

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **202429015**  
Release Date: 7/19/2024

Third Party Communication: None  
Date of Communication: Not Applicable

Index Number: 355.00-00, 355.01-00,  
355.01-01, 361.00-00,  
361.02-00, 368.00-00,  
368.04-00

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:CORP:1  
PLR-125162-23

Date:  
April 19, 2024

**Legend**

Distributing =

DRE 1 =

FSub 1 =

US Sub =

FSub 2 =

DRE 2 =

Business A =

Business B =

State A =

Country A =

Country B =

Date 1 =

a =

b =

c =

d =

Continuing Arrangements =

Funding Requirement =

Dear \_\_\_\_\_ :

This letter responds to a letter from your authorized representatives dated December 22, 2023, requesting rulings on certain federal income tax consequences of the Proposed Transaction (defined below). The material information provided in that letter and in subsequent correspondence is summarized below.

This letter is issued pursuant to Rev. Proc. 2023-1, 2023-1 I.R.B. 1, Rev. Proc. 2022-10, 2022-6 I.R.B. 473, and 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 “Covered Transaction[s]” under section 355 and 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 upon information 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 (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 State A corporation, is the parent of a worldwide group that includes both domestic and foreign entities. Distributing directly and indirectly owns corporations, partnerships, and entities disregarded as separate from their sole regarded owners under Treas. Reg. § 301.7701-3 for U.S. federal income tax purposes (“DREs”). Distributing and its eligible members join in the filing of a consolidated U.S. federal income tax return.

Distributing is engaged directly and through members of its “separate affiliated group” as defined in section 355(b)(3)(B) (the “DSAG”) in Business A. On Date 1 (a date within five years of the Separation, as defined below), Distributing acquired all of the assets of Business B in a transaction in which gain or loss was recognized within the meaning of section 355(b)(2)(C).

Immediately prior to the Proposed Transaction, Distributing owns all the equity interests in DRE 1, a State A limited liability company. DRE 1 owns all of the stock of FSub 1, a Country A entity that is classified as a corporation for U.S. federal income tax purposes. DRE 1 and FSub 1 conduct Business B.

Distributing also owns all the stock of: (i) US Sub; and (ii) FSub 2, a Country A entity that is classified as a corporation for U.S. federal income tax purposes. FSub 2 owns all the equity interests in DRE 2, a Country B DRE. Distributing, US Sub, FSub 2, and DRE 2 conduct Business A.

Financial information has been submitted in accordance with Rev. Proc. 2017-52 indicating that Business A as conducted by the DSAG has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

## The Proposed Transaction

For what are represented to be valid business reasons, Distributing proposes to engage in the following transaction (the “Proposed Transaction”) to separate Business A from Business B and distribute Business B to its public shareholders. The relevant steps of the Proposed Transaction are set forth below.

1. Distributing will cause DRE 1 to convert into a State A corporation (the “Conversion”). Following the Conversion, DRE 1 is referred to as “Controlled.”
2. Distributing will contribute cash to Controlled (the “Funding Requirement”) in exchange for no additional stock of Controlled (together with the Conversion, the “Contribution”).

3. Controlled may engage in a private placement, pursuant to which Controlled will issue new shares constituting no more than a percent of Controlled stock by vote and by value to one or more investors in exchange for cash (the "Private Placement").

4. Distributing will distribute at least b percent of the common stock of Controlled pro rata to its holders of common stock or pursuant to an exchange by Distributing in redemption of its shares (the "Distribution" and, together with the Contribution, the "Separation"). Distributing may retain up to c percent of the common stock of Controlled (the "Retained Shares"), but in no event shall the Retained Shares together with any shares issued in the Private Placement exceed a percent of Controlled stock.

5. Distributing will dispose of the Retained Shares in one or more public or private sales as soon as warranted, but in no event later than d years after the date of the Distribution.

In the absence of the Retention, Distributing believes that Distributing would be required to incur incremental indebtedness at a significant cost and on potentially less favorable terms (the "Retention Business Purpose").

### **Representations**

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

#### Rev. Proc. 2017-52 Representations

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

(a) Distributing has made the following alternative representations: Representations 3(a); 8(b); 11(a); 15(a); 22(a); 31(a); and 41(a).

(b) Distributing has not made the following representations because they do not apply to the Separation: Representations 24; 25; and 40.

(c) Distributing has made the following modified representations:

Representation 2: In the Distribution, Distributing will distribute at least 80% of the stock and securities of Controlled; provided that, in the case that a split-off results in the exchange of stock constituting less than Control of Controlled, Distributing will effect a pro rata distribution of Controlled stock to ensure that Control is distributed as promptly as practicable after such split-off, taking into account applicable stock exchange and clearing agency requirements.

Representation 6: To the extent the Distribution is effected as a spin-off, no shareholder of Distributing will surrender Distributing stock in the Distribution.

Representation 7: To the extent the Distribution is effected as a split-off, the fair market value of Controlled stock, Controlled securities, or Other Property to be received by each shareholder of Distributing that surrenders Distributing stock will be approximately equal to the fair market value of Distributing stock surrendered by the shareholder in the transaction.

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 Separation, except for payables and receivables arising by reason of the Continuing Arrangements or payables and receivables incurred in the ordinary course of business.

### Representations relating to the Retained Shares

With respect to the Retained Shares, Distributing has made the following representations:

- (a) Distributing will keep the Retained Shares, if any, to facilitate the Retention Business Purpose.
- (b) None of Distributing's directors or officers will serve as directors or officers of Controlled as long as Distributing retains the Retained Shares.
- (c) Distributing will dispose of the Retained Shares as soon as a disposition is warranted consistent with the Retention Business Purpose, but in any event, not later than d years after the Distribution.
- (d) Distributing will vote the Retained Shares in proportion to the votes cast by Controlled's other shareholders.

### **Rulings**

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

1. The Separation will qualify as a tax-free reorganization under 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. Distributing will recognize no gain or loss on the Contribution. Section 361(a).
3. Controlled will recognize no gain or loss on the Contribution. Section 1032(a).

4. Controlled's basis in each asset received in the Contribution will be equal to the basis of that asset in the hands of Distributing immediately before the Contribution. Section 362(b).
5. Controlled's holding period in each asset received in the Contribution will include the period during which Distributing held such asset. Section 1223(2).
6. Distributing's shareholders will recognize no gain or loss (and no amount will be includible in income) upon the receipt of Controlled stock in the Distribution. Section 355(a).
7. Distributing will recognize no gain or loss upon the Distribution. Section 361(c).
8. To the extent the Distribution is effected as a spin-off, the aggregate basis of the Distributing common stock and the Controlled stock in the hands of each Distributing shareholder immediately after the Distribution (including any fractional share interest in Controlled stock to which the shareholder may be entitled) will equal the aggregate adjusted basis of the Distributing common stock held by such Distributing shareholder immediately before the Distribution, allocated between the stock of Distributing and Controlled in proportion to the fair market value of each immediately after the Distribution in accordance with Treas. Reg. § 1.358-2(a)(2)(iv). Section 358(b)(2) and (c).
9. To the extent the Distribution is effected as a split-off, immediately after the Distribution, the basis of the Controlled stock in the hands of a holder of Distributing stock who exchanges Distributing stock for Controlled stock in the Distribution will be the same as the basis of the Distributing common stock exchanged therefor. Section 358(a).
10. The holding period of the Controlled stock received by Distributing's shareholders in the Distribution (including any fractional share interest in Controlled stock to which shareholders may be entitled) will equal the holding period of the Distributing common stock with respect to which the Distribution will be made, provided that the Distributing common stock is held as a capital asset on the date of the Distribution. Section 1223(1).
11. Earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33, as applicable.
12. The receipt by Distributing's shareholders 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 Distributing's shareholders as part of the Distribution and then had been disposed of by such shareholders for the amount of such cash in a sale or exchange. The gain or loss (determined using the basis

allocated to the fractional shares in Ruling 8 or 9) 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 determined in Ruling 10.

13. Distributing's continuing ownership of any Retained Shares until its disposition within d years after the Distribution will not adversely impact the qualification of the Distribution under sections 355 and 368(a)(1)(D) and will not be in pursuance of a plan having as one of its principal purposes the avoidance of U.S. federal income tax for purposes of section 355(a)(1)(D)(ii).
14. The tax consequence for the year in which any adjustment to the Funding Requirement is made between Distributing and Controlled will be characterized in a manner consistent with the proper treatment if such payment had occurred immediately before the Distribution pursuant to the Separation. 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 provision of the Code and 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**

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, copies of this letter are being sent to your authorized representatives.



A copy of this ruling letter must be attached to any income tax return for which it is relevant. Alternatively, a taxpayer filing its return electronically may satisfy this requirement by attaching a statement to its return that provides the date and control number (PLR-125162-23) of this ruling letter.

Sincerely,

*Mark J. Weiss*

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

cc: