

**Internal Revenue Service**

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:CORP:1  
PLR-102903-23

Date:  
June 02, 2023

Legend

Parent =

Controlled =

DRE 1 =

US Parent =

US Sub 1 =

US Sub 2 =

US OpCo =

State A =

State B =

Country Z =

Parent Business =

Controlled Business =

Specified Assets =

Applicable Foreign Law  
Requirement =

X =

Special Purpose Entities =

Purposes =

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

This letter responds to your letter dated February 6, 2023, and subsequent correspondence, on behalf of Parent and its subsidiaries requesting rulings on certain U.S. federal income tax consequences of a series of proposed transactions (collectively, the "Proposed Transaction"). The material information submitted in that request and subsequent correspondence is summarized below.

This letter is issued pursuant to Rev. Proc. 2023-1, 2023-1 I.R.B. 1, Rev. Proc. 2022-10, 2022-6 I.R.B. 473, and Rev. Proc. 2017-52, 2017-41 I.R.B. 283, as amplified and modified by Rev. Proc. 2018-53, 2018-43 I.R.B. 667, regarding a Transactional Ruling for a Covered Transaction. This office expresses no opinion as to any issue not specifically addressed by the rulings below.

The rulings contained in this letter are based on 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 office has made no determination regarding whether each of the distributions in 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 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).

#### **SUMMARY OF FACTS**

Parent is a Country Z publicly traded corporation with subsidiaries in multiple countries engaged in the Parent Business and the Controlled Business.

Controlled is a newly formed Country Z corporation that will become the publicly traded holding company for the Controlled Business.

US OpCo, a State A corporation, is an operating company that holds substantially all of the US portion of the Controlled Business (the "US Controlled Business"). US Sub 1 owns all of the stock of US OpCo.

US Sub 1, a State B corporation, is primarily a holding company that holds subsidiaries

operating the US portion of the Parent Business and Controlled Business. US Sub 1 owns all the interests in DRE 1, a State A entity that is a disregarded entity, and all of the stock of US Sub 2, a State A corporation. DRE 1 and US Sub 2 hold certain Specified Assets related to the US Controlled Business. US Sub 1, US Sub 2 and US OpCo are all members of the same US affiliated group of which US Parent is the common parent (the "US Affiliated Group"). US Parent owns all of the stock of US Sub 1. Parent indirectly owns all of the stock of US Parent.

For what are represented to be valid business purposes, Parent has decided to separate the Controlled Business from the Parent Business into a stand-alone publicly traded corporation.

#### PROPOSED TRANSACTION

(i) Each of DRE 1 and US Sub 2 will distribute the Specified Assets each holds to US Sub 1, and US Sub 1 will contribute the Specified Assets to US OpCo (together, the "Specified Asset Transfer"). Following the Specified Asset Transfer, US Sub 1 will sell all of the shares of US OpCo to Parent in exchange for cash or a note equal to the fair market value of such US OpCo shares. These transactions will occur only after Parent has complied with the Applicable Foreign Law Requirement and very shortly prior to the Spinoff.

(ii) Parent will transfer to Controlled interests in entities conducting the Controlled Business (including US OpCo) and, possibly, cash, in exchange for Controlled stock, and non-US subsidiaries of Parent will transfer to non-US subsidiaries of Controlled interests in non-US entities or assets conducting the Controlled Business in exchange for cash (the "Controlled Transfer"). The Controlled Transfer will occur in a series of related transactions occurring in the calendar year of the Spinoff and prior to the Spinoff, and, with respect to US OpCo, will occur only after the transactions described in clause (i) have occurred.

In all cases, neither the entities transferred nor any of the material assets thereof will have been acquired during the five-year period immediately preceding the Spinoff in a transaction in which gain or loss was recognized in whole or in part, except in connection with transfers between members of an affiliated group (within the meaning of Treas. Reg. § 1.355-3(b)(4)(iv)) or in connection with the expansion of an existing five-year trade or business.

(iii) Following the Controlled Transfer, Parent will distribute all of the shares of Controlled to its shareholders *pro rata* (the "Distribution"; the Controlled Transfer and the Distribution are collectively referred to as the "Spinoff").

Parent and its subsidiaries also expect to have certain continuing relationships with Controlled and its subsidiaries in order to facilitate the Spinoff (the "Continuing Relationships"). The areas that these relationships may cover include (a) manufacturing facilities that will produce products for both the Parent

Business and the Controlled Business; (b) research and development; (c) certain commercialization agreements; (d) distribution functions shared by the two businesses; (e) shared contracts; (f) limited promotional activities; (g) regulatory cooperation; (h) certain non-core business functions; (i) trademarks and other intellectual property; (j) delayed transfers; (k) books and records; and (l) indemnification and litigation. Any relationship in place for more than 24 months will be on terms similar to those used in third-party transactions.

About x percent of Parent shares are held by Special Purpose Entities. The Special Purpose Entities are separate legal entities with no shareholders or other residual economic beneficiaries and are formed for specific Purposes. Parent has no direct economic interest in the assets, liabilities, or income of the Special Purpose Entities and does not exercise direct control over them. However, under Country Z corporate law, the shares are considered treasury shares of Parent for general corporate purposes. The Special Purpose Entities will receive Controlled stock as shareholders of Parent, but the Special Purpose Entities may independently decide to retain or dispose of their Controlled shares. The Special Purpose Entities are foreign entities that are not subject to US federal income tax.

### **Representations**

Except as otherwise set forth below, Parent makes all the Representations in Section 3 of the Appendix to Rev. Proc. 2017-52, treating Controlled as “Controlled” and Parent as “Distributing”.

(1) Distributing has made the following alternative representations: 3(a), 11(a), 15(a), 22(a), 31(a) and 41(a).

(2) Distributing has not made the following representations, which do not apply to the proposed transactions: 7, 19, 20, 24, 25 and 40.

(3) Distributing has made the following modified representations:

Representation 2: Except to the extent the Controlled stock distributed to the Foundations is treated as retained by Distributing, in the Distribution, Distributing will distribute on the same day all the stock and securities of Controlled that it holds immediately before the Distribution.

Representation 8: If Distributing has any securities outstanding, Distributing will not distribute Controlled stock, Controlled securities or Other Property to any holder of any such Distributing securities in the Distribution, in satisfaction thereof.

Representation 33: Except as contemplated by the Continuing

Relationships, payments made in connection with all continuing transactions, if any, between Distributing and Controlled after the Distribution will be for fair market value based on arm's-length terms.

Representation 43: To the extent either Distributing or Controlled is treated as a controlled foreign corporation within the meaning of section 957(a) as a result of section 958(b), no affiliate of Distributing is or will be required to include an amount in income with respect to either Distributing or Controlled under section 951(a).

Representation 44: The Distribution is not part of a plan (or series of related transactions) resulting in any foreign corporation being treated as a "surrogate foreign corporation" within the meaning of section 7874(a)(2)(B)(ii) or a domestic corporation as a result of section 7874(b).

Representation 46: Controlled will not issue stock to a person other than Distributing in anticipation of the Distribution. Controlled will not issue securities to a person other than Distributing in anticipation of the Distribution, other than debt issued to third parties, the proceeds of which will be used to retire intercompany debt held by Distributing or subsidiaries of Distributing or otherwise in the ordinary course of business.

- (4) Distributing has made the following modified representations regarding the potential retention of Controlled shares by the Special Purpose Entities:
- (a) The establishment of the Special Purpose Entities and their capitalization with Distributing shares occurred prior to any discussions regarding the Proposed Transaction and did not otherwise occur in pursuance of a plan having as one of its principal purposes the avoidance of US federal income tax.
  - (b) Board Members' fiduciary duties to the Special Purpose Entities will not permit the Special Purpose Entities to waive their rights to receive, or otherwise avoid receiving, Controlled shares with respect to the Distributing shares they hold in the Distribution.
  - (c) Distributing will undertake in a manner consistent with Country Z law to encourage the Special Purpose Entities to dispose of Controlled shares in a commercially reasonable manner as soon as possible but in no event later than five years after the Distribution.
  - (d) None of Distributing's directors or officers will serve as directors or officers of Controlled.
  - (e) Distributing will not exercise control or influence over the Special

Purpose Entities' voting decisions with respect to any Controlled shares held by the Special Purpose Entities.

(5) Distributing has made the following representation regarding the Specified Asset Transfer:

(a) Immediately after the Proposed Transaction, Controlled and any of its direct or indirect subsidiaries (including US OpCo) will not be related within the meaning of section 1239(b) and (c) to Parent or any member of the US Affiliated Group, including US Sub 1 or US Sub 2.

### **RULINGS**

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

1. No gain or loss will be recognized by Parent on the Distribution. Section 361(c).
2. No gain or loss will be recognized by (and no amount otherwise will be included in the income of) the shareholders of Parent as a result of the Spinoff (section 355(a)(1)).
3. Each Parent shareholder's basis in Parent stock and Controlled stock following the Spinoff will equal such shareholder's basis in the stock of Parent it held immediately prior to the Spinoff, allocated between the stock of Parent and Controlled in proportion to their relative fair market values (section 358(c) and Treas. Reg. § 1.358-2(a)(2)).
4. The holding period of the Controlled shares received by each shareholder of Parent in the Spinoff will include the holding period of the Parent shares with respect to which the Spinoff will be made, provided that such Parent shares are held as capital assets on the date of the Spinoff (section 1223(1)).
5. As provided in section 312(h), proper allocation of earnings and profits between Parent and Controlled will be made under Treas. Reg. § 1.312-10(a).
6. To the extent that Controlled shares received by the Special Purpose Entities are treated as retained by Parent, such retention will not be in pursuance of a plan having as one of its principal purposes the avoidance of US federal income tax within the meaning of section 355(a)(1)(D)(ii) and Treas. Reg. § 1.355-2(e).
7. Any gain recognized by US Sub 1 or US Sub 2 on the Specified Asset Transfer of its depreciable and amortizable property will not be treated as ordinary income under Section 1239. See Reg. § 1.1502-13(d)(1)(ii)(A)(1).

**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.

**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.

In accordance with the Power of Attorney on file with this office, copies of this letter are 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,

*Gerald B. Fleming*

Gerald B. Fleming  
Senior Technician Reviewer, Branch 2  
(Corporate)

cc: