Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

[Third Party Communication:
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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:CORP:B06
PLR-164070-04
Date:
April 26, 2005

Legend

Shareholder =

Parent =

Distributing =

Partner A =

Partner B =

LLC =

Controlled 1 =

Controlled 2 =

Controlled 3 =

Controlled 4 =

Controlled 5 =

Business 1 =

Business 2 =

aa% =

bb% =

cc% =

dd% =

Country 1 =

Country 2 =

State X =

State Y =

Dear :

This responds to your authorized representative's a letter dated December 10, 2004, requesting rulings concerning the federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated January 28

2005, March 1, 2005, March 12, 2005 and April 11, 2005. The information submitted for consideration is summarized below.

The rulings contained in this letter are predicated upon the 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 a ruling. Verification of the information, representations, and other data may be required as part of the audit process. Moreover, no information provided by the taxpayer has been reviewed and no determination has been made regarding whether the proposed transaction: (i) satisfies the business purpose requirement of §1.355-2(b) of the Income Tax Regulations, (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) of the Internal Revenue Code and § 1.355-2(d)), and (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 (see § 355(e)(2)(A)(ii) and §1.355-7T).

Shareholder, incorporated under the laws of Country 1 owns all of the outstanding stock of Parent, a State X corporation. Parent is the common parent of an affiliated group of corporations that files a consolidated Federal income tax return as well as an affiliated group containing foreign subsidiaries. Parent owns all of the outstanding stock of Distributing, a state Y corporation, and Partner A and Partner B, both state X corporations. Partner A and Partner B respectively own aa% and bb% of LLC, a limited liability company which has elected to be treated as a partnership for federal income tax purposes. LLC owns cc% of each of Controlled 1, Controlled 2, Controlled 3, Controlled 4 and Controlled 5 (collectively, the “Controlled Entities”). The Controlled Entities are all incorporated under the laws of Country 2, and are considered controlled foreign corporations (CFCs) within the meaning of § 957. Under the laws of Country 2, each Country 2 entity must have more than one shareholder. To satisfy this requirement, Parent owns the remaining dd% of each of the Controlled Entities (less than 1%).

Distributing and LLC are each currently engaged in Business 1, and each of the Controlled Entities are engaged in Business 2 (the same line of business as Business 1). Partner A and Partner B serve as holding companies for each company’s respective interest in LLC and neither corporation directly conducts any business.

We have received financial information that Business 1 and Business 2 each have had gross receipts and operating expenses representative of an active trade or business for each of the past five years.

For what has been represented as a valid business purpose, the taxpayers have proposed the following transaction:

(i) Partner B will merge with and into Partner A with Partner A surviving the merger under applicable state law ("First Merger"). The taxpayer has represented that the First Merger will qualify under § 368(a)(1)(A). As a result of the First Merger, LLC will have one owner and will cease to be considered a partnership for U.S. federal income tax purposes.

(ii) Partner A will merge with and into Distributing, with Distributing surviving the merger under applicable state law ("Second Merger"). The taxpayer has represented that the Second Merger will qualify under § 368(a)(1)(A).

(iii) LLC will transfer all of its assets used in the conduct of Business 1 to Distributing.

(iv) Parent will transfer its nominal dd% interest in each of the Controlled Entities to Distributing. The taxpayer has represented that this transfer is done solely to satisfy Country 2 law, and will constitute a tax-free exchange under § 351.

(v) Parent will issue shares of its common stock to LLC in exchange for the cc% of the stock of each of the Controlled Entities held by LLC

(vi) Distributing will distribute the stock of LLC to Parent.

(vii) LLC will liquidate, and the stock that Parent issued in step (v) will be cancelled.

In accordance with ruling (1) below, steps (v), (vi) and (vii) will be treated for U.S. federal tax purposes as if Distributing distributed the stock of each of the Controlled entities to Parent (the "Distributions").

The following representations are made with respect to the proposed transaction:

(a) The indebtedness owed by the Controlled Entities to Distributing after the proposed transaction will not constitute stock or securities.

(b) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of the corporation.

(c) No part of the consideration to be distributed by Distributing will be received by a security holder as an employee or in any capacity other than that of a security holder of the corporation.

(d) The 5 years of financial information submitted concerning Business 1 and Business 2 represents its present operations, and there have been no substantial operational changes since the date of the last financial statements submitted.

(e) Following the transaction, Distributing and each of the Controlled Entities will continue the active conduct of its business, independently and with its separate employees.

(f) The distribution of the stock, or stock and securities, of the Controlled Entities is carried out for the following corporate business purposes: to rationalize the number of legal entities in the consolidated group and enable Shareholder to claim an indirect foreign tax credit for taxes paid by the consolidated group and the Country 2 taxes paid by the Controlled Entities. The distribution of the stock, or stock and securities, of the Controlled Entities is motivated, in whole or substantial part, by one or more of these corporate business purposes.

(g) The proposed transaction is not being used principally as a device for the distribution of the earnings and profits of Distributing or the Controlled Entities or both.

(h) Distributing neither accumulated its receivables nor made any extraordinary payment of its payables in anticipation of the transaction.

(i) With the exception of a loan made by LLC to Controlled 3 for working capital, and other than receivables/payables having arm's length terms and incurred in the ordinary course of Distributing's and the Controlled Entities' businesses, no inter-corporate debt will exist between Distributing and the Controlled Entities at the time of, or subsequent to, the Distributions.

(j) Immediately before the Distributions, items of income, gain, loss, deduction and credit will be taken into account as required by the applicable intercompany transaction regulations. Further, Distributing's excess loss account with respect to the Controlled Entities will be included in income immediately before the Distributions.

(k) Payments made in connection with all continuing transactions, if any, between Distributing and the Controlled Entities will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(l) Neither Distributing nor any of the Controlled Entities is an investment company as defined in §368(a)(2)(F)(iii) and (iv).

(m) The Distributions are not part of a plan or series of related transactions (within the meaning of §1.355-7T) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of §355(d)(4)) in Distributing or the Controlled Entities (including any predecessor or successor of any such corporation).

(n) For purposes of §355(d), immediately after the Distributions, no person (determined after applying §355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in §355(d)(5) and (8)) during the five year period (determined after applying §355(d)(6)) ending on the date of the Distributions.

(o) For purposes of §355(d), immediately after the Distributions, no person (determined after applying §355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power or 50 percent or more of the total value of shares of all classes of stock of the Controlled Entities, that was either (i) acquired by purchase as defined in §355(d)(5) and (8)) during the five year period (determined after applying §355(d)(6)) ending on the date of the Distributions or (ii) attributable to distributions on Distributing's stock that was acquired by purchase (as defined in §355(d)(5) and (8)) during the five year period (determined after applying §355(d)(6)) ending on the date of the Distributions.

(p) The Controlled Entities are controlled foreign corporations. The Controlled Entities will remain controlled foreign corporations after the Distributions.

(q) Neither Distributing nor any of the Controlled Entities has been a United States real property holding corporation (a "USRPHC"), as defined in §897(c)(2), at any time during the 5-year period ending on the date of the Distributions, and neither Distributing nor any of the Controlled Entities will be a USRPHC immediately after the Distributions.

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

(1) For federal tax purposes steps (v), (vi) and (vii) of the proposed transaction will be treated as if Distributing transferred the stock of each of the Controlled Entities to Parent (see Rev. Rul. 83-142, 1983-2 C.B. 68; Rev. Rul. 77-191, 1977-1 C.B. 94; Rev. Rul. 57-311, 1957-2 C.B. 243).

(2) Distributing will recognize no gain or loss and no amount will be included in its income upon the Distributions (§ 355(c)(1)).

(3) Parent will recognize no gain or loss (and no amount will otherwise be included in the income of Parent) upon the Distributions (§ 355(a)(1)).

(4) The basis of the stock of each of the Controlled Entities in the hands of Parent immediately after the Distributions shall be the lesser of the adjusted basis of the respective stock in the hands of Distributing or the substituted basis allocated to the stock of the Controlled entities in accord with § 1.358-2(a)(2) (§358(b)(2); Notice 87-64, 1987-2 C.B. 375).

(5) The holding period of the stock of each of the Controlled Entities stock received by Parent will be the greater of the holding period of such stock in the hands of Distributing or the holding period of the stock of Distributing in the hands of Parent (§ 1248(f); Notice 87-64, 1987-2 C.B. 375.

(6) Section 1248(f)(1) will not be applicable to the Distributions (§ 1248(f)(2); Notice 87-64, 1987-2 C.B. 375).

(7) The earnings and profits of each of the Controlled Entities, to the extent attributable to such stock under §§ 1.1248-2 or 1.1248-3 (whichever is applicable), which were accumulated in taxable years of such foreign corporations beginning after December 31, 1962, and during the periods that each of the Controlled Entities was a controlled foreign corporation, shall be attributable to such stock.

(8) As provided in § 312(h), proper allocation of earnings and profits between Distributing and the Controlled Entities will be made under §§ 1.312-10(b).

No opinion is expressed about the tax treatment of the proposed transaction under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or the effects resulting from, the proposed transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the Distributions satisfy the business purpose requirement of §1.355-2(b); (ii) whether the proposed transaction is used principally as a device for the distribution of the earnings and profits of Distributing or the Controlled Entities or both (see §355(a)(1)(B) and §1.355-2(d)); and (iii) whether the Distributions and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii). In addition, no opinion is expressed regarding (1) whether the transaction described in step (i) and step (ii) each qualify as a reorganization under section 368(a)(1)(A), and (2) whether the requirements of section 351 have been satisfied in step (iv), or any tax consequences as a result of these transactions. Further, no opinion is expressed regarding whether any or all of the above referenced foreign corporations are passive foreign investment companies (within the meaning of §1297(a) of the Code and the regulations to be promulgated thereunder). If it is determined that any or all of the above described foreign corporations are passive

foreign corporations, no opinion is expressed with respect to the application of §§1291 through 1298 to the proposed transaction. In particular, in a transaction in which gain is not otherwise recognized, regulations under § 1291(f) may require gain recognition notwithstanding any other provision of the Code.

This ruling is only directed to the taxpayer requesting it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to the federal income tax return of each taxpayer involved in the taxable year in which the transaction is consummated

Under a power of attorney on file with this office, the original letter is being sent to the taxpayer and a copy to the taxpayer's authorized representative.

Sincerely,

Mark J. Weiss
Mark J. Weiss
Acting Assistant to the Chief, Branch 6
CorporateOffice of Associate Chief Counsel
(Corporate).

cc: