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Department of the Treasury
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PLR-119233-18

Date:
December 06, 2018

Legend

Distributing =

Controlled =

Acquiring =

Merger Sub =

DRE1 =

Sub1 =

Sub2 =

Sub3 =

FSub1 =

Exchange Bank =

Controlled Securities =

A Notes =

Date 1 =

State A =

Distributing Business =

Controlled Business =

Business A =

Business B =

Agreements =

a =

b =

c =

d =

e =

f =

g =

h =

i =

Dear :

This letter responds to your letter dated June 12, 2018, submitted on behalf of Distributing, its affiliates, and its shareholders, requesting rulings on certain federal income tax consequences of a series of proposed transactions (the Proposed Transactions, as defined herein). The material information submitted in that request and subsequent correspondence is summarized below.

This letter is issued pursuant to Rev. Proc. 2017-52, 2017-41 I.R.B. 283, as amplified and modified by Rev. Proc. 2018-53, 2018-43 I.R.B. 667, regarding one or more "Covered Transactions" under section 355 and/or section 368 of the Internal Revenue Code (the "Code") and pursuant to section 6.03(2) of Rev. Proc. 2018-1, 2018-1 I.R.B. 1, regarding one or more significant issues under section 355 of the Code.

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. 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.

This office has made no determination regarding whether the Distribution (as defined below): (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (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 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).

Summary of Facts

Distributing, a publicly traded State A corporation, is the parent company of a worldwide group of foreign and domestic affiliates (the "Distributing Group"). Distributing and its domestic affiliates join in the filing of a consolidated U.S. federal income tax return. At the time of the Proposed Transactions, Distributing had a single class of voting common

stock issued and outstanding (the "Distributing Common Stock"). Prior to the Proposed Transactions, Distributing and its subsidiaries were engaged in the Distributing Business and the Controlled Business. The following describes the relevant corporate structure of the Distributing Group immediately before the Proposed Transactions (described below) were undertaken. Except as described below, each entity is treated as a corporation for Federal income tax purposes.

Distributing directly owned all of the issued and outstanding equity interests in DRE1, Sub1, Sub2 and Sub3. DRE1 owned all of the issued and outstanding equity interests of FSub1. Sub1, Sub2, Sub3 and FSub1 directly or indirectly held all the assets, liabilities and entities comprising the Controlled Business other than those transferred in the Direct Sales (as described below).

As of Date 1, Distributing had a balance of \$a under a senior term loan facility (the "Term Loan"). Since Date 1, the outstanding balance of the Term Loan has exceeded \$b. Additionally, as of Date 1, the A Notes issued by Distributing were outstanding.

Acquiring is a publicly traded State A corporation that is unrelated to Distributing. Prior to the Combination (described below), Acquiring owned all of the issued and outstanding stock of Merger Sub, a newly formed State A corporation. For purposes of satisfying the active trade or business requirements of section 355(b) with respect to the Distribution, Distributing and the members of its "separate affiliated group" as defined in section 355(b)(3)(B) have relied on Business A, and Controlled and the members of its "separate affiliated group" as defined in section 355(b)(3)(B) have relied on Business B. Financial information has been submitted in accordance with Rev. Proc. 2017-52 indicating that each of Business A and Business B has had gross receipts and operating expenses representing the active conduct of trade or business for each of the past five years.

The Proposed Transactions

The following transactions (the "Proposed Transactions") occurred to separate the Controlled Business from the Distributing Group and thereby facilitate the Combination:

- (i) Distributing formed Controlled with one authorized class of common stock (the "Controlled Stock") and no authorized classes of preferred stock.
- (ii) Distributing contributed all of the stock of Sub1, Sub2 and Sub3 to DRE1.
- (iii) Distributing contributed all of the ownership interests in DRE1 to Controlled in exchange for the Controlled Cash (defined below in Step 4), all of the issued and outstanding Controlled Stock, and the Controlled Securities (the "Contribution").

- (iv) Controlled borrowed \$b in cash (the "Controlled Cash") from third-party lenders through capital markets borrowing, which it transferred to Distributing in partial consideration for the Contribution. Distributing segregated the Controlled Cash by depositing it into a separate bank account.
- (v) Distributing transferred the Controlled Securities to the Exchange Bank in exchange for (and in retirement of) a portion of the A Notes (the "Debt Exchange" and such portion of the A Notes, the "Distributing Exchange Debt"). The Distributing Exchange Debt will have been purchased by the Exchange Bank at least h days prior to such Debt Exchange. Thereafter, the Exchange Bank sold the Controlled Securities to third-party investors.
- (vi) Distributing distributed all of the Controlled Stock to its shareholders in exchange for Distributing Common Stock pursuant to a registered exchange offer (the "Distribution").
- (vii) On the closing date of the Combination but prior to the effective time of the Combination, certain subsidiaries of Distributing transferred certain non-U.S. assets, liabilities and entities comprising a portion of the Controlled Business directly to one or more subsidiaries of Acquiring in exchange for \$c in cash (the "Direct Sales").
- (viii) Pursuant to the Merger Agreement among Distributing, Controlled, Acquiring and Merger Sub (the "Merger Agreement"), Merger Sub merged with and into Controlled, with Controlled surviving as a wholly owned subsidiary of Acquiring (the "Combination"). In the Combination, each outstanding share of Controlled Stock (except for any shares of Controlled Stock owned by Distributing, Controlled, Acquiring or Merger Sub) was converted into the right to receive Acquiring common stock. Cash was issued instead of fractional shares of Acquiring stock in the Combination. Immediately after the consummation of the Combination, approximately d percent of the outstanding shares of Acquiring common stock were held by pre-Combination holders of shares of Controlled Stock and approximately e percent of the outstanding shares of Acquiring common stock were held by pre-Combination Acquiring stockholders.
- (ix) Distributing used the Controlled Cash to repay the Term Loan within 30 days after the Distribution.

Distributing, Acquiring, and Controlled entered into an agreement that sets forth the terms of the Proposed Transactions and will govern the allocation of various items including liabilities (the "Separation Agreement"). Distributing and Controlled also entered into other agreements that will govern the post-Combination relationship between Distributing, Acquiring and Controlled and the allocation of liabilities. These agreements are as follows:

Employee Matters Agreement – Distributing, Acquiring, and Controlled entered into an agreement (the “Employee Matters Agreement”) that generally allocates between the parties the pre-and post-Combination liabilities in respect of the employees and independent contractors of the Controlled Business transferring to Controlled and establishes certain requirements relating to compensation and benefits of the transferring employees after the effective time of the Combination.

Tax Matters Agreement – Distributing, Acquiring, and Controlled entered into an agreement (the "Tax Matters Agreement") that generally addresses two categories of tax issues: taxes on the pre-Distribution operations of all the business segments (including the Controlled Business), and taxes imposed as a result of the Proposed Transactions. Responsibility for taxes on pre-Distribution operations and the Proposed Transactions are allocated between Controlled and Distributing (as will be refunds from such periods).

Following the Distribution, Distributing will also have certain continuing business relationships with Controlled and Acquiring. Except as described below, these arrangements are expected to terminate within several years after the Distribution. The specific relationships are as follows:

Transition Services Agreement - Distributing and its subsidiaries, on the one hand, and Controlled and its subsidiaries, on the other hand, will provide various services on an interim and transitional basis to each other following the Distribution pursuant to a transition services agreement (the "Transition Services Agreement") entered into by Distributing and Controlled. In no case will the transition services be provided for longer than 12 months following the Distribution. Examples of services that may be provided under the Transition Services Agreement may include the manufacture, supply and distribution of select products in certain markets, processes or applications in support of finance, information technology, human resources, employee benefits, procurement or legal activities in certain cases where these capabilities cannot be reasonably transferred before the Combination closes, and office, warehouse or plant space and associated services in certain locations.

IP License Agreement - Finally, Distributing and Acquiring entered into an agreement (the “IP License Agreement”). Under the IP License Agreement, (a) Acquiring (on behalf of Controlled) obtained a worldwide, perpetual and irrevocable, non-exclusive license to certain retained patents, copyrights and trade secrets owned by Distributing and used by Controlled as of the closing of the Combination and (b) Distributing retained a worldwide, perpetual and irrevocable, non-exclusive license to certain patents, copyrights and trade secrets owned by Controlled and used by Distributing as of the closing of the Combination.

Following the Combination, Acquiring may carry out open-market share repurchases or accelerated share repurchases (the "Share Repurchases") in certain circumstances. Any such Share Repurchases will be motivated by a corporate business purpose, will be made with respect to widely-held shares and will not be motivated by a desire to increase or decrease the ownership percentage of any particular shareholder or group of shareholders.

Pursuant to the Merger Agreement, Acquiring's post-Combination board of directors increased from f to g members. Distributing appointed an individual to fill the newly-created vacancy, who will subsequently be nominated for re-election at the expiration of such director's initial terms. All post-Combination Members of the Acquiring board of directors will stand for election in the normal course at the first annual general meeting following the Combination. Under Acquiring's governing documents, Acquiring's board is empowered to manage the corporation's business, except with respect to certain matters traditionally reserved to shareholders.

Representations

The following representations have been made with respect to the Proposed Transactions:

Except as otherwise provided below, Distributing has made all the representations provided in section 3 of the Appendix to Rev. Proc. 2017-52, as of immediately prior to the Distribution:

- (a) Distributing has made the following alternative representations set forth in section 3 of the Appendix to Rev. Proc. 2017-52, as of immediately prior to the Distribution: 3(a), 8(b), 11(a), 15(a), 22(a), 31(a) and 41(a).
- (b) Distributing has not made the following representations, which do not apply: 5, 6, 25 and 40.
- (c) Distributing has not made the following representation: 46.
- (d) Distributing has made the following modified representations:

Representation 32: No intercorporate debt existed between Distributing and Controlled at the time of the Distribution, and no intercorporate debt has existed or will exist between Distributing and Controlled subsequent to the Distribution, except in each case for (i) amounts payable under the Agreements and (ii) trade payables arising in the ordinary course of business.

Representation 33: Except with respect to certain payments made pursuant to the Transition Services Agreement, payments made in connection with all

continuing transactions, if any, between Distributing and Controlled after the Distribution will be for fair market value based on arm's-length terms.

Distributing has made the following additional representations:

- (e) Any Share Repurchases will not be related to the Proposed Transactions, and are expected to occur at approximately the same times, and to be in the same or a lesser amount, as the Share Repurchases that Acquiring would have undertaken if the Combination did not occur.
- (f) The payment of cash in lieu of fractional shares of Acquiring stock is solely for the purpose of avoiding the expense and inconvenience of issuing fractional shares and does not represent separately bargained-for consideration. No Distributing shareholder will receive cash in an amount equal to or greater than the value of one full share of Acquiring common stock.
- (g) The Controlled Securities issued to Distributing in the Contribution will qualify as "securities" within the meaning of section 361(a).
- (h) The Combination will qualify as a reorganization under sections 368(a)(1)(B) and/or 368(a)(2)(E).

Pursuant to Rev. Proc. 2018-53, Distributing has made the following representations as of immediately prior to the Distribution. For purposes of the representations below, terms used but not otherwise defined herein have the meanings set forth in Rev. Proc. 2018-53:

- (i) Distributing is in substance the obligor of each Distributing Debt that will be assumed or satisfied.
- (j) No holder of Distributing Debt that will be assumed or satisfied is a person related to Distributing or Controlled within the meaning of § 267(b) or § 707(b)(1) (Related Person).
- (k) The holder of Distributing Debt that will be assumed or satisfied will not hold the debt for the benefit of Distributing, Controlled, or any Related Person.
- (l) Exchange Bank did not acquire Distributing Debt from Distributing, Controlled, or any Related Person. Neither Distributing, nor Controlled, nor any Related Person participated or will participate in any profit gained by Exchange Bank upon an exchange of § 361 Consideration; nor was any such profit limited by agreement or other arrangement. The amount of the § 361 Consideration received by Exchange Bank in satisfaction of the Distributing Debt was determined pursuant to arm's length negotiations.

- (m) Distributing incurred the Distributing Debt that was assumed or satisfied (a) before the request for any relevant ruling was submitted and (b) no later than 60 days before the earliest of the following dates: (i) the date of the first public announcement (as defined in § 1.355-7(h)(10)) of the Divisive Reorganization or a similar transaction, (ii) the date of the entry by Distributing into a binding agreement to engage in the Divisive Reorganization or a similar transaction, and (iii) the date of approval of the Divisive Reorganization or a similar transaction by the board of directors of Distributing.
- (n) The total adjusted issue price (determined under § 1.1275-1(b)) of Distributing Debt that was assumed or satisfied did not exceed the historic average of the total adjusted issue price of (a) Distributing Debt owed to persons other than Related Persons and (b) obligations that were evidenced by Non-contingent Debt Instruments and were owed by other members of Distributing's separate affiliated group (within the meaning of § 355(b)(3)(B)) to persons other than Related Persons.
- (o) All the Distributing Debt that will be satisfied with § 361 Consideration will be satisfied no later than 30 days after the first distribution of Controlled stock to Distributing's shareholders.
- (p) Distributing has not replaced and will not replace any Distributing Debt that was assumed or satisfied with previously committed borrowing, other than borrowing in the ordinary course of business pursuant to a revolving credit agreement or similar arrangement.

Rulings

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

- (1) The Contribution, together with the Distribution, will be a reorganization within the meaning of section 368(a)(1)(D). Distributing and Controlled will each be "a party to a reorganization" under section 368(b).
- (2) No gain or loss will be recognized by Distributing on the Contribution. (sections 361(a); 361(b) and 357(a)).
- (3) No gain or loss will be recognized by Controlled on the Contribution. (section 1032(a)).

- (4) The basis in each asset received by Controlled in the Contribution will equal the basis of that asset in the hands of Distributing immediately before the Contribution. (section 362(b)).
- (5) The holding period in each asset received by Controlled in the Contribution will include the period during which the asset was held by Distributing. (section 1223(2)).
- (6) No gain or loss will be recognized by Distributing upon the distribution of the Controlled Stock in the Distribution. (section 361(c)).
- (7) No gain or loss will be recognized by (and no amount otherwise will be included in the income of) holders of Distributing Common Stock upon the receipt of Controlled Stock in the Distribution. (section 355(a)).
- (8) The basis of the Controlled Stock in the hands of a holder of Distributing Common Stock who exchanges Distributing Common Stock for Controlled Stock in the Distribution immediately after the Distribution will be the same as the basis of the Distributing Common Stock exchanged therefor. (section 358(a)).
- (9) If a holder of Distributing Common Stock that purchased or acquired shares on different dates or at different prices is not able to identify which particular share of Controlled Stock is received in exchange for a particular share of Distributing Common Stock, the holder may designate which particular share of Controlled Stock is received in exchange for a particular share of Distributing Common Stock, provided the designation is consistent with the terms of the Distribution. (Treas. Reg. § 1.358-2(a)(2)).
- (10) The holding period of each holder of Distributing Common Stock in the Controlled Stock received in the Distribution will include the holding period of the Distributing Common Stock exchanged therefor, provided that such Distributing Common Stock is held as a capital asset on the date of such Distribution. (section 1223(1)).
- (11) Earnings and profits of Distributing will be allocated between Distributing and Controlled in accordance with Section 312(h), (Treas. Reg. § 1.312-10(a) and Treas. Reg. § 1.1502-33(e)).
- (12) No gain or loss will be recognized by Distributing in the Debt Exchange other than any (i) deductions attributable to the fact that the Distributing Exchange Debt may be redeemed at a premium, (ii) income attributable to the fact that the Distributing Exchange Debt may be redeemed at a discount and (iii) interest expense accrued with respect to the Distributing Exchange Debt. (section 361(c)).

- (13) To the extent that Controlled shareholders are also Acquiring shareholders immediately prior to the Combination, 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 an Acquiring 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 for purposes of section 355(e). In the case of widely-held, publicly-traded mutual funds, this offset is determined without regard to changes in ownership of such funds by their public shareholders.
- (14) 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.
- (15) To the extent the Share Repurchases are treated as part of a plan (or series of related transactions) with the Distribution for purposes of section 355(e), the Share Repurchases will be 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 Treas. Reg. § 1.355-7(h)(3) and (14)) of Acquiring common stock on a pro rata basis for purposes of testing the effect of the Share Repurchases on the Distribution under section 355(e).
- (16) The initial designations of the post-Combination members of the Acquiring board of directors will not affect the determination of the total voting power or value of the stock of Controlled acquired within the meaning of section 355(e).

Caveats

No opinion is expressed about the tax treatment of the Proposed Transactions under other provisions of the Code or 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

The ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be sued 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 returns that provides the date on and control number (PLR-119233-18) of the letter ruling.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

William W. Burhop
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel (Corporate)