

Internal Revenue Service

Number: **202152010**

Release Date: 12/30/2021

Index Number: 355.00-00, 355.01-00,
361.00-00, 368.04-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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CC:CORP:B01
PLR-108823-21

Date:
October 04, 2021

Legend

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

FSub 1 =

FCorp 1 =

FCorp 2 =

FCorp 3 =

Distributing Business =

Controlled Business =

State A =

Country A =

Country B =

Country C =

Continuing
Arrangements =

Distributing Debt =

Date 1 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

a =

b =

c =

d =

e =

f =

g =

h =

Dear :

This letter responds to your letter dated April 14, 2021, as supplemented by additional letters dated August 23, 2021 and September 20, 2021, submitted on behalf of Distributing, its affiliates, and its shareholders, requesting rulings under section 355 and related provisions of the Internal Revenue Code (the “Code”) and related regulations with respect to a series of proposed transactions (the “Proposed Transactions”). 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 Code and pursuant to section 6.03(2) of Rev. Proc. 2021-1, 2021-1 I.R.B. 1, regarding one or more significant issues under sections 332, 337, and 355 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 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 Proposed Transactions: (i) satisfy the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) are 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) are 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 corporations 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 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 (the “Distributing U.S. Group”). At the time of the Proposed Transactions, Distributing will have a single class of voting common stock issued and outstanding. The Distributing Group has been actively engaged in two businesses, the Distributing Business and the Controlled Business.

Ownership Structure

The following summary describes the relevant ownership structure of the Distributing Group immediately prior to the Proposed Transactions. Except as described below, each entity is treated as a corporation for U.S. federal income tax purposes.

Distributing directly owns all of the issued and outstanding stock of Sub 1. Sub 1 indirectly owns all of the issued and outstanding stock of both Sub 2 and Sub 3 through a domestic eligible entity (within the meaning of Treas. Reg. § 301.7701-3(a)) that is disregarded as an entity separate from its owner for U.S. federal income tax purposes (a “disregarded entity”). Sub 1, Sub 2, and Sub 3 are each domestic corporations and members of the Distributing U.S. Group that conduct the Distributing Business. Each of Sub 2 and Sub 3 own all of the issued and outstanding membership interests in a number of disregarded entities that conduct the Distributing Business.

Distributing also directly owns all of the issued and outstanding stock of Sub 4. Sub 4 directly owns all of the issued and outstanding stock of Sub 5 which, in turn, directly owns all of the issued and outstanding stock of Sub 6. Sub 4 and Sub 5 are each domestic corporations and members of the Distributing U.S. Group. Sub 6 is a domestic entity treated as a corporation for U.S. federal income tax purposes and a member of the Distributing U.S. Group.

Sub 6 directly owns: (i) all of the issued and outstanding stock of FSub 1, a Country A entity that is treated as a disregarded entity for U.S. federal income tax purposes; (ii) all of the issued and outstanding stock of FCorp 1, a Country B entity that is treated as a corporation for U.S. federal income tax purposes; and (iii) all of the issued and outstanding stock of Controlled, a State A corporation formed by Sub 6 on Date 1.

FSub 1 directly and indirectly owns a number of domestic and foreign entities that are treated as disregarded entities for U.S. federal income tax purposes. FSub 1 also: (i) directly owns all of the issued and outstanding stock of a foreign entity that is treated as a corporation for U.S. federal income tax purposes; (ii) indirectly owns all of the issued and outstanding stock of two foreign entities that are treated as corporations for U.S. federal income tax purposes; and (iii) indirectly owns all of the issued and outstanding stock of two domestic corporations for U.S. federal income tax purposes

that are not members of the Distributing U.S. Group. FSub 1, FCorp 1, and the disregarded entities directly and indirectly held by FSub 1, collectively, operate the Controlled Business.

Prior to Distributing's last fiscal quarter-end prior to the date that Distributing's board of directors first had discussions with respect to the Proposed Transactions, Distributing had approximately \$2 of existing debt owed to unrelated third-party banks (the "Distributing Debt").

For purposes of satisfying the active trade or business requirements of section 355(b) with respect to the Public Spin-off (as defined below), Distributing and the members of its "separate affiliated group" as defined in section 355(b)(3)(B) will rely on the Distributing Business, and Controlled and the members of its "separate affiliated group" as defined in section 355(b)(3)(B) will rely on the Controlled Business. Distributing has submitted financial information in accordance with Rev. Proc. 2017-52 indicating that both the Distributing Business and Controlled Business have had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Prior Intercompany Transactions

In Year 1, Distributing directly owned all of the issued and outstanding stock of both Sub 5 and FCorp 2, a Country C entity treated as a corporation for U.S. federal income tax purposes. Distributing contributed all of the issued and outstanding stock of FCorp 2 to Sub 5 in exchange for Sub 5 stock and a note receivable, in a qualifying section 351 exchange (the "FCorp 2 Transaction"). Under section 351(b), Distributing would have recognized gain, if any, in an amount not in excess of the fair market value of the note receivable. Pursuant to the intercompany transaction rules of Treas. Reg. § 1.1502-13, the recognition of gain with respect to the FCorp 2 Transaction was deferred (the "Intercompany Gain").

In Year 2, Distributing formed Sub 4 and contributed all of the issued and outstanding stock of Sub 5 to Sub 4 solely in exchange for stock of Sub 4 in a tax-free section 351 exchange.

In Year 3, Sub 5 directly owned all of the issued and outstanding stock of: (i) FSub 1, which was then treated as a corporation for U.S. federal income tax purposes; and (ii) FCorp 3, a Country A entity treated as a corporation for U.S. federal income tax purposes. Sub 5 transferred all of the issued and outstanding stock of FCorp 2 to FCorp 3. As part of the same plan, FCorp 2 made an election to be treated as a disregarded entity for U.S. federal income tax purposes (the "FCorp 2 Reorganization"). The FCorp 2 Reorganization was treated as a tax-free reorganization under section 368(a)(1)(D). After this transaction, which resulted in the deemed liquidation of FCorp 2, the stock of FCorp 3 became a successor asset, as defined in Treas. Reg. § 1.1502-13(j)(1), with respect to the Intercompany Gain.

Following the FCorp 2 Reorganization, Sub 5 transferred all of the issued and outstanding stock of FCorp 3 to FSub 1. As part of the same plan, FCorp 3 made an election to be treated as a disregarded entity for U.S. federal income tax purposes. This transaction was treated as a tax-free reorganization under section 368(a)(1)(D). After this transaction, which resulted in a deemed liquidation of FCorp 3, the stock of FSub 1 became a successor asset, as defined in Treas. Reg. § 1.1502-13(j)(1), with respect to the Intercompany Gain.

In Year 4, Sub 5 formed Sub 6 and transferred all of the issued and outstanding stock of FSub 1 to Sub 6. As part of the same plan, FSub 1 made an election to be treated as a disregarded entity for U.S. federal income tax purposes. This transaction was treated as a tax-free reorganization under section 368(a)(1)(F). After this transaction, which resulted in a deemed liquidation of FSub 1, the stock of Sub 6 became a successor asset, as defined in Treas. Reg. § 1.1502-13(j)(1), with respect to the Intercompany Gain. Accordingly, immediately prior to the Proposed Transactions, there exists a deferred intercompany transaction between Distributing (the selling member) and Sub 5 (the buying member), with respect to the Sub 6 stock (the successor asset) (i.e., the Intercompany Gain).

Proposed Transactions

For what are represented to be valid business reasons, Distributing proposes to separate the Distributing Business and Controlled Business. The relevant steps of the Proposed Transactions are set forth below.

Step 1: Sub 4 converts to an LLC that will be treated as a disregarded entity for U.S. federal income tax purposes.

Step 2: Sub 5 converts to an LLC that will be treated as a disregarded entity for U.S. federal income tax purposes.

Step 3: Sub 6 makes a check-the-box election to be treated as a disregarded entity for U.S. federal income tax purposes (the "Sub 6 Election").

Step 4: Controlled borrows up to \$b of new debt from third parties.

Step 5: FCorp 1 and/or FSub 1 distributes approximately \$c up the chain, through the disregarded entities, to Distributing, which Distributing uses to pay down a portion of the Distributing Debt.

Step 6: Sub 6 contributes all of the issued and outstanding stock of FCorp 1 and all of the issued and outstanding membership interests of FSub 1 to Controlled in exchange for Controlled stock and the \$b borrowed by Controlled in Step 4 (the "Controlled Cash") (collectively, the "Controlled Contribution").

Step 7: Sub 6 distributes all of the issued and outstanding stock of Controlled up the chain, through the disregarded entities, to Distributing.

Step 8: Distributing distributes shares of Controlled stock representing at least d (a number greater than 80) percent of the total combined voting power of all Controlled stock pro-rata to Distributing's public shareholders (the "Public Spin-off"). Within 12 months following the Public Spin-off, Distributing may transfer shares of Controlled stock representing up to e (a number less than 20) percent of the total combined voting power of all Controlled Stock (the "Retained Stock") to one or more unrelated third-party banks in exchange for (and in retirement of) a portion of Distributing's debt (the "Equity-for-Debt Exchange"). Any Retained Stock not transferred in the Equity-for-Debt exchange will be disposed of in a taxable disposition (the "Retention"). Within 30 days following the Public Spin-off, Distributing will use the Controlled Cash to repay outstanding Distributing Debt (the "Boot Purge").

In connection with the Public Spin-off, Distributing and Controlled, collectively with their affiliates, will enter into certain agreements that will continue after the completion of the Public Spin-off in order to effect an orderly transition of Controlled to a standalone public company, including transitional services agreements (the "Transition Services Agreements"), a separation and distribution agreement, and a tax matters agreement (collectively, the "Continuing Arrangements"). The Transition Services Agreements will be on a cost or cost-plus basis and will last no longer than g months after the Public Spin-off.

Following the Public Spin-off, Distributing and Controlled will operate as independent companies having separate boards of directors. The separate boards of directors will have no overlapping membership with the exception of one overlapping board member serving as a chairman of Distributing and Controlled (the "Overlapping Board Member"). The Overlapping Board Member will serve in this capacity to accommodate each company's need for the member's unique industry experience, to reassure investors, and to provide a sense of business continuity. The Overlapping Board Member will not be an officer or employee involved in the day-to-day operations of Distributing or Controlled. The Overlapping Board Member will be elected for a term of f years, will not be eligible for re-election, and will at all times have a minority voting power with respect to each of the boards of Distributing and Controlled.

Representations

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

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

1. Distributing has made the following alternative representations: 3(a), 8(a), 11(a), 15(b), 22(a), 31(a), 41(a).
2. Distributing has not made the following representations, which do not apply to the Public Spin-off: 7, 20, 24, 25, 39, 40.
3. Distributing has made the following modified representations:

Representation 2: Other than the Retained Stock, Distributing will distribute on the same day all of the stock and securities of Controlled that it holds immediately before the Public Spin-Off.

Representation 5: None of the Controlled stock to be distributed in the Public Spin-off will be received in any capacity other than that of a shareholder of Distributing.

Representation 33: Payments made in connection with the Transition Services Agreement, between Distributing and Controlled after the Public Spin-off, will be based on a cost or cost-plus basis.

Except as set forth below, Distributing has made all the representations in section 3.04 of Rev. Proc. 2018-53 with respect to the Public Spin-off:

4. Distributing has not made the following representation with respect to the Boot Purge, because it does not apply to the Public Spin-off: 6.
5. Distributing has not made the following representation with respect to the Equity-for-Debt Exchange, but provided the required explanation: 6.
6. Distributing has made the following modified representations:

Representation 4: Distributing incurred the Distributing Debt that will be assumed or satisfied (i)(a) before the request for any relevant ruling is submitted and (b) no later than 60 days before the earliest of the following dates: (1) the date of the first public announcement (as defined in Treas. Reg. § 1.355-7(h)(10)) of the Proposed Transactions or a similar transaction; (2) the date of the entry by Distributing into a binding agreement to engage in the Proposed Transactions or a similar transaction; and (3) the date of approval of the Proposed Transactions or a similar transaction by the board of directors of Distributing; or (ii) on a date later than such date described in clause (i) and the proceeds of such debt will be used to repay Distributing Debt incurred prior to the relevant date described in clause (i).

Distributing has made the following additional representations:

7. The Sub 4 conversion and the Sub 5 conversion, in Steps 1 and 2, respectively, will each qualify as a tax-free liquidation under section 332.
8. Other than the transfer of Sub 6's assets by Distributing to Controlled in the Controlled Contribution, the Sub 6 Election will otherwise qualify as a tax-free liquidation under section 332. Neither Distributing nor Controlled has any plan or intention to transfer, in the aggregate, more than h percent of the fair market value of the respective assets of Sub 6 to another corporation.
9. Distributing's basis in the Sub 6 stock will be eliminated in the Sub 6 Election without the recognition of gain or loss (and such eliminated basis will not be reflected in the basis in any successor asset within the meaning of Treas. Reg. § 1.1502-13(j)(1)).
10. The Distributing U.S. Group's consolidated tax returns have not reflected the effects of the FCorp 2 Transaction.
11. With respect to the FCorp 2 Transaction, the Distributing U.S. Group has not derived, and no taxpayer will derive, any federal income tax benefit from the intercompany transaction that gave rise to the intercompany gain or the redetermination of the intercompany gain, including any adjustment to the basis in member stock under Treas. Reg. § 1.1502-32.
12. The Retention of the Retained Stock by Distributing after the Public Spin-off will not be part of a plan having as one of its principal purposes the avoidance of Federal income tax.
13. None of Distributing's directors or officers will serve as directors or officers of Controlled as long as Distributing holds the Retained Stock, except for the Overlapping Board Member.
14. The Retained Stock will be disposed of as soon as a disposition is warranted consistent with the business purpose for the Retention, but in any event no later than five years after the Public Spin-off.
15. Distributing will vote the Retained Stock in proportion to the votes cast by Controlled's other shareholders.

Rulings

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

1. The Controlled Contribution, together with the Public Spin-off, will qualify as a tax-free reorganization and distribution pursuant to sections 368(a)(1)(D) and 355. Distributing and Controlled will each be a "party to a reorganization" within the meaning of section

368(b).

2. No gain or loss will be recognized by Distributing on the Controlled Contribution. Sections 361(a), 361(b), and 357(a).

3. No gain or loss will be recognized by Controlled on the Controlled Contribution. Section 1032(a).

4. The basis in each asset received by Controlled in the Controlled Contribution will equal the basis of that asset in the hands of Distributing immediately before the Controlled Contribution. Section 362(b).

5. The holding period in each asset received by Controlled in the Controlled 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 (and no amount otherwise will be included in the income of) the public shareholders of Distributing upon the receipt of Controlled stock in the Public Spin-off. Section 355(a)

7. No gain or loss will be recognized by Distributing upon its distribution of the stock of Controlled in the Public Spin-off. Section 361(c).

8. Each Distributing shareholder's aggregate basis in its Distributing stock and Controlled stock after the Public Spin-off will equal such shareholder's aggregate basis in its Distributing stock immediately prior to the Public Spin-off. Section 358(a). The basis will be allocated between Distributing stock and Controlled stock in proportion to the fair market values of each immediately after the Public Spin-off in accordance with Treas. Reg. § 1.358-2(a)(2). Section 358(a) through (c).

9. Each Distributing shareholder's holding period in its Controlled stock will include the holding period of the Distributing stock with respect to which the distribution of the Controlled stock is made; provided that such Distributing stock is held by such Distributing shareholder as a capital asset on the date of the Public Spin-off. Section 1223(1).

10. The receipt by the public shareholders of Distributing of cash in lieu of fractional shares, if any, of Controlled stock will be treated for U.S. federal income tax purposes as if the fractional shares had been distributed to such shareholders as part of the Public Spin-off and then had been disposed of by such shareholders for the amount of such cash in a sale or exchange. The gain (or loss) recognized (determined using the basis allocated to the fractional shares in Ruling 8), if any, will be treated as capital gain (or loss) under section 1001, provided the stock was held as a capital asset by the selling shareholder. Such gain (or loss) will be short-term or long-term capital gain (or loss) (determined using the holding period provided in Ruling 9).

11. The earnings and profits of Distributing will be allocated between Distributing and Controlled in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33.

12. The Equity-for-Debt Exchange will be treated as being pursuant to the plan of reorganization for purposes of sections 361(c)(3).

13. The Boot Purge will be treated as being pursuant to the plan of reorganization for purposes of sections 361(b)(1)(A) and 361(b)(3). Distributing will not be required to segregate or otherwise trace the Controlled Cash.

14. The Retention is not in pursuance of a plan having as one of its principal purposes the avoidance of U.S. federal income tax within the meaning of section 355(a)(1)(D)(ii). The Retention satisfies the requirements of section 355(a)(1)(D)(ii) and Treas. Reg. § 1.355-2(e).

15. Upon the deemed liquidations of Sub 4, Sub 5, and Sub 6, resulting from the Sub 4 conversion, the Sub 5 conversion, and the Sub 6 Election, respectively, the amount of the Intercompany Gain from the FCorp 2 Transaction will be redetermined to be excluded from gross income under Treas. Reg. § 1.1502-13(c)(6)(ii)(C).

16. The transfer of Sub 6's assets by Distributing to Controlled in the Controlled Contribution will not preclude the Sub 6 Election from otherwise qualifying as a "complete liquidation" within the meaning of section 332.

17. Post-distribution payments made between 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 Public Spin-off or for a taxable period beginning before and ending after the Public Spin-off; and (ii) will not become fixed and ascertainable until after the Public Spin-off, will be viewed as occurring immediately before the Public Spin-off. See Arrowsmith v. Commissioner, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84.

Caveats

No opinion is expressed or implied about the tax treatment of the Proposed Transactions 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 Transactions that are not specifically covered by the above rulings.

Procedural Statements

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.

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

A copy of this letter ruling must be attached to any federal 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 (PLR-108823-21) of this letter ruling.

Sincerely,

Brian R. Loss
Office of Associate Chief Counsel (Corporate)
Senior Technician Reviewer, Branch 4

cc: