

## Internal Revenue Service

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CC:CORP:1

PLR-108843-23

Date:

September 28, 2023

### Legend

Distributing 2 =

Distributing 1 =

Controlled 1 =

Controlled 2 =

Sub 1 =

Sub 2 =

Sub 3 =

PLR-108843-23

2

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

FSub 1 =

FSub 2 =

FSub 3 =

FSub 4 =

FSub 5 =

FSub 6 =

JV 1 =

JV 2 =

Country A =

Country B =

Country C =

State A =

State B =

Country A Corporation =

Foreign Stock Exchanges =

Partial Demerger =

Category 1 Businesses =

Category 2 Businesses =

Business A =

Business B =

Business C =

Separation Agreements =

Industrial Agreements =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

a =

b =

c =

d =

e =

f =

g =

h =  
i =  
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p =

Dear :

This letter responds to your letter dated April 20, 2023, and subsequent correspondence, on behalf of Distributing 2 and its subsidiaries (the Taxpayers) requesting rulings on certain U.S. federal income tax consequences of a series of proposed transactions (as defined and described below, the Proposed Transactions). The material information submitted in that letter and subsequent correspondence is summarized below.

This letter is issued pursuant to Rev. Proc. 2023-1, 2023-1 I.R.B. 1; Rev. Proc. 90-52, 1990 C.B. 626; 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 one or more Covered Transactions; and section 6.03(2) of Rev. Proc. 2023-1, regarding a significant issue under section 332 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 information and representations submitted by the Taxpayers and accompanied by a penalties of perjury statement executed by appropriate parties. 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 Proposed Transactions: (i) satisfy the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) are 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) are 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 the Facts**

Distributing 2, a Country A corporation for U.S. federal income tax purposes, is the parent of a worldwide group of domestic and foreign affiliates. Its stock is publicly traded on the Foreign Stock Exchanges.

Distributing 2 and its subsidiaries are engaged in two distinct categories of businesses, which Distributing 2 classifies as Category 1 Businesses and Category 2 Businesses. As discussed below, Distributing 2 proposes to separate its Category 2 Businesses from its Category 1 Businesses through the Proposed Transactions.

Distributing 2 formed Controlled 2, a Country A entity, on Date 3, in exchange for a single share of stock, which is still held by Distributing 2. Controlled 2 filed an election to be disregarded as an entity separate from Distributing 2 for U.S. federal income tax purposes, effective as of its date of formation, but will convert to a Country A corporation for U.S. federal income tax purposes prior to the Global Spin-off, as defined and described below.

Distributing 2 owns all the stock of FSub 1, a Country A corporation for U.S. federal income tax purposes. FSub 1 in turn owns a% of the stock of FSub 2, a Country B corporation for U.S. federal income tax purposes. Distributing 2 owns b% of the stock of FSub 2.

The remaining stock of FSub 2 is owned by a small number of individuals. FSub 2 directly and indirectly owns all the stock of FSub 3, a Country B corporation for U.S. federal income tax purposes.

Distributing 1 is a State A corporation and the common parent of an affiliated group of corporations that files a consolidated return for U.S. federal income tax purposes (Distributing 1 Consolidated Group).

Distributing 1 has three classes of stock outstanding, which have identical economic entitlements but differ in their voting rights. The Class A shares represent c% of the economic rights and d% of the voting power of all Distributing 1 shares outstanding. The Class B shares represent e% of the economic rights and f% of the voting power of all Distributing 1 shares outstanding. The Class C shares represent g% of the economic rights and h% of the voting power of all Distributing 1 shares outstanding.

FSub 2 owns all the Class A shares and Distributing 2 owns all the Class B and Class C shares. No Class A shares or Class B shares were issued during the five years prior to the Proposed Transactions. All the Class C shares were issued to Distributing 2 in taxable transactions on dates that are within the five years prior to the Proposed Transactions.

Distributing 1 owns all the stock of Sub 1, a State A corporation that is a member of the Distributing 1 Consolidated Group. Sub 1 owns all the membership interests of Sub 2, a State A limited liability company that has elected to be treated as a corporation for U.S. federal income tax purposes, and all the stock of Sub 3 and Sub 4, both of which are State A corporations. Sub 2, Sub 3, and Sub 4 are members of the Distributing 1 Consolidated Group.

Distributing 1 directly and indirectly conducts (and has conducted throughout the past five years) Business A, a Category 1 Business, and Business B, a Category 2 Business. The Taxpayers have submitted financial information indicating that each of Business A and Business B had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

Distributing 1 has conducted Business B both directly and through subsidiaries that it has wholly owned throughout the five years preceding the Proposed Transactions. Distributing 1 has conducted Business A indirectly through Sub 3, which, throughout the five years ending on Date 1, owned (either directly or through a disregarded entity)  $i\%$  of the partnership interests in JV 1 and  $j\%$  of the partnership interests in JV 2, each of which was organized under State B law and has consistently been treated as a partnership for U.S. federal income tax purposes. On Date 1, Sub 3 purchased the remaining  $k\%$  interest in each JV for cash, through an entity disregarded as separate from Sub 3.

Sub 5 is a State A corporation that is wholly owned directly by Distributing 1 and that is a member of the consolidated group of which Distributing 1 is the common parent.

Sub 4 owns approximately  $l\%$  of the stock of FSub 5, a Country C corporation for U.S. federal income tax purposes. Sub 1 owns  $m\%$  of the stock of FSub 5. The remaining stock of FSub 5 is owned by FSub 2 and FSub 3. FSub 5 owns and operates both Category 1 Businesses and Category 2 Businesses.

Distributing 2 wholly owns (indirectly) FSub 4, an entity organized in Country A. FSub 4 is a stock option management vehicle of Distributing 2 and holds approximately  $n\%$  of the stock for purposes of hedging and, ultimately, funding previously granted employee stock options of Distributing 2 granted to Distributing 2 employees.

### **Preliminary Steps**

On Date 5, Distributing 1 formed Controlled 1 as a limited liability company under State A law. Controlled 1 elected to be treated as a corporation for U.S. federal income tax purposes, effective as of its date of formation.

On Date 2, Sub 5 formed Sub 6 and Sub 7 under State A law and received and continues to hold all the membership interests in both entities. Neither of those entities elected to be treated as corporations for U.S. federal income tax purposes, and so both are disregarded as entities separate from Sub 5 for such purposes.

On Date 4, Sub 3 withdrew approximately \$0 of cash that it had deposited with Sub 2 pursuant to a cash pooling arrangement and distributed that cash to Sub 1. The Taxpayers have represented that Sub 1's basis in the stock of Sub 3 immediately before the distribution was greater than the amount of the distribution, and that the distribution did not cause an "excess loss account" within the meaning of Treas. Reg. § 1.1502-19 to be created with respect to the stock of Sub 3. On the same day, Sub 1 used the cash it received in that distribution to repay debt that it owed Sub 2 pursuant to a cash pooling arrangement.

Prior to the Proposed Transactions, FSub 5 will sell its Category 2 Businesses to a wholly-owned subsidiary of Distributing 1 in a taxable transaction for U.S. federal income tax purposes. Following the sale, Sub 4 will purchase the shares of FSub 5 that are held by FSub 2 and FSub 3, in transactions subject to section 304 of the Code. Sub 1 will contribute its stock of FSub 5 to Sub 3.

Sub 1 will convert from a corporation to a limited liability company under State A law, causing it to be disregarded as an entity separate from Distributing 1 for U.S. federal income tax purposes. Sub 1 then will distribute all the shares of Sub 3 and Sub 4 to Distributing 1.

On or around Date 6, Sub 5 transferred all the assets and liabilities principally related to Business C (a Category 1 Business) to Sub 7 and transferred all the assets and liabilities principally related to its other Category 1 Businesses to Sub 6. Sub 5 then contributed all the membership interests of Sub 7 to Sub 6.

Shortly before the U.S. Spin-off (defined below), Sub 5 will convert into an LLC under State A law and will not elect to be treated as a corporation for U.S. federal income tax purposes. Accordingly, Sub 5 will become disregarded as an entity separate from Distributing 1 for U.S. federal income tax purposes. The Taxpayers have represented that the conversion of Sub 5 from a corporation to a disregarded entity will be treated as a nontaxable liquidation of Sub 5 pursuant to section 332 of the Code. Following the conversion, Sub 5 will distribute the membership interests in Sub 6 to Distributing 1.



Sometime before the Global Spin-off, Distributing 2 will form FSub 6 under Country A law to manage Controlled 2's stock option programs following the spin-offs. Accordingly, FSub 4 will transfer to FSub 6 a portion of the Distributing 2 shares currently held by FSub 4, to fund FSub 6's post-spin obligations under pre-spin option programs.

### **Proposed Transactions**

For what are represented to be valid business reasons, Distributing 2 and its affiliates will undertake the following steps to separate the Category 2 Businesses from the Category 1 Businesses (the Proposed Transactions).

- 1) Distributing 1 will contribute all its assets that are principally related to the Category 1 Businesses (including all the membership interests or shares in Sub 6, Sub 3, and Sub 4) to Controlled 1 (the U.S. Contribution). The Taxpayers have represented that there is no plan or intention for Controlled 1 to further contribute the shares of Sub 3 or of Sub 4 to a Controlled 1 subsidiary. Controlled 1 also will assume approximately \$p of liabilities that relate to the Category 1 Businesses, all of which the Taxpayers have represented will give rise to a deduction when paid.
- 2) Distributing 1 will distribute all the membership interests in Controlled 1 to Distributing 2 in redemption of a mix of the Class B and Class C shares that Distributing 2 holds in Distributing 1 (the U.S. Spin-off). The ratio of Class B and Class C shares of Distributing 1 that will be redeemed in the U.S. Spin-off will be determined based on the relative fair market values of the shares of Distributing 1 and Controlled 1, respectively, at the time of the U.S. Spin-off. The Taxpayers have represented that the mix of Class B and Class C shares that are redeemed will be calculated such that (i) less than 50% of the Controlled 1 membership interests will be distributed to Distributing 2 in redemption of Class C shares and (ii) less than 50% of Distributing 1's remaining stock (following the redemption) held by Distributing 2 and FSub 2 will consist of Class C shares.
- 3) Controlled 2 will convert to a Country A Corporation, at which point it will be treated as a corporation for U.S. federal income tax purposes.
- 4) On Date 7, Distributing 2 will transfer all the assets and liabilities principally associated with its Category 2 Businesses (including all its shares in FSub 1, FSub 2, FSub 6 and Distributing 1) to Controlled 2 in a Partial Demerger. In exchange for this contribution, Controlled 2 will issue new shares directly to Distributing 2's shareholders pro-rata to their relative holdings of Distributing 2 common stock (including the previously described contribution, the Global Spin-off). For Country A accounting and tax reporting purposes only, the Partial Demerger will be treated as occurring on Date 6.

- 5) Distributing 2 will sell its single share of Controlled 2 on the open market shortly after the Global Spin-off.
- 6) FSub 6 and FSub 4 will receive shares of Controlled 2 in the Global Spin-off that will amount to approximately n% of Controlled 2's issued and outstanding shares in the aggregate, and which they will retain to fund employee stock plans. FSub 6 and FSub 4 will dispose of any shares in Distributing 2 and Controlled 2, respectively, that remain after the options issued under the employee stock plans prior to the spin-offs are exercised or expire, in orderly sales on the open market.

In connection with the Proposed Transactions, Distributing 2 and/or certain of its subsidiaries (including Controlled 1), on the one hand, and Controlled 2 and/or certain of its subsidiaries (including Distributing 1), on the other hand, have entered into and will enter into certain agreements (the Continuing Agreements) intended to govern their relationship (and that of their respective subsidiaries) following the consummation of the Global Spin-off, consisting of the Separation Agreements and Industrial Agreements.

### **Representations**

Distributing 1 and Sub 1 have made the following representations from Rev. Proc. 90-52 with respect to the liquidation of Sub 1.

- a) Distributing 1, on the date of adoption of the plan of liquidation of Sub 1 and at all times until the final liquidating distribution is completed, will be the owner of at least 80 percent of the single outstanding class of Sub 1 stock.
- b) No shares of Sub 1 stock will have been redeemed during the 3 years preceding the adoption of the plan of complete liquidation of Sub 1.
- c) All distributions from Sub 1 to Distributing 1 pursuant to the plan of complete liquidation will be made within a single taxable year of Sub 1.
- d) Sub 1 (as a corporation) will not retain any assets following its conversion to a limited liability company.
- e) Sub 1 will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than 3 years prior to the date of adoption of the plan of liquidation.
- f) Prior to adoption of the liquidation plan, no assets of Sub 1 will have been distributed in kind, transferred, or sold to Distributing 1, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than 3 years prior to adoption of the liquidation plan.

- g) Sub 1 will report all earned income represented by assets that will be distributed to its shareholders such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
- h) The fair market value of the assets of Sub 1 will exceed its liabilities both at the date of the adoption of the plan of complete liquidation and immediately prior to the time the first liquidating distribution is made.
- i) There is no intercorporate debt existing between Distributing 1 and Sub 1 and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than 3 years prior to the date of adoption of the liquidation plan.
- j) Distributing 1 is not an organization that is exempt from federal income tax under section 501 or any other provision of the Code.
- k) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the conversion of Sub 1 to a limited liability company have been fully disclosed.

Additionally, Distributing 1 and Sub 1 have made the following modified representations from Rev. Proc. 90-52 with respect to the liquidation of Sub 1:

- a) Other than the contributions of (i) the shares of Sub 3 and Sub 4 to Controlled 1 in the U.S. Contribution and (ii) m% of the shares of FSub 5 to Sub 3, no assets of Sub 1 have been, or will be, disposed of by either Sub 1 or Distributing 1, except for dispositions occurring in the ordinary course of business and dispositions occurring more than 3 years prior to adoption of the plan of liquidation.
- b) Other than the contributions of (i) the shares of Sub 3 and Sub 4 to Controlled 1 in the U.S. Contribution and (ii) m% of the shares of FSub 5 to Sub 3, the liquidation of Sub 1 will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation (Recipient) of any of the businesses or assets of Sub 1, if persons holding, directly or indirectly, more than 20 percent in value of the Sub 1 stock also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of section 318(a) of the Code as modified by section 304(c)(3).

Distributing 1 has made all the representations in section 3 of the Appendix to Rev. Proc. 2017-52 with respect to the U.S. Contribution and U.S. Spin-off, except:

- a) Distributing 1 has made the following alternative representations:  
3(a); 8(b); 11(b) (as modified below); 15(a); 22(a); 31(a); and 41(a).

- b) Distributing 1 has not made the following representations, which do not apply to the U.S. Contribution or U.S. Spin-off: 6, 19, 20, 24, 25, and 35.
- c) Distributing 1 has made the following modified alternative representation:  
Alternative representation 11(b) is made subject to the Continuing Agreements.
- d) Distributing 1 has not made representations 40 but has provided the required explanation. Moreover, Distributing 1 has made the following additional representation:

At no point immediately prior to, or as a result of, the U.S. Spin-off will Distributing 1 have an excess loss account (within the meaning of Treas. Reg. § 1.1502-19) in the stock of Controlled 1.

- e) Distributing 1 has not made representation 42 with respect to its interest in Controlled 1 but provided the required explanation.
- f) Distributing 1 has made all the representations in Section 3.04 of Rev. Proc. 2018-53 with respect to the U.S. Contribution and U.S. Spin-off, except:

- i) Distributing 1 has made the following modified representation 4:

Except for ordinary course liabilities, Distributing incurred the Distributing Debt that will be assumed or satisfied (a) before the request for any relevant ruling is submitted and (b) no later than 60 days before the earliest of the following dates: (i) the date of the first public announcement (as defined in § 1.355-7(h)(10)) of the Divisive Reorganization or a similar transaction, (ii) the date of the entry by Distributing 1 into a binding agreement to engage in the Divisive Reorganization or a similar transaction, and (iii) the date of approval of the Divisive Reorganization or a similar transaction by the board of directors of Distributing 1.

- ii) Distributing 1 has not made representation 6 because it does not apply to the U.S. Contribution and U.S Spin-off.
- g) Distributing 2 has made all the representations in section 3 of the Appendix to Rev. Proc. 2017-52 with respect to the Global Spin-off, except:
- h) Distributing 2 has made the following alternative representations:  
3(a); 8(b); 11(b) (as modified below); 15(a); 22(a); 31(a); and 41(a).
- i) Distributing 2 has not made the following representations, which do not apply to the Global Spin-off:

7, 19, 20, 24, 25, 27, 28, 35, 36, 37, 38, and 39.

- j) Distributing 2 has made the following modified representations and modified alternative representations:
  - i) Representation 2 is made subject to (1) the single share of Controlled 2 that Distributing 2 will hold following the Partial Demerger; and (2) the Controlled 2 shares that will be allocated directly to FSub 4 in the Partial Demerger as a result of its ownership of Distributing 2 stock and that will be retained by FSub 4. Distributing 2 will sell the single share of Controlled 2 on the open market shortly after the completion of the Global Spin-off. Neither Distributing 2's temporary retention of a single share of Controlled 2 following the Global Spin-off nor FSub 4's temporary retention of a small amount of Controlled 2 stock to support legacy employee stock options is in pursuance of a plan having as one of its principal purposes the avoidance of federal income tax.
- k) Alternative representation 11(b) is made subject to the Continuing Agreements.
- l) Representation 17 is made subject to the Continuing Agreements.

### **Rulings**

Based solely on the information submitted and the representations set forth above, we rule as follows regarding the distribution by Sub 3, the liquidation of Sub 1, and the Proposed Transactions:

#### **A. The Liquidation of Sub 1**

- 1. The U.S. Contribution will not preclude the liquidation of Sub 1 from qualifying as a complete liquidation within the meaning of section 332.

#### **B. U.S. Contribution and U.S. Spin-off**

- 1. The U.S. Contribution and U.S. Spin-off, together, will qualify as a "reorganization" within the meaning of section 368(a)(1)(D). Distributing 1 and Controlled 1 will each be "a party to a reorganization" within the meaning of section 368(b).
- 2. Distributing 1 will not recognize gain or loss on the U.S. Contribution. Sections 361(a) and 357(a).
- 3. The liabilities assumed by Controlled 1 in the U.S. Contribution will be excluded under section 357(c)(3) in determining the amount of liabilities of Distributing 1 assumed by Controlled 1. Sections 357(c), 358(d) and 361(b)(3).

4. Controlled 1 will not recognize gain or loss on the U.S. Contribution. Section 1032(a).
5. Controlled 1's basis in each asset it receives in the U.S. Contribution will be the same as the basis of that asset in the hands of Distributing 1 immediately before the U.S. Contribution. Section 362(b).
6. Controlled 1's holding period for each asset it receives in the U.S. Contribution will include the period during which Distributing 1 held that asset. Section 1223(2).
7. No gain or loss will be recognized by (and no amount otherwise will be included in the income of) Distributing 2 from the receipt of Controlled 1 membership interests in the U.S. Spin-off. Section 355(a).
8. No gain or loss will be recognized by Distributing 1 from its distribution of Controlled 1 membership interests in the U.S. Spin-off. Section 361(c).
9. Distributing 2's aggregate basis in the membership interests of Controlled 1 immediately after the U.S. Spin-off will equal Distributing 2's aggregate basis in the Distributing 1 stock surrendered in the U.S. Spin-off and will be allocated among the shares received in the manner described in Treas. Reg. § 1.358-2(a). Section 358(a)(1) and (b)(1).
10. Distributing 2's holding period in the membership interests of Controlled 1 will include the period in which it held the stock of Distributing 1 in respect of which the Controlled 1 membership interests was distributed. Section 1223(1).
11. The earnings and profits of Distributing 1 will be allocated between Distributing 1 and Controlled 1 in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33.

C. Global Spin-off

1. For U.S. federal income tax purposes, the Global Spin-off will be treated as if (i) Distributing 2 contributed all the assets and liabilities associated with its Category 2 Businesses (including all its shares in FSub 1, FSub 2, FSub 6 and Distributing 1) to Controlled 2 in exchange for all of the stock of Controlled 2 and Controlled 2's assumption of Distributing 2's liabilities associated with the Category 2 Businesses in Country A, and then immediately thereafter (ii) Distributing 2 distributed all of the stock of Controlled 2 to Distributing 2's shareholders. Cf. Rev. Rul. 77-191, 1977-1 C.B. 94; Rev. Rul. 57-311, 1957-2 C.B. 243.

2. Global Spin-off will be a “reorganization” within the meaning of section 368(a)(1)(D). Distributing 2 and Controlled 2 will each be “a party to a reorganization” within the meaning of section 368(b).
3. No gain or loss will be recognized by (and no amount otherwise will be included in the income of) any of Distributing 2’s shareholders from the receipt of Controlled 2 stock in the Global Spin-off. Section 355(a).
4. Each Distributing 2 shareholder’s aggregate basis in the stock of Distributing 2 and Controlled 2 after the Global Spin-off will equal such Distributing 2 shareholder’s aggregate basis in Distributing 2 stock immediately prior to the Global Spin-off, pursuant to section 358(b). The basis will be allocated between the stock of Distributing 2 and the stock of Controlled 2 in proportion to the fair market values of each immediately after the Global Spin-off, in accordance with Treas. Reg. § 1.358-2(a)(2).
5. Each Distributing 2 shareholder’s holding period in the stock of Controlled 2 will include the period in which it held the stock of Distributing 2 in respect of which the Controlled 2 stock was distributed. Section 1223(1).
6. The earnings and profits of Distributing 2 will be allocated between Distributing 2 and Controlled 2 in accordance with section 312(h) and Treas. Reg. § 1.312-10(a).

### **Caveat**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of the Proposed Transactions 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 Transactions that is not specifically addressed by the above rulings.

### **Procedural Statements**

This ruling is directed only to the Taxpayers 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 returns that provides the date and control number (PLR-108843-23) of the letter ruling.

Sincerely,

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Robert M. Rhyne  
General Attorney, Branch 3 Office of Associate  
Chief Counsel (Corporate)

cc: