

Internal Revenue Service

Number: **202351009**

Release Date: 12/22/2023

Index Number: 355.00-00, 355.01-00,
368.00-00, 368.04-00

,

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:2

PLR-112307-23

Date:

September 27, 2023

Legend

Foreign Parent =

Distributing =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

FDRE 1 =

FDRE 2 =

US DRE 1 =

US DRE 2 =

Country A =

State A =

State B =

Business A =

Business B =

Business C =

Business D =

Intercompany
Payables =

Intercompany =
Receivables

Seconded =
Employees

Dear :

This letter responds to your letter dated June 9, 2023 and subsequent correspondence, submitted by your authorized representatives, requesting rulings on certain US federal income tax consequences of a proposed transaction, as defined and described 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), Rev. Proc. 2023-1, 2023-1 I.R.B. 1, and Rev. Proc. 2022-10, 2022-6 I.R.B. 473. 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 Distribution (as 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 for 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

Foreign Parent is a publicly-traded Country A corporation and the parent of a worldwide group that includes both domestic and foreign entities (the Parent Worldwide Group). The Parent Worldwide Group's business operations include Businesses A, B, C, and D.

Foreign Parent indirectly owns, through a chain of entities that are each disregarded as separate from Foreign Parent for US federal income tax purposes, FDRE 1, a Country A entity that is also disregarded as separate from Foreign Parent. FDRE 1 owns all of the stock of Distributing, a State A corporation. Distributing is the common parent of an affiliated group of corporations that files a consolidated US federal income tax return (the Distributing Consolidated Group).

Distributing wholly owns (i) Sub 1, a State B corporation; (ii) Sub 2, Sub 3, and Sub 4, each a State A corporation; and (iii) US DRE 1 and US DRE 2, each a State A limited liability company that is disregarded as separate from Distributing for US federal income tax purposes.

Sub 2 wholly owns, directly and indirectly, the outstanding equity of various subsidiaries that are (i) corporations or (ii) limited liability companies classified as either corporations or disregarded entities for US federal income tax purposes (the "Sub 2 Subsidiaries"). Sub 1, Sub 2, Sub 3, and the Sub 2 Subsidiaries are engaged in Business A and are collectively referred to as the "Distributing Business A Entities." Each of Sub 1, Sub 2, Sub 3, Sub 4, and the regarded Sub 2 Subsidiaries is a member of the Distributing Consolidated Group.

In addition, Distributing owns, directly and indirectly, various entities that, together with Sub 4, US DRE 1, and US DRE 2, are engaged in Business B, collectively referred to as the "Distributing Business B Entities."

Foreign Parent also owns, indirectly through a chain of entities that are each disregarded as separate from Foreign Parent for US federal income tax purposes, FDRE 2, a Country A entity that is disregarded as separate from Foreign Parent for US federal income tax purposes. FDRE 2 owns all of the stock of Sub 5, a State A corporation. Sub 5 is the common parent of an affiliated group of corporations that files a consolidated US federal income tax return (the Sub 5 Consolidated Group). Sub 5 and its direct and indirect subsidiaries are primarily engaged in Business A.

For purposes of satisfying the active trade or business requirement of section 355(b) with respect to the Distribution (as defined and described below), (i) Distributing will rely upon Business C, a subset of Business B, conducted by members of its "separate affiliated group" as defined in section 355(b)(3)(B) (i.e., Distributing through US DRE 1 and US DRE 2, and Sub 4); and (ii) Controlled (as defined below) will rely upon Business D, a subset of Business A, conducted by members of its "separate affiliated group" as defined in section 355(b)(3)(B) (i.e., Sub 2 and regarded Sub 2 Subsidiaries,

either directly or through disregarded entities). Financial information has been submitted in accordance with Rev. Proc. 2017-52 indicating that each of Business C and Business D has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

After the formation of Controlled and prior to the Contribution (as defined and described below), Distributing and the Distributing Business A Entities will enter into a series of transactions in which the Distributing Business A Entities will distribute excess capital and/or retained earnings, if any, to Distributing directly or through one or more other Distributing Business A entities (the Pre-Separation Distributions). Distributing represents that section 301 will apply to the Pre-Separation Distributions, if any. The Pre-Separation Distributions will adjust intercompany balances owed between Distributing and certain Distributing Business A Entities. The Pre-Separation Distributions could reduce or eliminate an Intercompany Payable owed by Distributing to a Distributing Business A Entity. The Pre-Separation Distributions could also increase or create an Intercompany Receivable owed to Distributing by a Distributing Business A Entity.

Proposed Transaction

For what are represented to be valid corporate business purposes, Distributing proposes to undertake the following Proposed Transaction to separate the Distributing Business A Entities from the Distributing Business B Entities (the Proposed Transaction):

- (1) Distributing will form Controlled as a State A corporation with a single class of common stock issued and outstanding.
- (2) Distributing will contribute to Controlled (a) 100 percent of the outstanding stock of each of Sub 1, Sub 2, and Sub 3; and (b) any Intercompany Receivables (the Contribution). The Contribution will be effected in part as a contribution to capital and in part in exchange for the assumption of any remaining Intercompany Payables.
- (3) Distributing will distribute 100 percent of the outstanding stock of Controlled to FDRE 1 (the Distribution, together with the Contribution, the Spin-Off).

Following the Proposed Transaction, it is expected that Foreign Parent will combine Controlled and Sub 5 in a tax-free manner.

Representations

Except as set forth below, Distributing has made all of the representations in section 3 of the Appendix to Rev. Proc. 2017-52 with respect to the Spin-Off.

1. Distributing has made the following alternative representations: 3(a), 8(b), 11(a) (subject to the modification described below), 15(a), 22(a), 31(a), and 41(a).
2. Distributing has not made the following representations, but provided the required explanations: 7, 19, 20, 24, 25, 35, 39, and 40.
3. Distributing has made the following modified representations:

Representations 11(a): Following the Distribution, Distributing or the DSAG and Controlled or the CSAG each will continue, independently and with its separate employees (and, in the case of the CSAG, with the Seconded Employees), the active conduct of the business on which it relies to meet the active trade or business requirement of section 355(b).

Representation 32: No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution of Controlled stock, other than intercompany debt arising from payments for the Seconded Employees or in the ordinary course of operations.

Rulings

Based solely on the information submitted and the representations made, we rule as follows with respect to the Proposed Transaction:

1. The Contribution, together with the Distribution, will be a reorganization within the meaning of section 368(a)(1)(D) and section 355. Distributing and Controlled will each be a “party to a reorganization” within the meaning of section 368(b).
2. Distributing will recognize no gain or loss on the Contribution. Sections 361(a) and 357(a).
3. Controlled will recognize no gain or loss on the Contribution. Section 1032(a).
4. Controlled’s basis in each asset received from Distributing in the Contribution will be the same as the basis of the asset in the hands of Distributing immediately before the Contribution. Section 362(b).
5. Controlled’s holding period for each asset received in the Contribution will include the period during which Distributing held such asset. Section 1223(2).
6. Distributing will recognize no gain or loss on the distribution of Controlled stock in the Distribution. Section 361(c) and Treas. Reg. § 1.367(e)-1(c).

7. Foreign Parent will recognize no gain or loss, and no amount will be included in its income, on the receipt of Controlled stock in the Distribution. Section 355(a)(1).
8. The aggregate basis of the Controlled stock and the Distributing stock in the hands of Foreign Parent immediately after the Distribution will equal the aggregate basis of the Distributing stock held by Foreign Parent immediately before the Distribution. Section 358(a). The basis will be allocated between Distributing stock and Controlled stock in proportion to the fair market value of each immediately after the Distribution in accordance with Treas. Reg. § 1.358-2(a)(2). Sections 358(a), (b), and (c).
9. Foreign Parent's holding period in the Controlled stock received in the Distribution will include the holding period of the Distributing stock held by Foreign Parent with respect to which the Distribution is made, provided that such Distributing stock is held as a capital asset on the date of the Distribution. Section 1223(1).
10. Earnings and profits of Distributing will be allocated between Distributing and Controlled in accordance with section 312(h). Treas. Reg. § 1.312-10(a) and Treas. Reg. § 1.1502-33(e).
11. Following the Distribution, Controlled will not be a successor of Distributing for purposes of section 1504(a)(3). Therefore, Controlled and its direct and indirect subsidiaries that are "includible corporations" under section 1504(b) and satisfy the ownership requirements of section 1504(a)(2) will be members of an affiliated group of corporations entitled to file a consolidated US federal income tax return with Controlled as the common parent.

Caveat

No opinion is expressed or implied about the tax treatment of the Proposed Transaction under any other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the preceding 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.

In accordance with the Power of Attorney on file with this Office, a copy of this letter is being sent to your authorized representative.

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,

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

cc: