

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:
, ID No.

Telephone Number:

Refer Reply To:
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PLR-137380-13
Date:
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Foreign Parent =

Distributing =

Controlled =

Foreign Sub =

Global Business =

Business X =

Business Y =

Date 1 =

Date 2 =

Date 3 =

State A =

State B =

c =

d =

Country E =

Country F =

Dear :

We respond to your August 23, 2013, request for rulings on certain federal income tax consequences of a proposed transaction described below (the Proposed Transaction). The information submitted in that request and in later correspondence is summarized below.

SUMMARY OF FACTS

Foreign Parent, a Country E corporation, together with related entities (the Foreign Parent Group), operates Global Business, which includes Business X and Business Y. Foreign Parent owns all of the stock of Distributing, a domestic corporation incorporated in State A that was formed on Date 1 originally to perform Business Y functions for the group in the United States but became engaged in both Business X and Business Y. Distributing formed Controlled, a State B corporation, on Date 2 as part of the proposed transaction.

Business X and Business Y face different operating, regulatory, growth opportunity, and talent retention challenges. Foreign Parent Group management has decided that each business must have its own business model to operate efficiently and maximize its contribution to Foreign Parent Group's overall enterprise value. Accordingly, Distributing is undertaking the proposed transaction to separate Business X and Business Y in order to (a) enhance compliance with differing regulatory requirements and minimize the regulatory risks associated with Business Y; (b) limit the potential negative impact of Business Y on Business X; (c) permit the management of Controlled to focus solely on Business Y and facilitate compliance with regulatory requirements; (d) further the global realignment of the Business Y function of the Foreign Parent Group; and (e) provide Business Y with the ability to implement a distinct employee compensation program that will more effectively attract and retain talent (collectively, the Corporate Business Purposes).

PROPOSED TRANSACTION

For what is represented to be valid business reasons, Distributing proposes to undertake the following Proposed Transaction:

- (i) On Date 2, Distributing incorporated Controlled in State B.
- (ii) On Date 3, Distributing transferred all assets related to Business Y and \$c to Controlled in exchange for all of the Controlled stock and the assumption by Controlled of related liabilities (the Contribution).
- (iii) Foreign Sub, a wholly owned Country F company of Foreign Parent, will elect to be classified as an entity disregarded from Foreign Parent (hereinafter Foreign DRE).
- (iv) Distributing will transfer the Controlled stock for no consideration to Foreign DRE (the Distribution).

In connection with the Contribution and Distribution, Distributing and Controlled will have certain continuing relationships that will be formalized in agreements between them (Continuing Relationships). The Continuing Relationships generally may be categorized into General Agreements and Transitional Agreements. The General Agreements include a Distribution Agreement providing key terms for separating Business Y from Business X and a Tax Matters Agreement governing the rights, responsibilities, and obligations of Distributing and Controlled regarding tax matters subsequent to the Distribution. The indemnification provisions of these agreements are referred to as the Contingent Liability Arrangements. The Transitional Agreements involve obligations arising after the Distribution that relate to transitional and administrative support services that Foreign Parent Group will provide to Controlled, or vice versa, for an interim period not to exceed d years (and may include annual renewals unless terminated upon advance written notice) while Controlled establishes its own administrative support and corporate service arrangements. Services will be compensated at cost initially and on an arm's length basis if the interim period is extended.

REPRESENTATIONS

Distributing has made the following representations regarding the Contribution and the Distribution:

- (a) Apart from intercompany balances that may arise from the provision of transitional and administrative support services under the Transitional Agreements, no intercorporate debt will exist between Distributing (or any entity controlled directly or indirectly by Distributing) and Controlled (or any entity controlled directly or indirectly by Controlled) at the time of, or subsequent to, the distribution of Controlled stock.
- (b) No part of the consideration distributed by Distributing will be received by Foreign Parent as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (c) The five years of financial information submitted on behalf of Business X is representative of its present operations, and with regard to such operations, 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 Business Y is representative of its present operations, and with regard to such operations, there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) Neither Business X conducted by Distributing nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Distributing in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. For the five-year period ending on the date of the Distribution, Distributing will have been the principal owner of the goodwill, if any, and significant assets of Business X. Following the Distribution, Distributing will be the principal owner of the goodwill, if any, and significant assets of Business X.
- (f) Neither Business Y to be conducted by Controlled following the Contribution nor control of an entity conducting this business will have been 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. For the five-year period ending on the date of the Distribution, (i) Distributing will have been the principal owner of the goodwill, if any, and significant assets of Business Y from the beginning of such period until the Contribution. Following the Contribution, Controlled will be the principal owner of the goodwill, if any, and significant assets of Business Y.
- (g) Apart from transitional and administrative support services that may be provided under the Transitional Agreements, Distributing will continue the active conduct of Business X, independently and with its separate employees, following the Distribution.

- (h) Apart from transitional and administrative support services that may be provided under the Transitional Agreements, Controlled will continue the active conduct of Business Y, independently and with its separate employees, following the Distribution.
- (i) The Distribution is carried out for the Corporate Business Purposes. The Distribution is motivated, in whole or substantial part, by one or more of the Corporate Business Purposes.
- (j) The Distribution will not be used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (k) The total adjusted basis and the fair market value of the assets transferred by Distributing to Controlled in the Contribution each will equal or exceed the sum of (i) the total liabilities assumed (within the meaning of section 357(d)) by Controlled, and (ii) the total amount of any money and the fair market value of any other property (within the meaning of section 361(b)) received by Distributing and transferred to its creditors in connection with the reorganization.
- (l) The liabilities assumed (as determined under section 357(d)) by Controlled in the Contribution will have been incurred in the ordinary course of business and will be associated with the assets transferred.
- (m) The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.
- (n) The total fair market value of the assets transferred to Controlled in the Contribution will exceed the sum of: (i) the amount of any liabilities assumed (as determined under section 357(d)) by Controlled in connection with the Contribution; (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the Contribution; and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under section 361(a) without the recognition of gain) received by Distributing in connection with the Contribution.
- (o) The aggregate fair market value of the assets transferred to Controlled in the Contribution will equal or exceed the aggregate adjusted basis of those assets.
- (p) Distributing will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the Contribution and Distribution.

- (q) No investment tax credit determined under section 46 has been, or will be, claimed for any property that will be transferred by Distributing to Controlled in the Contribution.
- (r) Neither Distributing nor Controlled is an investment company as defined in section 368(a)(2)(F)(iii) and (iv).
- (s) No intercorporate debt will exist between Distributing (or any entity controlled directly or indirectly by Distributing) and Controlled (or any entity controlled directly or indirectly by Controlled) at the time of, or subsequent to, the Distribution, other than intercompany loans or other obligations that have arisen, or will arise, between the parties in the ordinary course of business or as a result of the Continuing Relationships.
- (t) Apart from certain payments made under the Transitional Agreements, payments made in connection with all continuing transactions between Controlled (or any entity controlled directly or indirectly by Controlled) and Distributing (or any entity controlled directly or indirectly by Distributing) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (u) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, 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 section 355(d)(5) and (8)) during the 5-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (v) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (w) The Distribution is not part of a plan or series of related transactions (within the meaning of section 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 section 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).

- (x) Immediately after the Distribution (as defined in section 355(g)(4)), (i) if any person holds a 50-percent or greater interest (within the meaning of section 355(g)(3)) in any disqualified investment corporation (within the meaning of section 355(g)(2)), such person will have held such interest in such corporation (either directly or through attribution) immediately before the Distribution; or (ii) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (y) Neither Distributing nor Controlled will have been a United States real property holding corporation (as defined in section 897(c)(2)) at any time during the 5-year period preceding the Distribution, and neither Distributing nor Controlled will be a United States real property holding corporation (as defined in section 897(c)(2)) immediately after the Distribution.

RULINGS

- (1) The Contribution, followed by the Distribution, will be a reorganization under section 368(a)(1)(D). Distributing and Controlled each will be “a party to the reorganization” within the meaning of section 368(b).
- (2) Distributing will not recognize any gain or loss on the Contribution (sections 361(a) and 357(a)).
- (3) Controlled will not recognize any gain or loss on the Contribution (section 1032(a)).
- (4) Controlled’s basis in each asset received from Distributing in the Contribution will equal the basis of that asset in the hands of Distributing immediately before the Contribution (section 362(b)).
- (5) Controlled’s holding period in each asset received from Distributing in the Contribution will include the period during which Distributing held that asset (section 1223(2)).
- (6) Distributing will not recognize any gain or loss on its distribution of Controlled stock to Foreign Parent (section 361(c)(1)).
- (7) Foreign Parent will not recognize any gain or loss (and will not include any amount in income) on the receipt of Controlled stock in the Distribution (section 355(a)(1)).

- (8) Immediately following the Distribution, the basis that Foreign Parent had in a share of Distributing stock before the Distribution will be allocated between the share of Distributing stock with respect to which the Distribution is made and the share of Controlled stock received with respect thereto in proportion to the fair market value of each (section 358(b)(2) and (c); section 1.358-2(a)(2)).
- (9) Foreign Parent's holding period in the Controlled stock received in the Distribution will include the holding period of the Distributing stock on which the Distribution is made, provided Foreign Parent holds its Distributing stock as a capital asset on the date of the Distribution (section 1223(1)).
- (10) Earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with section 312(h) and section 1.312-10(a).
- (11) Any payments between Distributing and Controlled that are made following the Distribution pursuant to the Contingent Liability Arrangements regarding obligations that (i) have arisen or will arise for a taxable period ending on or before the Distribution or for a taxable period beginning before but ending after the Distribution and (ii) will not have become fixed and ascertainable until after the Distribution, will be treated as occurring immediately before the Distribution. (Cf. Arrowsmith v. Commissioner, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84).

CAVEATS

We express no opinion about the federal income tax treatment of the Proposed Transaction under other provisions of the Internal Revenue Code or regulations or the federal income tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding whether the Distribution satisfies the business purpose requirement of section 1.355-2(b); whether the Distribution is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see section 355(a)(1)(B) and section 1.355-2(d)); and whether the Distribution is part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii) and section 1.355-7.

PROCEDURAL STATEMENTS

The rulings contained in this letter are based upon 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 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 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 the letter ruling.

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

Sincerely,

Filiz A. Serbes
Chief, Branch 3
Office of the Associate Chief Counsel
(Corporate)

cc: