aggregate basis of Controlled stock and Distributing stock in the hands of such holders immediately after the Proposed Transaction will be the same as the basis of Distributing stock immediately before the Proposed Transaction on which such distribution was made, allocated in proportion to the fair market values of Distributing stock and Controlled stock. §§ 358(a)–(c); Treas. Reg. § 1.358-2(a)(2).

(11) The Distributing shareholders' holding periods in Controlled stock will include the holding period of the Distributing stock with respect to which the Proposed Transaction is made, provided that Distributing stock is held as a capital asset on the date of the Proposed Transaction. § 1223(1).

(12) Distributing's earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with § 312(h) and Treas. Reg. § 1.312-10(a).

(13) Payments made between Distributing and Controlled and their respective affiliates under any of the Continuing Arrangements regarding liabilities, indemnities or other obligations that (i) have arisen or will arise for a taxable period ending on or before the Proposed Transaction or for a taxable period beginning before and ending after the Proposed Transaction and (ii) will not become fixed and ascertainable until after the Proposed Transaction, will be viewed as occurring immediately before the Proposed Transaction. Cf. *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84.

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. In particular, no opinion is expressed regarding the Federal income tax consequences of any cost or cost plus basis transactions under the transition services agreements.

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,

Richard K. Passales _____

Richard K. Passales
Senior Counsel, Branch 4
Office of Associate Chief Counsel (Corporate)

cc: