

Internal Revenue Service

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PLR-104413-24

Date:

March 22, 2024

LEGEND

Distributing =

Controlled 1 =

Facility A
Services =

Transition
Services
Agreements =

Product C =

Product C
Supply
Agreement =

Date A =

Date B =

Date C =

Date D =

Date E =

Date F =

Jurisdiction C =

Jurisdiction D =

Jurisdiction E =

q =

r =

s =

t =

Facility A
Events =

Dear :

This letter responds to your letter dated February 13, 2024, as supplemented by subsequent information and documentation, submitted on behalf of Distributing, its affiliates, and its shareholders, requesting a supplemental ruling to the private letter ruling (PLR-110954-21) dated December 17, 2021, (the “Prior Letter Ruling”) on certain Federal income tax consequences of a series of transactions (the “Transactions”). The material information submitted in that request and subsequent correspondence is summarized below. Capitalized or underlined terms not defined in this letter have the meanings assigned to them in the Prior Letter Ruling.

This letter is issued pursuant to section 3.05 of 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 a supplemental ruling on one or more Covered Transactions under section 355 and/or section 368 of the Internal Revenue Code (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 Transactions: (i) satisfied the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) was 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).

SUPPLEMENTAL FACTS

The facts described in the Prior Letter Ruling are unchanged, except as described below.

Operational Extensions

As described in the Prior Letter Ruling, in connection with the Transactions that occurred to separate the Controlled Business from the Distributing Group (the “Separation”), Distributing (and/or one or more of Distributing’s direct or indirect subsidiaries) and Controlled 1 (and/or one or more of Controlled 1’s direct or indirect subsidiaries) entered into agreements (the “Post-Separation Agreements”) intended to

govern certain of their relationships (and that of their respective subsidiaries) following consummation of the Transactions and to manage an orderly transition in the operation of the Controlled Business.

Among other agreements, the Post-Separation Agreements include (i) the Transition Services Agreements that relate to the provision by Distributing to Controlled 1 (and vice versa) of certain customary limited transition services consistent with commonly shared services, including, but not limited to, those related to information technology, procurement, customer service, quality and regulatory affairs, accounting, human resources, and distribution and logistics; (ii) agreements related to assets, liabilities, and regulatory authorizations that could not be legally transferred prior to the Transactions; and (iii) certain manufacturing, supply, services, lease, intellectual property, and other related agreements intended to achieve a successful separation of the Controlled Business, including the Facility A and Facility B Agreements and the Brand Licensing Agreement.

Controlled 1 has encountered certain unforeseen developments and limitations in seeking to establish its own independent enterprise resource planning (“ERP”) system necessary to rely on its own independent information technology, procurement, quality and regulatory affairs, business affairs, tax, and treasury functions. Specifically, such developments include (i) the failure of certain key baseline assumptions to be correct, including assumptions that underestimated the complexity of ERP system design and implementation, difficulties in operationalizing ERP systems in certain non-U.S. jurisdictions, and the inability to migrate data from certain Distributing ERP systems to Controlled 1 ERP systems; (ii) the identification of certain critical issues and limitations that arose after the External Distribution that impacted Controlled 1’s ability to cause its ERP system to “go live” at expected dates, including lagging governmental and regulatory approvals, delays to account setup by Controlled 1’s customers with Controlled 1’s ERP system, and limitations in the timing of ERP transition posed by external financial reporting requirements; and (iii) identification of limitations relating to a third-party logistics provider that Controlled 1 had hired to provide certain services related to the ERP system (and implementation thereof). As a result of such developments, Controlled 1 cannot commercially feasibly complete by Date A the establishment of these standalone functions, and therefore must rely on certain transition services provided by Distributing beyond Date A, the date by which Distributing and Controlled 1 had originally agreed that all transition services provided under the Transition Services Agreements would terminate. Accordingly, Distributing and Controlled 1 will agree to extend the term of the Transition Services Agreements with respect to certain transition services such that those services would be provided for a longer period of time following the External Distribution (such extensions, the “Transition Services Extensions”). The period of time for which the applicable transition services will be extended varies, depending on the particular service in question, but in no event will be longer than is necessary to achieve a successful separation of the Controlled Business and, other than as it relates to Transition Services provided relating to Jurisdiction C, in no event will be longer than 9 months following the date of the

External Distribution (i.e., a maximum r-month extension beyond Date A).

Distributing and Controlled 1 also will extend the term of certain Post-Separation Agreements that relate to assets, liabilities, and regulatory authorizations that could not be transferred prior to the Transactions (the “Delayed Transfer Extensions”). It is expected that the Delayed Transfer Extensions will terminate upon or following the termination of the Transition Services Extensions but in no event will be longer than is necessary to achieve a successful separation of the Controlled Business.

Additionally, Controlled continues to use Distributing’s brand on Controlled Business products and needs to continue using certain of Distributing’s licenses and registrations to conduct the Controlled Business. Such need arose from certain developments, including (i) complications arising from a country-by-country regulatory approval strategy that is dependent on first completing a successful transition onto Controlled 1’s independent ERP system in that country; (ii) complexities and variance of multi-step processes required before products displaying Controlled 1’s brand or name can be sold in a particular country; (iii) delays related to the use of single stock keeping units (“SKUs”) for a particular product across countries, a fact that necessitates achieving regulatory approvals across all relevant jurisdictions (certain of which may have long lead times for regulatory approvals) before selling such product in any of the countries in which the SKU is used; (iv) constraints in the number of regulatory bodies capable of providing critical markings needed for products to be sold in certain jurisdictions using solely Controlled 1’s brand; and (v) resource constraints and turnover related to the ability to complete the design, specifications, verifications, and approvals of Controlled 1’s labels. Accordingly, Controlled 1 and its subsidiaries will continue to use Distributing’s brand, licenses, and registrations for a period extending beyond Date A (the “Brand Licensing and Registrations Extension”). The Brand Licensing and Registrations Extension will generally extend no longer than Date B but, in the case of the use of Distributing’s brand, licenses, and registrations for all SKUs relating to Jurisdiction C, Jurisdiction D, and Jurisdiction E, which collectively represent approximately s% of Controlled 1’s gross revenue, the Brand Licensing and Registration Extension will extend beyond Date B (but in no event will be longer than is necessary to achieve a successful separation of the Controlled Business).

Pursuant to the Facility A and Facility B Agreements, Controlled 1 and its subsidiaries provide, among other services, the Facility A Services to Distributing and its subsidiaries. As a result of certain unforeseen developments, including the Facility A Events, Distributing and Controlled 1 will agree that Controlled 1 and its subsidiaries will continue to provide the Facility A Services until Date C, instead of Date D, the original termination date (the “Facility A Services Extension”).

Following the External Distribution, Distributing and Controlled 1 entered into the Product C Supply Agreement (together with the Transition Services Extensions, the Delayed Transfer Extensions, the Brand Licensing and Registrations Extension, and the Facility A Services Extension, the “Operational Extensions”), which represented less

than t% of Controlled 1's overall production volume of Product C during the term of the Product C Supply Agreement.

Entity Classification Election

As described in the Prior Letter Ruling, in the First Controlled 2 Distribution, FSub 3 distributed approximately k% of the Controlled 2 Stock to FSub 2 and the remaining approximately l% of the Controlled 2 Stock to DRE 5.

On Date E, FSub 3 elected to be treated as an entity disregarded as separate from its owner for Federal tax purposes, with retroactive effect as of Date F (the "Entity Classification Election"). Accordingly, effective Date F, for Federal tax purposes, FSub 3 became disregarded as an entity separate from FSub 2. Distributing treated the deemed liquidation of FSub 3 resulting from the Entity Classification Election as a complete liquidation of FSub 3 described in sections 332 and 337. The Entity Classification Election was made as part of an internal restructuring of the Distributing Group and was unrelated to the Transactions.

REPRESENTATIONS

Distributing has made the following representation with respect to the Supplemental Facts:

1. Distributing reaffirms all the material information submitted in connection with, and all the representations contained in, the Prior Letter Ruling, as modified and supplemented by the representations and information herein.

Distributing has made the following modified representations pursuant to section 3.04 of Rev. Proc. 2018-53:

2. With respect to the External Distribution, instead of the modified Representation 33 that Distributing made in the Prior Letter Ruling, Distributing represents that any payments made in connection with all continuing transactions, if any, between Distributing and Controlled 1 after the External Distribution have been and will be for fair market value based on arm's-length terms or a mutually agreed upon cost-plus pricing arrangement that is commercially reasonable with respect to certain Post-Separation Agreements (other than purchases of Product C at cost pursuant to the Product C Supply Agreement).
3. With respect to the First Controlled 2 Distribution, instead of Representation 11(a) that Distributing made in the Prior Letter Ruling, Distributing makes the following modified Representations:
 - (a) Following the First Controlled 2 Distribution until the deemed liquidation of FSub 3 resulting from the Entity Classification Election, FSub 3 or FSub 3's

separate affiliated group continued, independently and with its separate employees, the active conduct of the business on which it relied to meet the active trade or business requirement of section 355(b).

- (b) Following the deemed liquidation of FSub 3 resulting from the Entity Classification Election, FSub 2 or FSub 2's separate affiliated group has continued, independently and with its separate employees, the active conduct of the business on which FSub 3 relied to meet the active trade or business requirement of section 355(b).

RULINGS

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

1. The Operational Extensions and the Entity Classification Election will not affect the rulings set forth in the Prior Letter Ruling.
2. The rulings set forth in the Prior Letter Ruling remain in full force and effect.

CAVEATS

Except as expressly provided in this letter, no opinion is expressed or implied concerning the tax treatment of the 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 Transactions that are not specifically covered by the above ruling. In particular, no opinion is expressed as to the effective date of the Entity Classification Election or the qualification of the deemed liquidation of FSub 3 resulting from the Entity Classification Election as a complete liquidation of FSub 3 under section 332.

PROCEDURAL STATEMENTS

This letter 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 return that provides the date and control number (PLR-104413-24) of this letter ruling.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Jonathan R. Neville

Jonathan R. Neville
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel (Corporate)

cc: