

Internal Revenue Service

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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:B05

PLR-112406-20

Date:

November 23, 2020

Legend

Distributing =

Foreign Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

New Sub 1 =

FSub 1 =

FSub 2 =

Foreign DE =

Business A =

Business B =

Investor =
Series A Stock =
Series B Stock =
State X =
Country Y =
Country Z =
Date 1 =
a =
b =
c =
d =
e =

Dear :

This letter responds to your letter dated May 22, 2020 requesting rulings on certain federal income tax consequences of a series of transactions (the "Proposed Transaction," as defined below). 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, regarding one or more "Covered Transactions" under section 355 and section 368 of the Internal Revenue Code (the "Code"). This letter also contains rulings under section 1504 and section 7874 of the Code. This office expresses no opinion as to any issue not specifically addressed by the rulings below.

The rulings contained in this letter are based upon 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 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 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. § 1.355-8 (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

Summary of Facts

Distributing, a publicly traded, widely held, State X corporation, is the parent company of a worldwide group of domestic and foreign affiliates (the “Distributing Group”). Distributing and its domestic affiliates join in the filing of a consolidated U.S. federal income tax return.

Distributing owns all of the stock of Sub 1, Sub 2, and Sub 3, all State X corporations that are all treated as corporations for federal income tax purposes.

Distributing owns all of the stock of FSub 1, a Country Y entity treated as a corporation for federal income tax purposes.

Distributing owns all of the stock of FSub 2, a Country Z entity treated as a corporation for federal income tax purposes.

The Distributing Group is engaged in Business A and Business B. Business A is conducted by various direct and indirect subsidiaries of Distributing, including Sub 3. Business B is conducted by Sub 1, Sub 2, FSub 1, FSub 2, and certain other Distributing direct and indirect subsidiaries.

Proposed Transaction

For what are represented to be valid corporate business purposes, Distributing proposes to separate Business A from Business B, such that following the separation Distributing will conduct Business A and a newly formed entity (“Foreign Controlled,” as defined below) will conduct Business B. For non-tax reasons, Foreign Controlled will be incorporated in Country Y. For reasons including federal income tax reasons, Distributing intends for Foreign Controlled to be treated as a domestic corporation for federal income tax purposes.

Distributing proposes to effectuate the separation through the following transaction (the “Proposed Transaction”). Some of the steps of the Proposed Transaction have already been completed.

- (i) On Date 1, Investor purchased Distributing Series A Stock for \$a.
- (ii) Distributing forms Foreign Controlled, an entity incorporated in Country Y that makes an initial election to be classified as a corporation for federal income tax purposes, by contributing cash or other property the amount or value of which equals \$b to Foreign Controlled in exchange for all of the stock of Foreign Controlled (the "Foreign Controlled Formation").
- (iii) Distributing forms Foreign DE, a limited liability company under the laws of Country Y, and Foreign DE makes an initial election to be classified as a disregarded entity for federal income tax purposes.
- (iv) Distributing transfers c percent of the stock of Sub 1 to Foreign DE in exchange for interests of Foreign DE.
- (v) Sub 1 converts to a limited partnership under State X law (hereinafter, Sub 1 is referred to as "New Sub 1"), and New Sub 1 makes an initial election to be classified as a corporation for federal income tax purposes. New Sub 1 registers under Country Y law as a foreign partnership.
- (vi) Distributing contributes 100 percent of the stock of Sub 2 to New Sub 1 in exchange for New Sub 1 stock of equal value (the "Sub 2 Contribution").
- (vii) Distributing contributes 100 percent of the stock of FSub 1 to New Sub 1 in exchange for stock of New Sub 1 of equal value (the "FSub 1 Contribution").
- (viii) In exchange for stock of Foreign Controlled, Distributing transfers 100 percent of the stock of FSub 2 to Foreign Controlled (the "FSub 2 Contribution"), and Distributing enters into a contractual obligation to transfer 100 percent of the stock of New Sub 1 and 100 percent of the interests of Foreign DE to Foreign Controlled immediately following the pro rata distribution of 100 percent of the stock of Foreign Controlled to the common shareholders of Distributing (the "Distributing Common Shareholders") in the External Spin (defined below) (the contractual obligation, the "Sub 1 Contribution Obligation").
- (ix) Distributing distributes 100 percent of the stock of Foreign Controlled pro rata to the Distributing Common Shareholders (the "External Spin").
- (x) In satisfaction of the Sub 1 Contribution Obligation and for no additional consideration, Distributing transfers 100 percent of the stock of New Sub 1 and 100 percent of the interests of Foreign DE to Foreign Controlled (the "Sub 1 Contribution").

- (xi) Following the External Spin, Investor purchases Distributing Series B Stock for \$d.

Representations

With respect to the Distribution, except as set forth below, Distributing has made all of the representations in Section 3 of the Appendix to Rev. Proc. 2017-52.

Distributing has made the following alternative representations set forth in Section 3 of the Appendix to Rev. Proc. 2017-52:

Representations 3(a), 8(b), 11(a), 15(b), 22(a), 31(a), and 41(a).

Distributing has not made the following representations, which do not apply to the Proposed Transaction:

Representations 19, 20, 24, and 25.

Distributing has not made the following representations:

Representation 44.

Distributing has made the following additional representations:

Sub 1 is not in a title 11 or similar case (as defined in section 368(a)(3)) and its liabilities do not exceed the value of its assets.

For purposes of section 7874(a)(2)(B)(i), the Proposed Transaction does not result in the direct or indirect acquisition by Foreign Controlled of substantially all of the properties held directly or indirectly by Distributing.

At all times relevant to the Proposed Transaction, Foreign DE will not hold any properties other than (i) its stock of New Sub 1, and (ii) a de minimis amount of assets to facilitate its organization or maintain its legal existence (the "De Minimis Foreign DE Assets").

At all times relevant to the application of section 7874 to the Proposed Transaction, after the completion of the Sub 2 Contribution and FSub 1 Contribution, the value of the stock of New Sub 1 will represent at least e percent (which is at least 80 percent) of the aggregate value of the following: the stock of New Sub 1, the stock of FSub 2, and the De Minimis Foreign DE Assets.

For purposes of Treas. Reg. § 1.7874-3(b)(3), the group income derived in Country Y will not be at least 25 percent of the total group income during the testing period.

Rulings

Based solely on the information submitted and representations made, we rule as follows with respect to the Covered Transactions:

1. For federal income tax purposes, Steps ii, vi, vii, viii, ix, and x of the Proposed Transaction will be treated as if:
 - 1(i). Distributing transfers 100 percent of the stock of Sub 2 to New Sub 1 in exchange for stock of New Sub 1 (pursuant to the Sub 2 Contribution);
 - 1(ii). Distributing transfers 100 percent of the stock of FSub 1 to New Sub 1 in exchange for stock of New Sub 1 (pursuant to the FSub 1 Contribution);
 - 1(iii). Distributing transfers 100 percent of the stock of FSub 2 and 100 percent of the stock of New Sub 1 and the De Minimis Foreign DE Assets to Foreign Controlled in exchange for stock of Foreign Controlled (pursuant to the FSub 2 Contribution and the Sub 1 Contribution, respectively); and thereafter,
 - 1(iv). Distributing distributes 100 percent of the stock of Foreign Controlled pro rata to the Distributing Common Shareholders.
2. The External Spin will qualify as a tax-free reorganization and distribution pursuant to sections 368(a)(1)(D) and 355. Foreign Controlled and Distributing will each be a "party to a reorganization" within the meaning of section 368(b).
3. No gain or loss will be recognized by Distributing in each of the Foreign Controlled Formation, the FSub 2 Contribution, and the Sub 1 Contribution under sections 361(a) or 357.
4. No gain or loss will be recognized by Foreign Controlled in each of the Foreign Controlled Formation, the FSub 2 Contribution, and the Sub 1 Contribution under section 1032(a).
5. Foreign Controlled's basis in each asset received in each of the Foreign Controlled Formation, the FSub 2 Contribution, and the Sub 1 Contribution will be the same as the basis of that asset in the hands of Distributing immediately before the Foreign Controlled Formation, the FSub 2 Contribution, and the Sub 1 Contribution, respectively, under section 362(b).
6. Foreign Controlled's holding period in each asset received from Distributing in each of the Foreign Controlled Formation, the FSub 2 Contribution, and the Sub 1 Contribution will include the period during which Distributing held that asset under section 1223(2).

7. No gain or loss will be recognized by Distributing on the External Spin under section 361(c)(1).
8. No gain or loss will be recognized by (and no amount will be included in income of) Distributing Common Shareholders upon receipt of Foreign Controlled stock in the External Spin under section 355(a).
9. The aggregate basis of the Distributing stock and the Foreign Controlled stock in the hands of the Distributing Common Shareholders immediately after the External Spin will be the same as the aggregate basis of the Distributing stock held by the Distributing Common Shareholders immediately before the External Spin under section 358(a). Such basis will be allocated between the Distributing stock and the Foreign Controlled stock in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2) under section 358(b)(2) and (c).
10. The holding period of the Foreign Controlled stock received by the Distributing Common Shareholders in the External Spin will include the holding period of the Distributing stock with respect to which the External Spin is made, provided that such Distributing stock is held as a capital asset on the date of the External Spin under section 1223(1).
11. Earnings and profits will be allocated between Distributing and Foreign Controlled in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33(e)(3).

Based solely on the information submitted and representations made, we rule as follows with respect to section 7874 and section 1504 of the Code:

12. The Proposed Transaction will result in a domestic entity acquisition (as defined in Treas. Reg. § 1.7874-12(a)(5)) with respect to which Foreign Controlled will be the foreign acquiring corporation (as defined in Treas. Reg. § 1.7874-12(a)(10)).
13. With respect to the domestic entity acquisition, the ownership percentage described in section 7874(a)(2)(B)(ii) will be at least 80 (by vote or value), because:
 - 13(i). At least 80 percent (by vote or value) of the stock of Foreign Controlled treated as received by Distributing pursuant to the transfers described in Ruling 1(iii) will be described in section 7874(a)(2)(B)(ii) and will not cease to be so described as a result of the External Spin. Treas. Reg. §§ 1.7874-2(f)(1)(i), (2)(i) and 1.7874-5(a).

- 13(ii). The stock of Foreign Controlled described in section 7874(a)(2)(B)(ii) will be transferred stock (as defined in Treas. Reg. § 1.7874-6(f)(2)), which will not be treated as held by members of the expanded affiliated group (as defined in Treas. Reg. § 1.7874-12(a)(7)) for purposes of applying section 7874(c)(2)(A) and Treas. Reg. § 1.7874-1 and, as a result, will be included in the numerator and denominator of the ownership fraction (as defined in Treas. Reg. § 1.7874-12(a)(17)). Treas. Reg. § 1.7874-6(b).
14. On the completion date (as defined in Treas. Reg. § 1.7874-12(a)(3)) with respect to the domestic entity acquisition, the expanded affiliated group will not be considered to have substantial business activities in Country Y when compared to the total business activities of the expanded affiliated group for purposes of section 7874(a)(2)(B)(iii). Treas. Reg. § 1.7874-3(b).
15. Foreign Controlled will be treated as a surrogate foreign corporation (other than for purposes of section 7874(a)(2)(A)) and, pursuant to section 7874(b) (and notwithstanding section 7701(a)(4)), a domestic corporation for all purposes of the Code. Section 7874(a)(2)(B), (a)(3), and (b). Nothing in section 894 or 7852(d), or in any other provision of law, will be construed as permitting an exemption, by reason of any treaty obligation of the United States, from Foreign Controlled being treated as a domestic corporation for all purposes of the Code pursuant to section 7874(b). Section 7874(f).
16. Except for purposes of determining whether Foreign Controlled is treated as a surrogate foreign corporation, the conversion of Foreign Controlled to a domestic corporation by reason of section 7874(b) constitutes a reorganization described in section 368(a)(1)(F) that occurs immediately after the formation of Foreign Controlled. Treas. Reg. § 1.7874-2(j)(1).
17. Section 367 does not apply to any transfer of property by Distributing to Foreign Controlled as part of the Proposed Transaction but does apply to the conversion of Foreign Controlled to a domestic corporation. Treas. Reg. § 1.7874-2(j)(3).
18. Foreign Controlled will be treated as an includible corporation in Distributing's affiliated group under section 1504 prior to the External Spin. As a result, New Sub 1 and Sub 2 will not cease to be includible corporations in Distributing's affiliated group under section 1504 by reason of the transfers described in Ruling 1(iii).

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the proposed transactions under any provision of the Code or regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the proposed transaction that is not specifically addressed by this letter.

Procedural Statements

This ruling is directed only to the taxpayer requesting 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 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 representatives.

Sincerely,

Douglas C. Bates

Douglas C. Bates
Chief, Branch 4
Office of Associate Chief Counsel (Corporate)

cc: