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Person To Contact:
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Telephone Number:

Refer Reply To:
CC:CORP:1
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Date:
November 19, 2021

Legend

Distributing =

Distributing 1 =

Foreign
Distributing 1 =

Foreign
Distributing 2 =

Controlled =

Controlled 1 =

Foreign
Controlled 1 =

Foreign
Controlled 2 =

Business A =

Business B =

Block A
Shares =

Block B
Shares =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

a =

b =

c =

d =

e =

f =

g =

Dear :

This letter responds to your authorized representatives' letter dated May 25, 2021, as supplemented by subsequent information and documentation (the "Ruling Request"), requesting rulings on certain federal income tax consequences of the Proposed Transaction (defined below). The material information submitted in the Ruling Request 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" and one or more significant issues under section 355 and section 368 of the Internal Revenue Code (the "Code"). This office expresses no opinion as to the overall tax consequences of the Proposed Transaction or 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 materials submitted in support of the Ruling Request. Verification of the information, representations, and other data may be required as part of the audit process.

Summary of Facts

Distributing, a publicly traded corporation, is the parent of a worldwide group (the "Distributing Group") that is engaged in Business A and Business B. Distributing is the common parent of an affiliated group of corporations that files a consolidated return for federal income tax purposes. Distributing owns all of the outstanding stock of Distributing 1. Distributing 1 owns all of the outstanding stock of Foreign Distributing 1, a foreign entity that is classified as a corporation for federal income tax purposes. The stock of Foreign Distributing 1 includes: (i) Block A Shares and (ii) Block B Shares. Foreign Distributing 1 owns all of the outstanding stock of Foreign Distributing 2, a foreign eligible entity classified as a corporation for federal income tax purposes.

Distributing has certain outstanding obligations, including (i) notes maturing on Date 1 with an aggregate principal amount of a (the "Date 1 Notes") and (ii) notes maturing on Date 2 with an aggregate principal amount of b (the "Date 2 Notes" and, collectively with the Date 1 Notes, the "Debt Obligations").

Proposed Transaction

For what are represented to be valid corporate business purposes (the "Corporate Business Purpose" or "Corporate Business Purposes"), the Distributing Group proposes to engage in the following transactions, some of which have already been consummated, to separate Business A from Business B (the "Proposed Transaction").

The Internal Restructuring

1. Distributing will form Controlled. Controlled will have outstanding one class of common stock (the "Controlled Common Stock"). In connection with the Proposed Transaction, Controlled expects to issue debt obligations to third-party lenders and may issue debt obligations constituting "securities" for federal income tax purposes to Distributing (the "Controlled Securities").
2. Distributing 1 will form Controlled 1, a domestic limited liability company, which will make an election to be classified as a corporation for federal income tax purposes. Controlled 1 will have outstanding one class of common stock (the "Controlled 1 Common Stock").
3. Foreign Distributing 2 will form Foreign Controlled 1, a foreign entity, which will make an election, effective upon formation, to be classified as disregarded from its owner for federal income tax purposes (a "Disregarded Entity"). Foreign Controlled 1 will have outstanding one class of common stock (the "Foreign Controlled 1 Common Stock").
4. Foreign Distributing 1 will form Foreign Controlled 2, a foreign eligible entity, which will make an election, effective upon formation, to be classified as a corporation for federal income tax purposes. Foreign Controlled 2 will have outstanding one class of common stock (the "Foreign Controlled 2 Common Stock").
5. In a series of transactions, the assets and liabilities of Business A held by various entities within the Distributing Group will be separated from the assets and liabilities of Business B held by such entities.
6. Foreign Distributing 2 will contribute the Business A assets (which will consist in part of equity in foreign entities that are classified as corporations or Disregarded Entities for federal income tax purposes) to Foreign Controlled 1.
7. Foreign Controlled 1 will make an election to be classified as a corporation for federal income tax purposes.
8. Foreign Distributing 2 will distribute the Foreign Controlled 1 Common Stock to Foreign Distributing 1.
9. Foreign Distributing 1 will contribute the Foreign Controlled 1 Common Stock to Foreign Controlled 2 in exchange for Foreign Controlled 2 Common Stock (the "Internal Contribution").
10. Foreign Distributing 1 will distribute the Foreign Controlled 2 Common Stock to Distributing 1 in exchange for a percentage of Block B Shares with a value equal to the fair market value of the Foreign Controlled 2 Common Stock (the "Internal Distribution" and, together with the Internal Contribution, the "Internal Split-Off").

11. Distributing 1 will contribute the Foreign Controlled 2 Common Stock and other entities relevant to Business A to Controlled 1.

12. Distributing 1 will distribute the Controlled 1 Common Stock to Distributing.

The External Distribution

13. Distributing will contribute the Controlled 1 Common Stock to Controlled in exchange for: (a) Controlled Common Stock, (b) cash (the "Controlled Dividend"), and (c) in certain of the scenarios described below, Controlled Securities (clauses (a)-(c) together, the "Asset Contribution"). It is expected that the Controlled Dividend will be funded by the issuance of debt obligations to third-party lenders.

14. Distributing will distribute to the holders of Distributing common stock at least 80 percent of the Controlled Common Stock (the "External Distribution") and will retain any shares of Controlled Common Stock not distributed in the External Distribution (the "Retained Shares" and, together with the cash proceeds of the Controlled Dividend and any Controlled Securities, the "Exchange Consideration").

15. In connection with the Asset Contribution and the External Distribution, Distributing expects to satisfy the Date 1 Notes and Date 2 Notes in transactions using in part the Exchange Consideration. Such transactions (the "Debt Exchanges") are expected to be undertaken in the manner described below.

Controlled Dividend Proceeds and Controlled Securities

Distributing may use the cash proceeds from the Controlled Dividend and the Controlled Securities (if issued) to satisfy the Date 1 Notes. However, due to the organizational complexities required to separate Business A from Business B, it is currently uncertain whether the External Distribution will occur on or before Date 3 (the day before Date 1). Accordingly, depending on when the External Distribution occurs or whether Controlled Securities are issued, Distributing expects to use the cash proceeds from the Controlled Dividend and the Controlled Securities (if issued) by undertaking the transaction described in one of the two following scenarios.

In the first scenario, if the External Distribution occurs on or before Date 3 and the cash proceeds of the Controlled Dividend are not materially less than c, then on or before Date 1 and no later than d days after the External Distribution, Distributing expects to use the cash proceeds of the Controlled Dividend and cash on hand to redeem the Date 1 Notes. No Controlled Securities will be issued.

If the External Distribution occurs on or before Date 3, but the cash proceeds of the Controlled Dividend are materially less than c, then Distributing may undertake the following transaction instead:

1. Controlled will issue Controlled Securities as part of the Exchange Consideration.
2. On or before Date 3, Distributing will issue new debt (the "New Q1 Debt 1") to one or more financial institutions (collectively, the "Financial Institution") for an amount of cash approximately equal to the face amount of the Controlled Securities.
3. On or before Date 1, Distributing will use the cash proceeds from the New Q1 Debt 1, the cash proceeds from the Controlled Dividend, and cash on hand to redeem the Date 1 Notes.
4. At least e days following the issuance of the New Q1 Debt 1, Distributing will enter into an exchange agreement with the Financial Institution pursuant to which Distributing will transfer the Controlled Securities to the Financial Institution in exchange for (and in retirement of) the New Q1 Debt 1. The exchange ratio for such exchange will be fixed on the date the exchange agreement is entered into.
5. At least f days following the execution of the exchange agreement and in no event later than d days after the External Distribution, Distributing will transfer the Controlled Securities (and cash on hand, if necessary) to the Financial Institution in exchange for (and in retirement of) the New Q1 Debt 1.

In the second scenario, if the External Distribution occurs after Date 3 and the cash proceeds of the Controlled Dividend are not expected to be materially less than c, then Distributing expects to undertake the following transaction, in connection with which no Controlled Securities will be issued:

1. On or before Date 3, Distributing will borrow via the issuance of new debt (the "Refinancing Debt A") an amount of cash approximately equal to the expected cash proceeds of the Controlled Dividend.
2. On or before Date 1, Distributing will use the cash proceeds of the Refinancing Debt A and cash on hand to redeem the Date 1 Notes.
3. As soon as practicable and in no event later than d days after the External Distribution, Distributing will repay the Refinancing Debt A using the cash proceeds of the Controlled Dividend (and cash on hand, if necessary).

If the External Distribution occurs after Date 3 but the cash proceeds of the Controlled Dividend are expected to be materially less than c, then Distributing may undertake the following transaction instead:

1. On or before Date 3, Distributing will issue new debt to the Financial Institution for an amount of cash approximately equal to the expected amount of the Controlled Dividend plus the face amount of the Controlled Securities. The new debt will have two components: (i) a portion of such debt approximately equal to the face amount of the Controlled Securities (“New Q1 Debt 2” and, together with the New Q1 Debt 1, the “New Q1 Debt”) and (ii) a portion of the new debt approximately equal to the expected cash proceeds of the Controlled Dividend (the “Refinancing Debt B” and, together with the Refinancing Debt A, the “Refinancing Debt”).
2. On or before Date 1, Distributing will use the cash proceeds from the New Q1 Debt 2, the Refinancing Debt B, and cash on hand to redeem the Date 1 Notes.
3. Controlled will issue Controlled Securities as part of the Exchange Consideration.
4. At least e days following the issuance of New Q1 Debt 2, Distributing will enter into an exchange agreement with the Financial Institution pursuant to which Distributing will transfer the Controlled Securities to Financial Institution in exchange for (and in retirement of) the New Q1 Debt 2. The exchange ratio for such exchange will be fixed on the date the exchange agreement is entered into.
5. At least f days following execution of the exchange agreement and in no event later than d days after the External Distribution, Distributing will transfer (i) the Controlled Securities (and cash on hand, if necessary) to the Financial Institution in exchange for (and in retirement of) the New Q1 Debt 2 and (ii) the cash proceeds of the Controlled Dividend (and cash on hand, if necessary) to the Financial Institution in exchange for (and in retirement of) the Refinancing Debt B.

The Retention and Use of the Retained Shares

As noted above, Distributing expects to retain the Retained Shares and any Controlled Securities (the “Retention”), which it generally will use to satisfy the Debt Obligations and/or the Intermediate Debt (defined below). Distributing has determined that the Retention furthers the Corporate Business Purpose of creating two independent capital structures, in which Distributing continues to target leverage consistent with its investment grade credit rating (the “Retention Purpose”).

Distributing expects to satisfy the Date 2 Notes using the Retained Shares. Distributing expects to dispose of the Retained Shares by undertaking the following transactions:

1. On or before Date 4 (the day before Date 2), Distributing will issue new debt (the “New Q4 Debt” and, together with the New Q1 Debt and the Refinancing Debt, the “Intermediate Debt”) to the Financial Institution for an amount approximately equal to and not materially more than the expected value of the Retained Shares.

2. On or before Date 2, Distributing will use the cash proceeds from the New Q4 Debt to repay a portion of the Date 2 Notes. Distributing may refinance the remaining portion of the Date 2 Notes or repay such portion with cash on hand.
3. At least e days after the issuance of the New Q4 Debt, Distributing will enter into an exchange agreement with the Financial Institution pursuant to which Distributing will transfer the Retained Shares (and cash on hand, if necessary) to Financial Institution in exchange for (and in retirement of) all of the New Q4 Debt. The exchange ratio for such exchange will be fixed on the date the exchange agreement is entered into.
4. At least f days following the execution of the exchange agreement and in no event later than g months after the External Distribution, Distributing will transfer the Retained Shares (and cash on hand, if necessary) to the Financial Institution in exchange for (and in retirement of) the New Q4 Debt (the "Stock-for-Debt Exchange"). If Distributing holds any Retained Shares following the Stock-for-Debt Exchange, Distributing expects to dispose of such Retained Shares as soon as disposition is warranted consistent with the Retention Purpose, but in no event later than e years after the External Distribution.

Representations

Distributing has made the following representations with respect to the Proposed Transaction.

The Internal Split-Off

Distributing has made the following representations with respect to the Internal Split-Off.

1. Other than with respect to the significant issues raised in the Ruling Request, the Internal Split-Off will satisfy the requirements of sections 355 and 368(a)(1)(D) as of the date of the Internal Split-Off and thereafter as relevant.
2. The fair market value of the Foreign Controlled 2 Common Stock to be received by Distributing 1 (which will surrender a percentage of the Block B Shares) will be approximately equal to the fair market value of the Foreign Distributing 1 stock surrendered by Distributing 1 in the Internal Split-Off.
3. As a foreign entity, Foreign Distributing 1 will not have an Excess Loss Account in the Foreign Controlled 2 Common Stock immediately before the Internal Split-Off.
4. The Internal Split-Off is not part of a plan (or series of related transactions) resulting in an acquisition described in section 7874(a)(2)(B)(i).
5. Distributing 1 will be a section 1248 shareholder, within the meaning of Treas. Reg. § 1.367(b)-2(b), with respect to each of Foreign Distributing 1 and Foreign Controlled 2 immediately before and after the Internal Split-Off.

6. Each of Foreign Distributing 1 and Foreign Controlled 2 will be a controlled foreign corporation, within the meaning of section 957(a), immediately before and after the Internal Split-Off.

7. Neither Foreign Distributing 1 nor Foreign Controlled 2 will be a passive foreign investment company, within the meaning of section 1297(a), immediately before or after the Internal Split-Off.

8. Neither Foreign Distributing 1 nor Foreign Controlled 2 will hold any United States real property interests, as defined in section 897(c)(1), immediately before or after the Internal Split-Off.

9. The Internal Split-Off will not result in the transfer of stock of any corporation that has been the U.S. transferor, the transferee foreign corporation, or the transferred corporation, or successor thereto, with respect to any unexpired "gain recognition agreement" within the meaning of section 367(a) and the regulations promulgated thereunder, except for transfers for which there is a "triggering event exception" as defined under Treas. Reg. § 1.367(a)-8(k).

The Retention

Distributing has made the following representations with respect to the Retention.

10. The Retention will enable Distributing to satisfy the Retention Purpose.

11. The Retained Shares and any Controlled Securities will be disposed of as soon as disposition is warranted consistent with the Retention Purpose, but in no event later than e years after the External Distribution.

12. No one will serve as a director or officer of both Distributing (or any of its affiliates) and Controlled (or any of its affiliates), and any Controlled Securities will not provide the power to appoint any director or officer of Controlled (or any of its affiliates).

13. The Retained Shares will be voted in proportion to the votes cast by the other shareholders of Controlled, and the Controlled Securities will not have any voting rights.

14. In no event will the Retention prevent Distributing from distributing an amount of stock of Controlled that represents control under section 368(c).

15. No indebtedness owed by Controlled to Distributing after the External Distribution will constitute stock or securities of Controlled or any other entity, except any Controlled Securities.

16. The External Distribution is motivated, in whole or substantial part, by the Corporate Business Purposes.

17. Other than with respect to significant issues raised in the Ruling Request, the Asset Contribution and the External Distribution will satisfy the requirements of section 355 and section 368(a)(1)(D) as of the date of the External Distribution and thereafter as relevant.

Rev. Proc. 2018-53

Except as discussed below, with respect to the Asset Contribution, External Distribution, and Debt Exchanges, Distributing has made each applicable representation under section 3.04 of Rev. Proc. 2018-53.

Distributing was unable to make the following standard representations; however, Distributing has made the following modified representations.

18. Representation 4: Distributing incurred the Distributing Debt that will be assumed or satisfied (a)(i) before the request for any relevant ruling is submitted and (ii) no later than 60 days before the earliest of the following dates: (A) the date of the first public announcement (as defined in Treas. Reg. § 1.355-7(h)(10)) of the Divisive Reorganization or a similar transaction, (B) the date of the entry by Distributing into a binding agreement to engage in the Divisive Reorganization or a similar transaction, and (C) the date of approval of the Divisive Reorganization or a similar transaction by the board of directors of Distributing, or (b) on a date later than any such date described in clause (a) and the proceeds of such Distributing Debt were used to repay Distributing Debt incurred prior to the relevant date described in clause (a). The terms “Distributing Debt” and “Divisive Reorganization” each has the meaning given thereto in Rev. Proc. 2018-53.

19. Representation 6: There are one or more substantial business reasons for any delay in satisfying Distributing Debt with § 361 Consideration beyond 30 days after the date of the first distribution of Controlled stock to Distributing’s shareholders. All the Distributing Debt that will be satisfied with § 361 Consideration will be satisfied no later than 180 days after such distribution, other than the New Q4 Debt, which will be satisfied no later than 365 days after such distribution. The term “§ 361 Consideration” has the meaning given thereto in Rev. Proc. 2018-53.

The External Distribution

Distributing has made the following additional representations with respect to the External Distribution.

20. Distributing will not replace any Distributing Debt that will be 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.

21. Any other property issued or transferred by Controlled to Distributing in pursuance of the plan of reorganization will be transferred by Distributing to its shareholders in pursuance of the plan of reorganization or to its creditors in connection with the reorganization. For purposes of this representation, "other property" means property other than stock and securities of Controlled.

22. Any securities issued by Controlled to Distributing in pursuance of the plan of reorganization will be transferred by Distributing to its shareholders in pursuance of the plan of reorganization or to its creditors in connection with the reorganization.

23. Pursuant to Treas. Reg. § 1.1502-13(g)(3)(ii), no deemed satisfaction and reissuance will occur with respect to securities or other obligations of Controlled distributed by Distributing to its shareholders or creditors in pursuance of the plan of reorganization or in connection with the reorganization.

24. The total adjusted basis and the fair market value of assets transferred by Distributing to Controlled will each equal or exceed the sum of: (a) the total amount of the liabilities assumed (within the meaning of section 357(d)) by Controlled, and (b) the total amount of any money and the fair market value of other property, if any, received by Distributing and transferred to its shareholders and its creditors. As used herein, "liabilities" means any liability or other obligation without regard to whether it has been taken into account for federal income tax purposes.

Rulings

Based solely on the information and representations submitted, we rule as follows regarding the Proposed Transaction:

1. The basis in the Foreign Controlled 2 Common Stock received by Distributing 1 in the Internal Split-Off will equal the basis of the Block B Shares surrendered therefor. Section 358(a)(1) and Treas. Reg. § 1.358-2(a)(2)(i).
2. The Retention will not be in pursuance of a plan having as one of its principal purposes the avoidance of federal income tax within the meaning of section 355(a)(1)(D)(ii) and Treas. Reg. § 1.355-2(e).
3. No gain or loss will be recognized to Distributing under section 361(b) or section 361(c) upon Distributing's receipt of Exchange Consideration and its distribution of such Exchange Consideration in the Debt Exchanges in satisfaction of the Debt Obligations and Intermediate Debt.

Caveat

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of the Proposed 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 Proposed Transaction that is not specifically addressed by the above rulings.

Procedural Matters

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 representatives.

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.

Sincerely,

Richard K. Passales
Senior Counsel, Branch 4
Office of Associate Chief Counsel (Corporate)

cc: