

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

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CC:CORP:B03

PLR-113441-23

Date:

October 27, 2023

Legend

Foreign Parent =

Sub 1 =

Sub 2 =

Sub 3 =

FSub 1 =

FSub 2 =

HoldCo =

New FSub 2 =

PLR-113441-23

2

Business A1 =

Business A2 =

Business B1 =

Business B2 =

Country A =

Country B =

Continuing
Relationships =

Dear _____ :

This letter responds to your letter dated June 30, 2023, requesting rulings on certain federal income tax consequences of a series of proposed transactions (the “Proposed Transactions”), as supplemented by your letters dated August 16, 2023, September 20, 2023, and October 17, 2023. The information provided in those letters is summarized below.

This letter is issued pursuant to Rev. Proc. 2017-52, 2017-41 I.R.B. 283, regarding two “Covered Transactions” under section 355 and section 368 of the Internal Revenue Code (the “Code”); section 6.03(2)(b) of Rev. Proc. 2023-1, 2023-1 I.R.B. 1, regarding one significant issue under section 355; 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 provided 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 on examination.

This office has made no determination regarding whether each of the FSub 2 Distribution and HoldCo Distribution (each defined below): (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is used primarily 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. § 1.355-8T (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7). This office also has made no determination regarding the U.S. federal income tax treatment of the Amalgamation or the HoldCo Merger (each defined below).

Summary of Facts

Foreign Parent is a publicly traded Country A corporation and is the parent of a worldwide group of entities that is engaged in several businesses, including Business A1, Business A2, Business B1, and Business B2 (the “Company”). The direct and indirect domestic and foreign subsidiaries of Foreign Parent relevant to the Proposed Transactions are described below.

Foreign Parent owns all of the issued and outstanding stock of Sub 1, a domestic corporation. Sub 1 is the parent of an affiliated group of corporations that files a consolidated return for U.S. federal income tax purposes. Foreign Parent also owns all of the issued and outstanding stock of Sub 2, a domestic corporation.

Sub 1 owns all of the issued and outstanding stock of each of Sub 3, a domestic corporation, and FSub 1, a Country B entity that is treated as a corporation for U.S. federal income tax purposes. FSub 1, in turn, owns all of the issued and outstanding stock of FSub 2, a Country B entity that is treated as a corporation for U.S. federal income tax purposes.

For purposes of satisfying the active trade or business requirement of section 355(b), (i) with respect to the FSub 2 Distribution (as defined below), FSub 1, as the distributing entity, will rely on Business A2, and FSub 2, as the controlled entity, will rely on Business B2, as conducted directly and/or by members of their respective “separate affiliated group” as defined in section 355(b)(3)(B); and (ii) with respect to the HoldCo Distribution (as defined below), Sub 1, as the distributing entity, will rely on Business A1, and HoldCo, as the controlled entity, will rely on Business B1, as conducted directly and/or by members of their respective “separate affiliated group” as defined in section 355(b)(3)(B).

Financial information has been submitted indicating that Business A1, Business A2, Business B1, and Business B2 each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

The Proposed Transactions

For what are represented to be valid business purposes, the Company intends to separate Business B1 and Business B2 from Business A1 and Business A2 in the Proposed Transactions.

1. FSub 1 will capitalize all or a portion of the intercompany obligations owed by FSub 2 to FSub 1 (the “FSub 2 Debt Capitalization”). Any such obligation not capitalized will be paid off in cash prior to the Country B Butterfly described below.
2. Sub 1 will incorporate a new entity (“NewCo”), a Country B entity that will be disregarded as separate from its owner for U.S. federal income tax purposes. NewCo will be authorized to issue both common and preferred shares.
3. The following transaction steps under the tax laws of Country B are necessary to separate FSub 2 from FSub 1 (the “Country B Butterfly”):
 - a. FSub 1 will reorganize its share capital to create a new class of common shares, and redeemable and retractable fixed value preferred shares. Sub 1 will exchange the common shares it holds of FSub 1 for new common shares of FSub 1 and fixed value preferred shares of FSub 1 (“FSub 1 PS”). FSub 1 PS will be redeemable and retractable for a value equal to the fair market value (“FMV”) of the shares of FSub 2.
 - b. Sub 1 will contribute FSub 1 PS to NewCo for consideration of additional common shares of NewCo.
 - c. FSub 1 will contribute the shares of FSub 2 to NewCo. In consideration, NewCo will issue fixed value preferred shares (“NewCo PS”) to FSub 1. NewCo PS will be redeemable and retractable for an amount equal to the FMV of the shares of FSub 2.
 - d. FSub 1 will redeem FSub 1 PS issued to NewCo for a non-interest-bearing note denominated in Country B currency (“Note 1”). NewCo will redeem NewCo PS issued to FSub 1 for a non-interest-bearing note denominated in Country B currency (“Note 2”).
 - e. Note 1 will be offset against Note 2. Both notes will then be cancelled. These transaction steps will constitute the “FSub 2 Distribution.”
4. NewCo and FSub 2 will amalgamate to collectively form a new entity (such new

entity, "New FSub 2," and such transaction, the "Amalgamation").

5. Sub 1 will incorporate HoldCo, a domestic corporation.
6. Sub 1 will contribute New FSub 2 and Sub 3 to HoldCo in exchange for shares of HoldCo (the "HoldCo Contribution").
7. Sub 1 will distribute the shares of HoldCo to Foreign Parent (the "HoldCo Distribution").
8. Sub 2 will merge with and into HoldCo with HoldCo surviving (the "HoldCo Merger").

Following the Proposed Transaction, Business B1 and Business B2, on the one hand, and Business A1 and Business A2, on the other hand, will operate as separate businesses, but Sub 1 (and/or one or more of its direct or indirect subsidiaries) and HoldCo (and/or one or more of its direct or indirect subsidiaries) will have certain Continuing Relationships.

Representations

The Company has made the following representations with respect to the Proposed Transactions:

FSub 2 Distribution

With respect to the FSub 2 Distribution, except as set forth below, the Company has made all the representations in section 3 of the Appendix to Rev. Proc. 2017-52.

- (a) The Company has not made the following representations, which do not apply to the FSub 2 Distribution: Representations 7; 17-20; 24; 25; 35; 36-39.
- (b) The Company has not made the following representations but provided the required explanations: Representations 34; 40.
- (c) The Company has made the following alternative representations: Representations 3(a); 8(a); 11(a); 15(a); 22(a); 31(a); 41(a).
- (d) The Company has made the following modified representations and provided the required explanations: Representations 32; 43.

Modified Representation 32: Other than as a result of the Continuing Relationships, no intercorporate debt will exist between FSub 1 and FSub 2 at the time of, or subsequent to, the distribution of FSub 2 stock.

Modified Representation 43: For purposes of Treas. Reg. § 1.367(b)-5(c), Sub

1's predistribution amount with respect to FSub 1 and FSub 2 will not exceed Sub 1's postdistribution amount with respect to FSub 1 and FSub 2, or, if the predistribution amount does exceed the postdistribution amount, Sub 1 will reduce its basis, or include an amount in income as a deemed dividend, to the extent provided in Treas. Reg. § 1.367(b)-5(c)(2).

HoldCo Distribution

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

- (a) The Company has not made the following representations, which do not apply to the HoldCo Distribution: Representations 7; 17-20; 24; 25; 35.
- (b) The Company has not made the following representations but provided the required explanations: Representations 34; 40.
- (c) The Company has made the following alternative representations: Representations 3(a); 8(a); 11(a); 15(a); 22(a); 31(a); 41(a).
- (d) The Company has made the following modified representation and provided the required explanation: Representation 32.

Modified Representation 32: Other than as a result of the Continuing Relationships, no intercorporate debt will exist between Sub 1 and HoldCo at the time of, or subsequent to, the distribution of HoldCo stock.

Rulings

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

Country B Butterfly

- 1. For U.S. federal income tax purposes, the steps of the Country B Butterfly will together be treated as if FSub 1 distributed all of the stock of FSub 2 to Sub 1 (*i.e.*, the FSub 2 Distribution).

FSub 2 Distribution

- 2. The FSub 2 Distribution, together with the FSub 2 Debt Capitalization, will qualify as a reorganization under sections 368(a)(1)(D) and 355. FSub 1 and FSub 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 FSub 1 upon the FSub 2 Debt Capitalization. Section 361(a).
- 4. No gain or loss will be recognized by FSub 2 upon the FSub 2 Debt

Capitalization. Section 1032(a).

5. No gain or loss will be recognized by—and no amount will be included in the income of—Sub 1 upon the receipt of FSub 2 stock in the FSub 2 Distribution. Section 355(a).
6. No gain or loss will be recognized by FSub 1 on its distribution of FSub 2 stock to Sub 1. Section 361(c).
7. The holding period of the FSub 2 stock received by Sub 1 in the FSub 2 Distribution will include the holding period of the FSub 1 stock with respect to which the distribution of the FSub 2 stock was made, provided the FSub 1 stock was held as a capital asset on the date of the FSub 2 Distribution. Section 1223(1).
8. Earnings and profits will be allocated between FSub 1 and FSub 2 in accordance with section 312(h) and Treas. Reg. § 1.312-10(a).

HoldCo Distribution

9. The HoldCo Distribution, together with the HoldCo Contribution, will qualify as a reorganization under sections 368(a)(1)(D) and 355. Sub 1 and HoldCo will each be a “party to a reorganization” within the meaning of section 368(b).
10. No gain or loss will be recognized by Sub 1 upon the HoldCo Contribution. Section 361(a).
11. No gain or loss will be recognized by HoldCo upon the HoldCo Contribution. Section 1032(a).
12. HoldCo’s basis in the stock of New FSub 2 and Sub 3 received in the HoldCo Contribution will be equal to the basis of such stock in the hands of Sub 1 immediately before the HoldCo Contribution. Section 362(b).
13. The holding period in the stock of New FSub 2 and Sub 3 received in the HoldCo Contribution will include the period during which such assets were held by Sub 1. Section 1223(2).
14. No gain or loss will be recognized by—and no amounts will be included in the income of—Foreign Parent upon the receipt of HoldCo stock in the HoldCo Distribution. Section 355(a).
15. No gain or loss will be recognized by Sub 1 on its distribution of HoldCo stock to Foreign Parent. Section 361(c).
16. The holding period of the HoldCo stock received by Foreign Parent in the HoldCo Distribution will include the holding period of the Sub 1 stock with respect to which the distribution of the HoldCo stock was made, provided the Sub 1 stock was held as a capital asset on the date of the HoldCo Distribution. Section 1223(1).
17. Earnings and profits will be allocated between Sub 1 and HoldCo in accordance

with section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33.

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transactions under any other provision of the Code or the regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are 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 this letter ruling.

In accordance with the power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representatives.

Sincerely,

Samuel G. Trammell

Samuel G. Trammell
Senior Counsel, Branch 2
Office of Associate Chief Counsel (Corporate)

cc: