

Internal Revenue Service

Number: **200812013**

Release Date: 3/21/2008

Index Numbers: 355.00-00, 355.01-00,
884.04-00

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:B04
PLR-137714-07

Date:
December 17, 2007

Legend

Parent =

Distributing =

Controlled =

Business A =

Business A1 =

Country A =

State A =

Date 1 =

Date 2 =

Dear _____ :

This letter responds to your August 20, 2007 letter requesting rulings as to the federal income tax consequences of a proposed transaction. The information submitted in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty 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. In particular, this office has not reviewed any information pertaining to, and has made no determination 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)); 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 (see § 355(e) and § 1.355-7).

Summary of Facts

Parent, a Country A corporation, is a holding company and the common parent of a corporate group composed of various domestic and foreign corporations. Parent has a single class of common stock outstanding.

Distributing, a Country A corporation, engages in Business A and Business A1 through domestic and foreign branches and foreign subsidiaries. Distributing has a single class of common stock outstanding, which is wholly-owned by Parent.

On Date 1, Distributing formed Controlled, a State A corporation. Controlled has a single class of common stock outstanding, which is wholly-owned by Distributing. On Date 2, Distributing contributed most of the assets and liabilities of Business A1 to Controlled in a transaction represented to qualify as tax-free under § 351 (the "Contribution").

Financial information has been submitted indicating that Distributing and Controlled each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the five years.

The Distribution is being carried out for the following corporate business purposes: (1) to insulate Distributing from various regulatory and litigation risks associated with its ownership of Controlled; (2) to achieve cost savings in any litigation involving Controlled; and (3) to better ensure the separation of assets and liabilities between Distributing and Controlled.

Proposed Transaction

For what are represented to be valid business purposes, Distributing will distribute all of the Controlled stock to Parent (the "Distribution").

In connection with the Distribution, Distributing and Controlled will enter into several agreements relating to the separation of Controlled and certain continuing transactions between the companies (the "Ancillary Agreements").

Representations

The following representations are made with respect to the Distribution:

(a) Any indebtedness owed by Controlled to Distributing after the Distribution will not constitute stock or securities.

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

(c) The five years of financial information submitted on behalf of Distributing is representative of its present operation, and there have been no substantial operational changes since the date of the last financial statements submitted.

(d) The five years of financial information submitted on behalf of Controlled is representative of its present operation, and there have been no substantial operational changes since the date of the last financial statements submitted.

(e) Following the Distribution, Distributing and Controlled will each continue the active conduct of its business, independently (except as contemplated by the Ancillary Agreements) and with its separate employees.

(f) The Distribution is being carried out for the following corporate business purposes: (1) to insulate Distributing from various regulatory and litigation risks associated with its ownership of Controlled; (2) to achieve cost savings in any litigation involving Controlled; and (3) to better ensure the separation of liabilities and assets between Distributing and Controlled. The Distribution is motivated, in whole or substantial part, by these corporate business purposes.

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

(h) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution, except for any indebtedness incurred in the ordinary course of business.

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

(j) Neither Distributing, Controlled, nor Parent is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).

(k) The Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) 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 Controlled (including any predecessor or successor of any such corporation).

(l) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold Distributing stock possessing 50 percent or more of the total combined voting power of all classes of stock entitled to vote, or 50 percent or more of the total value of shares of all classes of 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 Distribution.

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

(n) Neither Business A1 nor control of any entity conducting this business was acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.

(o) The Distribution was not contemplated at the time of the Contribution.

(p) Distributing is a qualified resident of Country A within the meaning of § 1.884-5.

Rulings

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

(1) No gain or loss will be recognized by (and no amount will be included in the income of) Parent upon the receipt of the Controlled stock in the Distribution. § 355(a)(1).

(2) No gain or loss will be recognized by Distributing on the distribution of the Controlled stock in the Distribution. § 355(c)(1).

(3) The aggregate basis of the Distributing stock and Controlled stock received by Parent after the Distribution will be the same as the basis of the Distributing stock in the hands of Parent immediately before the Distribution, allocated in the manner described in accordance with § 1.358-2(a). § 358(a), (b), and (c), § 1.358-1(a).

(4) The holding period of the Controlled stock in the hands of Parent will include the holding period of the Distributing stock held by Parent prior to the Distribution, provided that the Distributing stock is held as a capital asset on the date of the Distribution. § 1223(1).

(5) Provided that Parent attaches a statement to a timely filed (including extensions) 1120F (U.S. Income Tax Return of a Foreign Corporation) agreeing that Parent will treat a disposition of part or all of the stock of Controlled (or a successor in interest) as a “disposition” for purposes of § 1.884-2T(d)(5)(i), the transfer by Distributing of the Controlled stock to Parent will not be treated as a disposition of the Controlled stock by Distributing under § 1.884-2T(d)(5)(i).

Caveats

No opinion is expressed about the tax treatment of the proposed transaction described above under other provisions of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the proposed transaction that is not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the proposed transaction satisfies 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 Controlled or both (see § 355(a)(1)(B) and § 1.355-2(d)); (iii) whether the proposed transaction is part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii); (iv) the tax consequences of the Contribution; (v) except as otherwise provided herein,

§ 884 or other international tax consequences resulting from the proposed transactions; (vi) whether Parent or Distributing are entities eligible for tax benefits under the U.S.-Country A income tax convention; and (vii) the amount of effectively connected earnings and profits to be allocated from Distributing to Controlled under § 1.884-2T(d)(4) or the amount of earnings and profits at issue in respect to the proposed transaction under §§ 355 and 312.

Procedural Statements

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) 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 in this office, a copy of this ruling letter is being sent to your authorized representative.

Sincerely,

Richard K. Passales
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Corporate)