Internal Revenue Service

Number: **201817001**
Release Date: 4/27/2018

Index Number: 355.00-00

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:B3
PLR-115829-17

Date:
January 26, 2018

Legend

Distributing =

Merger Partner =

Merger Sub =

Holdco =

Controlled =

Owner A =

Owner B =

Sub 1 =

Sub 2 =

Sub 3 =

FSub 1 =

FSub 2 =

FSub 3 =

FSub 4 =

FSub 5 =

DRE 1 =

DRE 2 =

DRE 3 =

DRE 4 =

DRE 5 =

DRE 6 =

Business A =

Business B =

State A =

State B =

Country A =

Country B =

Country C =

Institutional Investors =

IP Matters Agreement =

Merger Partner Cash Distribution =

a =

b =

c =

d =

e =

f =

Dear :

This letter responds to your letter dated May 12, 2017, as supplemented by additional submissions, requesting rulings on certain federal income tax consequences of certain transactions (the “Transaction”). The information provided in that letter and in subsequent correspondence is summarized below.

The rulings contained 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. While this Office has not verified any of the materials submitted in support of the request for rulings, it is subject to verification on examination.

This letter is issued pursuant to section 6.03 of Rev. Proc. 2017-1, 2017-1, I.R.B. 1, regarding one or more significant issues under sections 355 and 368 of the Internal Revenue Code (the "Code"). The rulings contained in this letter only address one or more discrete legal issues involved in the Transaction. This Office expresses no opinion as to the overall tax consequences of the transactions described in this letter or as to any issue not specifically addressed by the rulings below.

SUMMARY OF FACTS

Distributing, a publicly traded State A corporation, is the parent of a worldwide group of corporations that includes both domestic and foreign entities, and is the common parent of an affiliated group of domestic corporations that files a U.S. consolidated federal income tax return. Prior to the Transaction, Distributing and its subsidiaries were engaged in Business A and Business B.

At the time of the Transaction, Distributing had a single class of common stock outstanding, the shares of which were publicly traded and widely held (the "Distributing Common Stock"). Distributing also had shares of common-equivalent preferred stock outstanding (the "Distributing Preferred Stock"), which was directly owned by Owner A, a State A limited liability company classified as a corporation, and Owner B, a State A corporation, each a first-tier subsidiary of Distributing. The Distributing Preferred Stock owned by Owner A and Owner B (the "Distributing Class A Preferred Stock" and "Distributing Class B Preferred Stock", respectively) was redeemable at Distributing's option for shares of Distributing Common Stock and possessed the same voting and distribution rights as the shares of Distributing Common Stock. Prior to the Transaction, approximately a percent by value of Distributing's stock consisted of Distributing Common Stock, and approximately b percent by value of its stock consisted of Distributing Preferred Stock.

Pursuant to the Transaction, the Business B assets and operations were separated from the Business A assets and operations, resulting in two publicly held, worldwide groups, with the Business A assets and operations owned by the Distributing group and the Business B assets and operations owned by the Controlled group. Shortly after the separation, Holdco, a newly formed State A corporation and first-tier subsidiary of Merger Partner, an unrelated foreign corporation, acquired all of the stock of Controlled owned by the Controlled public shareholders, in exchange for stock of Merger Partner (the "Combination"). Following the Combination, Merger Partner, Controlled and their respective subsidiaries intend to undertake intercompany integration transactions in order to combine the operations of Business B with the operations of Merger Partner and its subsidiaries (the "Integration Transactions").

RELEVANT ORGANIZATIONAL STRUCTURE

Prior to the Transaction, Distributing directly owned all of the stock of (i) Sub 1, a State A corporation; (ii) Sub 2, a State A corporation; (iii) Owner A; (iv) Owner B; and (v) FSub

1, a Country A entity classified as a corporation. Distributing also owned, indirectly through disregarded entities, all of the stock of FSub 2, a Country A entity classified as a corporation, and all of the equity interests in DRE 1, a State B limited partnership disregarded as separate from Distributing. Sub 2 owned all of the stock of Sub 3, a State A corporation. Owner A owned all of the equity interests in DRE 2, a State A limited liability company disregarded as separate from Owner A. Each of Sub 1, Sub 2, Sub 3, Owner A and Owner B was a member of Distributing's U.S. federal consolidated group.

In addition, FSub 1 owned all of the stock of FSub 3, a Country A entity classified as a corporation. FSub 3, in turn, owned, indirectly through disregarded entities, all of the stock of FSub 4, a Country B entity classified as a corporation. FSub 4, in turn, owned, indirectly through a disregarded entity, all of the equity interests in DRE 3, a Country A entity disregarded as separate from FSub 4.

Finally, FSub 2 owned, indirectly through disregarded entities, all of the stock of FSub 5, a Country C entity classified as a corporation. FSub 5, in turn, owned, indirectly through a disregarded entity, all of the equity interests in DRE 4, a Country B entity disregarded as separate from FSub 5. DRE 4, in turn, owned all of the equity interests in DRE 5, a Country B entity disregarded as separate from FSub 5. DRE 5, in turn, owned all of the equity interests in DRE 6, a Country B entity disregarded as separate from FSub 5.

THE TRANSACTION

For what have been represented to be valid business purposes, the parties described herein implemented the Transaction through the following steps pursuant to one overall plan of reorganization (the "Plan of Reorganization"):

(i) Distributing formed Controlled, a State A corporation, with a single class of common stock outstanding.

(ii) Controlled formed a Country B entity that made an initial election to be disregarded as separate from Controlled ("DRE 7").

(iii) Owner A formed a State A limited liability company that was disregarded as separate from Owner A ("DRE 8").

(iv) DRE 4 formed a Country A entity that made an initial election to be disregarded as separate from FSub 5 ("DRE 9").

(v) DRE 1, Distributing, and Owner A entered into a contribution agreement, pursuant to which (i) Distributing transferred Business B intangibles to Owner A, and (ii) immediately following such transfer, DRE 1 transferred legal and beneficial ownership with respect to certain Business B intangibles and legal ownership with respect to other Business B intangibles (where beneficial

ownership was already owned by Owner A), and assigned any associated contracts, to the extent necessary for use in Business B, to Owner A in exchange for a membership interest in Owner A.

(vi) DRE 1, through disregarded entities, distributed its interest in Owner A to Distributing.

(vii) Distributing contributed certain of its Business B assets to Owner A.

(viii) Distributing contributed certain of its Business B assets to Controlled.

(ix) Owner A sold its non-Business B assets to DRE 1 in exchange for cash.

(x) Sub 1 sold certain of its Business B assets (including any Business B intellectual property) to Owner A in exchange for cash.

(xi) Sub 1 sold the remainder of its Business B assets to DRE 8 in exchange for cash.

(xii) Sub 3 converted to a State A limited liability company that was disregarded as separate from Sub 2 (“Sub 3 DRE”).

(xiii) Sub 2 distributed its interest in Sub 3 DRE to Distributing.

(xiv) DRE 2 merged with and into Owner A, with DRE 2 ceasing to exist and Owner A as the surviving legal entity.

(xv) Owner A contributed its beneficial interest in certain Business B assets to DRE 8.

(xvi) Distributing transferred the corresponding legal title to the Business B assets contributed by Owner A to DRE 8 in Step (xv) to DRE 8 in exchange for a nominal amount of cash.

(xvii) Distributing contributed the cash received from DRE 8 in Step (xvi) to Owner A.

(xviii) Owner A transferred certain intercompany receivables owed to Owner A by regarded subsidiaries of Distributing as partial repayment of an intercompany payable owed by Owner A to Distributing.

(xix) Distributing contributed to Controlled (i) cash to cover certain employee costs (e.g., withholding taxes and payroll liabilities), (ii) its interest in various entities holding Business B assets, including Owner A, Sub 3 DRE, and FSub 1, (iii) certain Business B intangibles, and (iv) the remaining intercompany account receivable owing from Owner A to Distributing, and Controlled assumed certain

intercompany account payables of Distributing owing to certain Business B entities (such contribution, together with Step (viii), the "Controlled Contribution").

(xx) Controlled contributed its interest in FSub 1 to DRE 7.

(xxi) In anticipation of Controlled's third-party debt issuance, Distributing contributed an amount of cash to Controlled (the "Pre-Funded Interest Amount") sufficient to cover the interest expense and related fees payable to the third-party lenders (the "Lenders") between the time of the borrowing and the closing of the Combination. Such cash was placed into a separate escrow for the benefit of Lenders. After the External Distribution (defined below), Controlled reimbursed Distributing for the Pre-Funded Interest Amount (the "Post-Closing Interest Reimbursement Amount").

(xxii) Controlled issued debt to the Lenders in exchange for borrowing cash proceeds equal to such amount (the "Debt Proceeds"), which were deposited into an escrow account.

(xxiii) Controlled distributed the Debt Proceeds to Distributing, which Distributing deposited into a segregated account. Distributing has used the Cash Proceeds to repay certain Distributing debt.

(xxiv) In connection with the Transaction, Distributing and Controlled entered into an IP Matters Agreement, whereby Distributing (and/or its affiliates) irrevocably assigned, transferred, conveyed and delivered to Controlled (and/or its affiliates) all rights, title and interest to certain intellectual property subject to certain licenses, including cross licenses (the "Cross Licensing Provisions") whereby Distributing and Controlled granted to the other (including the affiliates of each) a right to use certain intellectual property used in the other's business pursuant to a license that is non-exclusive, worldwide, perpetual, irrevocable, royalty-free, fully paid-up, and generally nonsublicensable and nontransferable.

(xxv) Sub 1, DRE 1 and DRE 6 sold their non-Business B intangibles to a disregarded entity owned by FSub 5 in exchange for cash.

(xxvi) DRE 4 contributed its interest in DRE 5 and certain other Business B assets to DRE 9 in exchange for additional equity interests in DRE 9.

(xxvii) DRE 4 sold its interest in DRE 9 to DRE 3 in exchange for cash.

(xxviii) Controlled recapitalized its existing shares of Controlled common stock held by Distributing into two classes of common stock ("Controlled Class A Common Stock" and "Controlled Class B Common Stock"). The value of the Controlled

Class B Common Stock equaled the value of the Distributing Class A Preferred Stock held by Owner A.

(xxix) Distributing distributed (i) Controlled Class A Common Stock pro rata to its public shareholders, (ii) Controlled Class B Common Stock to Owner A in redemption of all the Distributing Class A Preferred Stock held by Owner A, and (iii) pursuant to the terms of the Distributing Class B Preferred Stock held by Owner B, the ratio that each share of Distributing Class B Preferred Stock converts into Distributing Common Stock was adjusted upwards to prevent the foregoing distribution from diluting the value of the Distributing Class B Preferred Stock (collectively, the "External Distribution").

(xxx) Pursuant to the Combination, Holdco acquired, in exchange solely for voting stock of Merger Partner, all of the Controlled Class A Common Stock held by the Controlled public shareholders in a transaction in which Merger Sub, a newly formed State A corporation owned by Holdco, merged with and into Controlled, with Merger Sub ceasing to exist and Controlled as the surviving legal entity. One day prior to the Combination, Merger Partner made the Merger Partner Cash Distribution of $c to its shareholders. The Combination resulted in the Controlled public shareholders retaining an indirect interest in Controlled stock greater than 50 percent of the voting power and value of all the Controlled stock.

(xxxi) Pursuant to the Combination, in order to avoid the expense and inconvenience of issuing fractional shares, Merger Partner delivered Merger Partner shares to an exchange agent on behalf of the Controlled shareholders representing the aggregate of the fractional shares to which they were entitled, and the exchange agent then sold the shares in an open-market transaction and remitted the cash proceeds to the shareholders otherwise entitled to receive the fractional shares.

Following the Combination, Merger Partner may carry out open-market share repurchases or accelerated share repurchases (the "Share Repurchases"). At the time of the Combination, Merger Partner represented to Distributing that the Share Repurchases, if consummated, would be motivated by a corporate business purpose, would be made with respect to widely-held shares and would not be motivated by a desire to increase or decrease the ownership percentage of any particular shareholder or group of shareholders. Also, pursuant to the Integration Transactions, Controlled undertook a proportional reverse stock split of its Class A Common Stock and Class B Common Stock. Similarly, Holdco undertook a reverse stock split of its stock. In addition to the foregoing, Merger Partner transferred all of the outstanding stock of Holdco to an historic, wholly-owned country B entity classified as a corporation ("Foreign Sub") solely in exchange for Foreign Sub stock. Following this transfer, Foreign Sub may transfer all the outstanding stock of the common parent of Merger Partner's existing affiliated group of domestic corporations that join in filing a U.S. consolidated federal income tax return ("Merger Partner U.S. Parent") to Holdco solely in exchange for additional Holdco stock.

Holdco may further transfer all of the Merger Partner U.S. Parent stock to Controlled solely in exchange for additional Controlled Class A Common Stock, resulting in Controlled and Merger Partner U.S. Parent joining in filing a U.S. consolidated federal income tax return.

Pursuant to the Merger Agreement among Distributing, Controlled, Merger Partner, Holdco, and Merger Sub, Merger Partner's initial, post-Combination board of directors consists of d members, e of which are non-executive directors who qualify as "independent" under applicable law. Subject to the approval of the Merger Partner nomination committee, Distributing will nominate f of the independent non-executive directors. All such initial, post-Combination members of the Merger Partner board of directors will stand for election in the normal course at the second annual general meeting following the Combination. Under Merger Partner's governing documents, the Merger Partner board is empowered to manage the corporation's business, except with respect to certain matters traditionally reserved to shareholders under applicable law.

REPRESENTATIONS

a) The Controlled Contribution and the External Distribution qualify as a reorganization within the meaning of sections 355 and 368(a)(1)(D).

b) The Combination qualifies as a reorganization within the meaning of section 368(a).

c) Taking into account the exchange of Controlled Class A Common Stock for stock of Merger Parent pursuant to the Combination, including any resulting section 367(a) gain recognition by the Controlled public shareholders, the External Distribution is not intended to be used principally as a device for the distribution of the earnings and profits of Distributing, Merger Partner, or Controlled.

d) The Plan of Reorganization includes Distributing's contribution of the Pre-Funded Interest Amount to Controlled and Controlled's payment of the Post-Closing Interest Reimbursement Amount to Distributing.

e) The payment of cash in lieu of fractional shares of Merger Partner common stock was solely for the purpose of avoiding the expense and inconvenience of issuing fractional shares and does not represent separately bargained-for consideration. To the best of Distributing's knowledge, no Controlled shareholder received cash in an amount equal to or greater than the value of one full share of Merger Partner common stock.

f) At the time of the Combination, there was no plan or intention to effect any Share Repurchases other than Share Repurchases, if any, that may be undertaken in the manner described herein.

g) At the time of the External Distribution, there was no plan or intention to liquidate Distributing, Merger Partner, Holdco, or Controlled, to merge Distributing, Merger Partner, Holdco, or Controlled, or to sell or otherwise dispose of the assets of Distributing or Controlled, except pursuant to the Combination, pursuant to sales or contributions that may be undertaken as part of the Integration Transactions, or in the ordinary course of business.

h) At the time of the External Distribution, there was no plan or intention by Distributing, Merger Partner, Holdco, or Controlled, or any party related to Distributing, Merger Partner, Holdco, or Controlled, to issue, redeem, or purchase any of the Distributing, Merger Partner, Holdco, or Controlled stock, apart from certain open market repurchases, the Share Repurchases, or issuances undertaken pursuant to the Combination or the Integration Transactions.

i) To the extent that any member of the Distributing separate affiliated group (as defined in section 355(b)(3)(B)) or Controlled separate affiliated group held cash or other liquid or inactive assets immediately following the External Distribution, the amount of such assets so held did not exceed the reasonable needs of their respective businesses, and were within industry norms.

j) Neither Business A nor Business B had or has as its principal function serving the business of the other business.

k) None of the Institutional Investors have any board or management role at Distributing or otherwise participated in the decision-making with respect to the Transaction.

RULINGS

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

1. To the extent that Controlled shareholders were widely-held, publicly-traded mutual funds that were also Merger Partner shareholders immediately prior to the Combination, for purposes of section 355(e), the increase in direct or indirect (based on the attribution principles under section 318(a)(2)(C)) ownership percentage of Controlled stock by reason of being a Merger Partner shareholder immediately prior to the Combination is offset by the decrease in such ownership percentage by reason of being a Controlled shareholder immediately prior to the Combination, determined without regard to changes in ownership of such funds by their public shareholders.

2. For purposes of section 355(e), in calculating the offset, by reason of being a Controlled shareholder immediately prior to the Combination, of any increase of a shareholder's Controlled stock ownership percentage, Distributing, absent actual knowledge to the contrary, may rely upon the publicly filed documents reporting ownership as of the closest point in time preceding the Combination that disclose the relevant shareholders' ownership percentage of stock in the relevant corporation.

3. The receipt of cash by a Controlled shareholder in lieu of a fractional share of Merger Partner shares is treated for U.S. federal income tax purposes as if the fractional share had been transferred to the Controlled shareholder as part of the Combination and then had been disposed of by the Controlled shareholder for the amount of cash in a section 1001(a) sale or exchange. For purposes of section 355(e), the sale of fractional shares of Merger Partner common stock in the market is not treated as an acquisition that is part of the plan that includes the External Distribution.

4. To the extent the Share Repurchases are treated as part of a plan (or series of related transactions) with the External Distribution for purposes of section 355(e), the Share Repurchases are treated as being made from all public shareholders (defined as shareholders who are not a "controlling shareholder" or a "ten-percent shareholder" within the meaning of Reg. §1.355-7(h)(3) and (14)) of Merger Partner common stock on a pro rata basis for purposes of testing the effect of the Share Repurchases on the External Distribution under section 355(e).

5. The initial designations of the post-Combination members of the Merger Partner board of directors do not affect the determination of the total voting power or value of the stock of Controlled acquired within the meaning of section 355(e).

6. Section 355(a)(3)(B) does not treat as "other property" any part of the Controlled stock actually or deemed issued by Controlled to Distributing pursuant to the IP Matters Agreement entered into in connection with the Controlled Contribution.

7. Payments from Distributing, or any of its affiliates, to Controlled, or any of its affiliates, or vice versa, under any continuing relationships regarding liabilities, indemnities, or other obligations that (i) have arisen for a taxable period ending on or before the External Distribution and (ii) do not become fixed and ascertainable until after the External Distribution, are treated as occurring immediately before the External Distribution, except for purposes of section 355(g). See *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952); Revenue Ruling 83-73, 1983-1 C.B. 84.

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Transaction under any provision of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from the Transaction that is not specifically covered by the above rulings. In particular, no opinion is expressed or implied concerning whether the recognition of capital gain pursuant to section 367(a) in connection with the Transaction is evidence of device under section 355(a)(1)(B) and Reg. section 1.355-2(d)(2)(iii). In addition, no opinion was requested and none is expressed regarding the application of section 7874 to Merger Partner.

PROCEDURAL STATEMENTS

This letter 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.

Pursuant to the power of attorney on file in this matter, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Gerald B. Fleming
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel (Corporate)

cc: