

Sub2 =

Sub3 =

Date1 =

State A =

Distributing
Business =

Controlled
Business =

Business A =

Business B =

Agreements =

a =

b =

c =

d =

e =

Transition Services Agreement =

Intellectual Property Matters Agreement =

DBS License Agreement =

Dear _____ :

This letter responds to your letter dated June 8, 2020, submitted on behalf of Distributing, its affiliates, and its shareholders, requesting rulings on certain Federal income tax consequences of a series of transactions (the "Proposed Transaction"). 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"). 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 Initial 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 entities (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 Transaction, Distributing will have a single class of voting common stock issued and outstanding ("Distributing Common Stock"). The Distributing Group has been actively engaged in two businesses, the Distributing Business and the Controlled Business. Except as described below, each entity is treated as a corporation for Federal income tax purposes.

Immediately before the Proposed Transaction will be undertaken, Distributing directly will own all of the issued and outstanding equity interests in DRE1, DRE2, DRE3,

DRE4, Sub1, Sub2, and Sub3. DRE1, DRE2, DRE3, DRE4, Sub1, Sub2 and Sub3 directly or indirectly will hold all the assets, liabilities, and entities that constitute the Controlled Business.

As of Date 1, which was the date of Distributing's last fiscal quarter-end prior to the date that Distributing's board of directors first had discussions with respect to the Proposed Transaction, Distributing had amounts outstanding under (i) a delayed-draw term loan facility currently due in 2021 in an aggregate principal amount of a, (the "Term Loan 1"). (ii) two commercial paper programs (the "CP Programs"), (iii) a five-year b senior unsecured term facility maturing in 2022 (the "Foreign Term Loan"). Additionally, as of Date 1, Distributing had four notes outstanding (the "Notes"). Distributing also currently has amounts outstanding under a delayed-draw term loan facility due in 2021 in an aggregate principal amount of c (the "Term Loan 2" and collectively with the Notes, the Term Loan 1, the CP Programs, and the Foreign Term Loan, the "Distributing Debt"), which were incurred after Date 1 and were used to settle amounts outstanding under the CP Programs.

For purposes of satisfying the active trade or business requirements of section 355(b) with respect to the Initial Distribution (as defined below), Distributing and the members of its "separate affiliated group" as defined in section 355(b)(3)(B) will rely on Business A, and Controlled and members of its "separate affiliated group" as defined in section 355(b)(3)(B) will rely 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 a trade or business for each of the past five years.

Proposed Transaction

The following transactions will occur to separate Business A from Business B (the "Proposed Transaction"):

- (i) Distributing formed Controlled and contributed all of the ownership interests in DRE1, DRE2, DRE3, DRE4, Sub1, Sub2, and Sub3 to Controlled (the "Contribution") in exchange for all of the issued and outstanding shares of controlled stock (the "Controlled Stock") and cash proceeds from a third-party borrowing and/or certain senior secured credit facilities ("Controlled Cash"). Controlled may also transfer debt securities of Controlled that qualify as "securities" within section 361(a) ("Controlled Securities").
- (ii) Distributing will distribute shares of the Controlled Stock representing at least d (a number greater than 80) percent of the total combined voting power of all Controlled Stock to Distributing shareholders either as a pro rata dividend (a "Spin-Off") or pursuant to a registered exchange offer in which Distributing shareholders would exchange shares of Distributing common stock for Controlled Stock (such exchange offer a "Split-off" and such distribution, the "Initial Distribution").

- (iii) Distributing will transfer any Controlled Securities to one or more investment banks (the “Exchange Banks”) in exchange for (and in retirement of) a portion of the Distributing Debt (such exchange, the “Debt-for-Debt Exchange”). Thereafter, Distributing understands that the Exchange Banks will sell the Controlled Securities to third-party investors for cash pursuant to an offering agreement.
- (iv) Within 12 months following the Initial Distribution, Distributing will transfer shares of the Controlled Stock representing up to e (a number less than 20) percent of the total combined voting power of all Controlled Stock (the “Remainder Stock”) (a) to its shareholders on a pro rata basis (the “Stock Distribution”) or pursuant to a registered exchange offer (the “Stock Exchange”), (b) to third parties for cash (the “Cash Sales”) or (c) to the Exchange Banks in exchange for (and in retirement of) a portion of the Distributing Debt (such exchange, the “Debt-for-Equity Exchange,” and together with the Debt-for-Debt Exchange, the “Debt Exchanges,” and such portion of the Distributing Debt, together with the portion exchanged in the Debt-for-Debt Exchange, the “Distributing Exchange Debt”). Thereafter, Distributing understands that the Exchange Banks will sell their shares of the Controlled Stock to third-party investors for cash as part of a public offering. Any Stock Distribution, Stock Exchange, and Debt-for-Equity Exchange are referred to collectively as the “Subsequent Distributions.”
- (v) Within 180 days following the Initial Distribution, Distributing will use an amount of cash (from its general accounts) equal to or greater than the amount of the Controlled Cash to repay outstanding Distributing Debt, make distributions to Distributing’s shareholders, and/or repurchase shares of Distributing Common Stock.
- (vi) In the event that Distributing determines that market and general economic conditions and sound business judgment do not support the disposition of all or any portion of any Remainder Stock during the 12 months, Distributing thereafter will dispose of any remaining shares of the Remainder Stock to third parties in exchange for cash. These third-party sales of the Remainder Stock will occur as soon as practicable, taking into account market and general economic conditions and sound business judgment, but in no event later than five years after the Initial Distribution.

Distributing and Controlled will enter into an agreement that sets forth the terms of the Proposed Transaction and will govern the allocation of various items including liabilities (the “Separation Agreement”). Distributing also will enter into certain customary agreements (the “Agreements”) with Controlled regarding tax (the “Tax Matters Agreement”) and employee matters (the “Employee Matters Agreement”). Following the Initial Distribution, Distributing will have certain continuing business relationships with Controlled. The specific agreements include the Transition Services Agreement, the Intellectual Property Matters Agreement and DBS License Agreement).

Following the Initial Distribution, one individual will serve as both an officer of Distributing and a director of Controlled. Such individual will constitute a minority of Controlled's board of directors and under Controlled's governing documents will be subject to an election for director of Controlled by the Controlled shareholders following the Initial Distribution in a manner consistent with those of Controlled's other directors. Under Controlled's governing documents, Controlled's board will be empowered to manage the corporation's business, except with respect to certain matters traditionally reserved for shareholders.

Representations

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

Except as set forth below, with respect to the Initial Distribution, Distributing has made all of the representations in section 3 of the Appendix to Rev. Proc. 2017-52.

- (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 Initial Distribution: 3(a), 8(b), 11(a), 15(a), 22(a), 31(a), and 41(a).
- (b) Distributing will not make Representation 2. In the Initial Distribution, Distributing will transfer at least d (a number greater than 80) percent of the Controlled Stock that it holds immediately before the Initial Distribution.
- (c) Distributing has made Representations 5 and 6 with respect to the Spin-Off or Stock Distribution but not with respect to any Split-Off or Stock Exchange.
- (d) Distributing has made Representation 7 with respect to any Split-Off or Stock Exchange but not with respect to any Spin-Off or Stock Distribution.
- (e) Distributing has not made the following representations: 25, 40, and 46.
- (f) Distributing has made the following modified representations:

Representation 32: No intercorporate debt will exist between Distributing and Controlled (and their respective affiliates, as applicable) at the time of, or subsequent to, the Initial Distribution, except for (i) amounts payable under the Agreements and (ii) ordinary course receivables and payables.

Representation 33: Payments made in connection with all continuing transactions, if any, between Distributing and Controlled after the Initial Distribution will be on arm's-length terms, except as contemplated by the Transition Services Agreement that are transitional in nature and the terms of which will last no longer than 2 years after the Initial Distribution.

Distributing has made the following additional representations:

- (g) Distributing will use an amount of cash (from its general accounts) equal to or greater than the amount of the Controlled Cash to repay outstanding Distributing debt, make distributions to Distributing shareholders, and/or repurchase shares of Distributing Common Stock.
- (h) Distributing's retention of any Remainder Stock is motivated by its desire to establish in an efficient and cost effective manner an appropriate capital structure for each of Distributing and Controlled and to avoid burdening Controlled's balance sheet. In particular, the dedication of any Remainder Stock to reduce, directly or indirectly, the Distributing indebtedness within 12 months of the Initial Distribution will meaningfully address Distributing's liquidity management considerations.
- (i) None of Distributing's officers will serve as an officer of Controlled as long as Distributing retains any Remainder Stock. Distributing expects one of its officers to serve as a director for Controlled. This individual will constitute a minority of Controlled's board of directors and intended to (1) reduce recruiting needs for new directors and to the extent directors will be replaced, allow for efficient recruiting of replacement directors, (2) provide Distributing and Controlled access to the experience of the officer and director and (3) benefit separately each of Distributing and Controlled by maintaining relationships between management and the board of directors that were developed over the years. Under Controlled's governing documents, such individual will be subject to an election for director of Controlled by the Controlled shareholders following the Initial Distribution in a manner consistent with those of Controlled's other directors. The overlap of officer and director is not inconsistent with any of the corporate business purposes motivating the Initial Distribution.
- (j) Distributing intends to effect any Subsequent Distributions of Cash Sales of any Remainder Stock within the 12 months of the Initial Distribution: should Distributing continue to own any Remainder Stock after such time, Distributing will complete the Stock Dispositions with respect to any Remainder Stock as soon as practicable taking into account market and general economic conditions and sound business judgment, in no event later than five years after the Initial Distribution.
- (k) Distributing will vote, or cause to be voted, any Remainder Stock in proportion to the votes cast by Controlled's other shareholders and Distributing may grant a proxy to Controlled to effectuate such voting.
- (l) Any Controlled Securities issued to Distributing in the Contribution will qualify as "securities" within the meaning of section 361(a).

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

(m) Distributing has made the following modified representations:

Representation 3: The holder of Distributing Exchange Debt that will be assumed or satisfied will not hold the debt for the benefit of Distributing, Controlled, or any Related Person. With respect to the Debt Exchanges, the Exchange Banks will not acquire the Distributing Exchange Debt from Distributing, Controlled, or any Related Person. Neither Distributing, nor Controlled, nor any Related Person will participate in any profit gained by the Exchange Banks upon an exchange of Section 361 Consideration: nor will any such profit be limited by agreement or other arrangement. The value of the Section 361 Consideration received by the Exchange Banks in satisfaction of the Distributing Exchange Debt will be determined pursuant to arm's length negotiations.

Representation 4: Except with respect to amounts outstanding under the CP Programs and Term Loan 2 that, in the aggregate, will not exceed the aggregate amounts outstanding under the CP Programs as of the submission of the Ruling Request or the following dates, Distributing incurred the Distributing Exchange Debt (a) before the submission of the Ruling Request 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 section 1.355-7(h)(10) of the Divisive Reorganization or a similar transaction, and (iii) the date of approval of the Distributing Reorganization or a similar transaction by the board of directors of Distributing.

Representation 6: Representation 6 is true and accurate as applied to any Distributing debt satisfied with the Controlled Cash. Distributing has provided one or more business reasons for satisfying debt in Debt-for Equity Exchange within the 12 months of the Initial Distribution. Representation 6 is inapplicable to the Distributing Exchange Debt satisfied in the Debt-for-Debt Exchange as any such debt is expected to be satisfied immediately following the Initial Distribution.

Rulings

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

- (1) The Contribution, together with the Initial Distribution and any Subsequent Distribution, will be a "reorganization" within the meaning of section 368(a)(1)(D). Distributing and Controlled will be each "a party to a reorganization" within the meaning of section 368(b).
- (2) Distributing will recognize no gain or loss on the Contribution. Sections 361(a), 361(b), and 357(a).
- (3) Controlled will recognize no gain or loss on the Contribution. Section 1032(a).

- (4) Controlled's basis in each asset received from Distributing in the Contribution will be the same as the basis of the 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 such asset. Section 1223(2).
- (6) Distributing will recognize no gain or loss upon the Initial Distribution or any Subsequent Distribution. Section 361(c).
- (7) Distributing shareholders will recognize no gain or loss (and no amount will be includible in income) upon the receipt of Controlled stock in the Initial Distribution or any Subsequent Distribution. Section 355(a)(1).
- (8) To the extent the Initial Distribution is effected as a Split-Off, the aggregate basis of the Controlled stock received by each Distributing shareholder in the Split-Off (including any fractional share interest in Controlled stock to which the shareholder may be entitled) will be the same as the shareholder's aggregate basis in the Distributing stock surrendered in exchange therefor. Section 358(a)(1); Treas. Reg. §§ 1.358-1(a) and 2(a)(2). The basis of Controlled Stock in the hands of any holder of Distributing Common Stock who exchanges Distributing Common Stock in any Stock Exchange immediately after the Stock Exchange will be the same as the basis of the Distributing Common Stock exchanged therefor. Section 358(a).
- (9) To the extent the Initial Distribution is effected as a Spin-Off, the aggregate basis of the Distributing stock and the Controlled stock in the hands of Distributing's public shareholders immediately after the Spin-Off will be the same as the aggregate basis of Distributing stock held by such Distributing shareholder immediately before the Initial Distribution. Section 358(a). Such basis will be allocated between Distributing stock and Controlled stock in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2) and section 358(b)(2) and (c).
- (10) 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, or as a distribution with respect to, a particular share of Distributing Common Stock, the holder may designate which particular share of Controlled Stock is received in exchange for, or as a distribution with respect to, a particular share of Distributing Common Stock, provided the designation is consistent with the terms of the Initial Distribution or any Subsequent Distributions, as applicable. Treas. Reg. Section 1.358-2(a)(2)(vii).
- (11) The holding period of Controlled stock received by Distributing's public shareholders in the Initial Distribution (including any fractional share interest in

Controlled to which public shareholders may be entitled) will include the holding period of the Distributing stock with respect to which the Initial Distribution is made, provided that such Distributing stock is held as a capital asset on the date of the Initial Distribution. Section 1223(1).

- (12) Earnings and profits will be allocated between Distributing and Controlled in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33(e)(3).
- (13) Distributing will recognize no gain or loss in any Debt Exchanges 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).
- (14) Distributing's continuing ownership of any Remainder Stock until its disposition within 5 years after the Initial Distribution will not adversely impact the qualification of the Initial Distribution under Sections 355 and 368(a)(1)(D) and will not be in pursuance of a plan having one of its principal purposes the avoidance of U.S. federal income tax for purposes of Section 355(a)(1)(D)(ii).
- (15) Except for purposes of section 355(g), any payments made between any of Distributing and Controlled and their respective affiliates under any of the Continuing Arrangements regarding liabilities, indemnities, or other obligations, that (i) have arisen or will arise for a taxable period ending on or before the Initial Distribution or for taxable year beginning before and ending after the Initial Distribution and (ii) will not become fixed and ascertainable until after the Initial Distribution, will be viewed as occurring immediately before the Initial Distribution. See *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952) and Rev. Rul. 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 Proposed Transaction under any 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 Transaction that is 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 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 returns that provides the date on and control number 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,

Mark J. Weiss
Chief, Branch 2
Office of Associate Chief Counsel
(Corporate)

cc: