

Internal Revenue Service

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Refer Reply To:
CC:CORP:1
PLR-111296-24

Date:
July 26, 2024

Legend

Distributing	=
Distributing 1	=
Controlled	=
Controlled 1	=
Shareholder Rights Plan	=
Controlled Right	=
Country A	=

Individual A	=
<u>d</u>	=
<u>e</u>	=
<u>f</u>	=
<u>g</u>	=

Dear _____ :

This letter responds to your letter dated May 31, 2024, requesting a supplemental private letter ruling to the private letter ruling dated February 9, 2024 (PLR-121713-23) (the “Prior Letter Ruling”) on certain U.S. federal income tax consequences of a series of proposed transactions (the “Proposed Transaction”). The material information submitted in that letter and subsequent correspondence is summarized below. Capitalized 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. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Supplemental Facts

The facts described in the Prior Letter Ruling remain unchanged, except as described below (such changes, the “Supplemental Facts”).

Steps of Transaction 2

The Prior Letter Ruling describes the steps of Transaction 2, each of which will be undertaken under the laws of Country A. Since the issuance of the Prior Letter Ruling, the steps comprising Transaction 2 have been modified based on the applicable laws of Country A and the advice of Country A legal counsel. The modified steps of Transaction

2 (as well as the other unchanged steps of Transaction 2) are set forth below and replace the steps described in the Prior Letter Ruling.

8. Under Country A law, Distributing will undergo a reorganization of capital whereby the holders of Distributing Common Stock will exchange their existing Distributing Common Stock for shares of a new class of Distributing common stock (the "Distributing Class A Common Stock") and Distributing preferred shares with a redemption value equal to the value of Controlled 1 (the "Distributing Special Shares"). The Distributing Class A Common Stock will have the same rights and obligations as the Distributing Common Stock, except that the Distributing Class A Common Stock will have d vote(s) per share (as compared to e vote(s) per share for the Distributing Common Stock).

In addition, under the laws of Country A, the following Steps 9 through 13 will also occur.

9. Former holders of Distributing Common Stock will transfer the Distributing Special Shares received from Distributing to Controlled in exchange for all the common stock of Controlled (the "Controlled Common Stock").

10. Distributing will transfer all of the Controlled 1 Common Stock to Controlled in exchange for Controlled preferred shares with a redemption value equal to the value of Controlled 1 (the "Controlled Special Shares").

11. Distributing and Controlled will each redeem their respective Special Shares in exchange for promissory notes of Distributing and Controlled, respectively ("Transaction 2 Promissory Notes"), in payment of the redemption price of their respective Special Shares.

12. The Transaction 2 Promissory Notes will then be set off against each other and cancelled.

13. Former holders of Distributing Common Stock will exchange the Distributing Class A Common Stock for shares of new Distributing Common Stock (the "New Distributing Common Stock"), and all Distributing Class A Common Stock will be cancelled. The New Distributing Common Stock will have the same rights and obligations as the Distributing Common Stock, and each former holder of Distributing Common Stock will have the same number of shares of New Distributing Common Stock as the number of shares of Distributing Common Stock such holder held immediately prior to the steps of the Proposed Transaction.

Steps 8 through 13 are collectively referred to as "Transaction 2."

Controlled Fractional Shares in Transaction 2

At the time of the Prior Letter Ruling, it was not expected that fractional shares of Controlled Common Stock would be issued in connection with Transaction 2. However, Distributing has determined that fractional shares of Controlled will, in fact, be issued in connection with Transaction 2. In lieu of issuing fractional shares of Controlled Common Stock directly to the former holders of Distributing Common Stock, an agent will aggregate all fractional shares into whole shares, sell for cash the whole shares in the open market, and distribute to each applicable shareholder of Controlled Common Stock, in lieu of any fractional share to which it otherwise may be entitled, such shareholder's ratable share of the total cash proceeds from the open market sale.

Controlled Shareholder Rights Plan

Since the Prior Letter Ruling, Distributing has determined that Controlled will adopt the Shareholder Rights Plan, pursuant to which, in connection with Transaction 2, a Controlled Right will attach to each share of Controlled Common Stock, and such Controlled Right will not be exercisable and will trade together with the shares of Controlled Common Stock unless and until certain take-over bids occur as described in the Shareholder Rights Plan. The Controlled Rights will be the type of rights described in Rev. Rul. 90-11, 1990-1 C.B. 10.

Board of Director Overlap

As described in the Prior Letter Ruling, Distributing and Controlled (and their respective affiliates, as applicable) will enter into the Continuing Arrangements. At the time of the Prior Letter Ruling, Distributing did not expect that there would be any overlap between the directors of Distributing and Controlled following the Proposed Transaction. However, it has been determined that Individual A (the "Overlapping Director"), a current member of the Distributing board of directors (the "Distributing Board"), will be appointed to the initial Controlled board of directors (the "Controlled Board"). The appointment of the Overlapping Director as an initial director on the Controlled Board is expected to be beneficial to Controlled. Following the Proposed Transaction, the Distributing Board and the initial Controlled Board will each have f directors. Each initial director of the Controlled Board, including the Overlapping Director, will be subject to re-election within g year(s) of the External Separation. The Overlapping Director constitutes a minority of each board of directors, possesses particular and unique expertise in the industry, and will provide continuity and serve specific business needs of Controlled.

Representations

Except with respect to the information submitted in connection with the supplemental ruling request and the representations modified below, Distributing reaffirms all of the material information submitted in connection with, and each representation contained in, the Prior Letter Ruling.

Representation 35:

As it was not anticipated that holders of Distributing Common Stock would be entitled to fractional shares of Controlled Common Stock (or any cash in lieu thereof), the Prior Letter Ruling stated that Representation 35 of Rev. Proc. 2017-52 was not applicable to Transaction 2. However, in light of the Supplemental Facts, Distributing makes Representation 35 with respect to Transaction 2.

Rulings

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

1. Except for the modifications described below, the Supplemental Facts will not affect any of the rulings in the Prior Letter Ruling, and those rulings remain in full force and effect.
2. Ruling 19 in the Prior Letter Ruling is modified as follows: The aggregate basis of the Distributing Common Stock and the Controlled Common Stock in the hands of the holders of Distributing Common Stock immediately after the Distribution (including any fractional share interest in the Controlled Common Stock to which the shareholders may be entitled) will be the same as the aggregate basis of the Distributing Common Stock held by holders of Distributing Common Stock immediately before the Distribution allocated between Distributing Common Stock and Controlled Common Stock in proportion to the fair market value of each immediately following the Distribution (Treas. Reg. § 1.358-2(a)(2); section 358(b)(2) and (c)).
3. Ruling 20 in the Prior Letter Ruling is modified as follows: The holding period of the Controlled Common Stock received by the Distributing shareholders in the Distribution (including any fractional share interest in the Controlled Common Stock to which shareholders may be entitled) will include the holding period of the Distributing Common Stock with respect to which the distribution of Controlled Common Stock will be made in the case of the Distribution, provided that the Distributing Common Stock is held as a capital asset on the date of the Distribution (section 1223(1)).
4. The receipt by Distributing's shareholders of cash in lieu of fractional shares of Controlled Common Stock, if any, 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 recognized (determined using the basis allocated to the fractional shares in Ruling 2), 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 3.

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 condition 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.

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 returns that provides the date and control number (PLR-111296-24) of the letter ruling.

Pursuant to a Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Gerald B. Fleming
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel (Corporate)

cc: