

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:CORP:1-PLR-118301-98

Date:

July 12, 1999

Re:

Distributing =

Controlled =

Holding 1 =

Consub =

Business D =

Date A =

	2
PLR-118301-98	
FSub9	=
Country T	=
Date E	=
aa	=
Country U	=
Country L	=
Country M	=
Country N	=
Country O	=
FSub1	=
FSub2	=
FSub3	=
FSub4	=
FSub7	=
FSub8	=

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FSub12	=
FSub13	=
FSub15	=
FSub16	=
FSub18	=
FSub19	=
FSub19A	=
FSub21	=
FSub22	=
FSub23	=
FSub25	=
FSub27A	=
FSub30	=
FSub32	=

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FSub33	=
FSub34	=
FSub 35	=
FD1	=
Sub 17	=
Corporation	=
Date B	=
Date C	=
Month D	=
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Dear :

We respond to your letter dated September 18, 1998, requesting a supplemental ruling to PLR 9824051 dated March 19, 1998 ("Prior Ruling Letter"). Additional information was submitted in letters dated November 20, 1998, February 19, 1999, March 2, 1999, and April 22, 1999. The information submitted for consideration is summarized below.

In the Prior Ruling Letter, we issued rulings under Internal Revenue Code sections 332, 355, and 368(a)(1)(D), and other Code provisions with respect to a proposed distribution by Distributing to its shareholders of all the stock of Controlled and certain related transactions. This transaction (the "Transaction") was consummated as of Date A.

After consummation of the Transaction, however, several issues have arisen incident to and after the Transaction which compel the modification of and additions to the rulings given in the Prior Ruling Letter. These events and the modifications to the Prior Ruling Letter are discussed seriatim below.

Issue 1 (Transfer of Financing Subsidiaries from Controlled to Consub)

Since the consummation of the Transaction, Controlled has attempted to obtain adequate financing arrangements. To that end, Controlled has determined that it can significantly reduce its interest rate for such financing if Controlled transfers the stock of other foreign subsidiaries to a domestic holding company and makes a pledge of the holding company stock. In addition to reducing interest rates, this stock transfer will avoid the need for preparing multiple legal pledge agreements in several jurisdictions.

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Accordingly, Controlled proposes that all or substantially all of its interests in FSub1, FSub2, FSub3, FSub4, FSub7, FSub8, FSub13, FSub15, FSub16, FSub18, FSub19, FSub19A, FSub22, FSub23, FSub25, FSub27A, FSub30, FD1 and Corporation (“the Financing Subsidiaries”) be transferred to Consub, a wholly-owned U.S. subsidiary of Controlled. As partial consideration for the FSub2 stock transferred by Controlled to Consub, Consub will issue to Controlled a \$aa promissory note (a de minimis amount) maturing on Date G, and bearing interest at the annual rate of hh percent. The taxpayer representative for Distributing and Controlled has represented that, to the best of his knowledge and belief, the proposed transfer of the Financing Subsidiaries stock by Controlled to Consub will qualify as a transaction described in section 351.

Issue 2 (Transfer of FSub9 stock from Distributing to Consub)

In the Transaction, Distributing contributed the stock of various subsidiaries to Controlled. FSub9, a Country T corporation, was among the subsidiaries that Distributing intended to transfer. Prior to the Transaction, however, Controlled was informed by its financial advisor that in order to obtain adequate financing after the spinoff, it would need to pledge its stock in FSub9. Such a direct pledge would have been problematic under Country T law.

In order to satisfy Country T law, minimize Country T transfer taxes, and still obtain financing, it was proposed that in lieu of the transaction with respect to FSub9 described in the Prior Ruling Letter, the transaction would be effected as follows: (i) Distributing would transfer the FSub9 stock to Consub, in exchange for Consub stock and a Consub note maturing on Date E with a face amount of \$aa; (ii) Distributing would transfer its newly acquired Consub stock to Controlled in constructive exchange for Controlled stock; (iii) Controlled would be distributed to the shareholders of Distributing as described in the Prior Ruling Letter. The Consub stock could then be pledged as collateral in the financing arrangement. This transfer of the FSub9 stock was consummated as described above on Date A in connection with the Transaction.

Distributing and Controlled have proposed that the above described transfer should be treated for tax purposes as if (i) Distributing transferred the FSub9 stock to Controlled in constructive exchange for additional Controlled stock and the Controlled notes transferred as part of the transaction; (ii) Controlled immediately retransferred such stock to Consub in constructive exchange for additional Consub stock and the Consub note; and (iii) the Consub note was immediately retransferred by Controlled to Distributing. The representative for Distributing and Controlled has represented that to the best of his knowledge and belief, the deemed transfer of all of the FSub9 stock by Controlled to Consub qualified as a transaction described in section 351.

Issue 3 (Transfer of FSub2 to Consub)

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FSub2, a Country O corporation, was planned to be transferred from Distributing to Controlled prior to the Transaction. Country O law requires that a corporation chartered in Country O must have five shareholders of record. Further, no one shareholder may hold more than bb percent of the outstanding stock of the corporation. Prior to Date F, Distributing held cc percent of the outstanding stock, while a former subsidiary of Distributing held dd percent in FSub2. Three minority shareholders hold de minimis amounts of FSub2 stock.

On Date F, the former subsidiary was merged into Distributing and its stock interest in FSub2 passed to Distributing by operation of law. Therefore, Distributing now held a ff percent interest in FSub2. Nevertheless, the registration of such stock in Country O was not changed after the merger.

In the Prior Ruling Letter (preliminary step (ii), p. 7-8)), it was indicated that all of the FSub2 stock was to be transferred from Distributing to Controlled. However, since this would have violated Country O law, only ee percent of the stock was transferred to Controlled. An additional gg percent was transferred directly to Consub. As described in **Issue 1**, substantially all of the remainder of the FSub2 stock will be transferred to Consub. The three minority shareholders continue to own their small amounts of FSub2 stock.

Distributing and Controlled have proposed that the above described transfer should be treated for tax purposes as if (i) Distributing transferred ff percent of the FSub2 stock to Controlled in constructive exchange for Controlled stock and one of the Controlled Notes, (ii) Controlled immediately transferred gg percent of the FSub2 stock to Consub in constructive exchange for Consub stock. The representative for Distributing and Controlled has represented that to the best of his knowledge and belief, the deemed transfer of gg percent of the stock by Controlled to Consub qualified as a transaction described in section 351.

With respect to **Issues 1, 2, and 3**, representation (mm) at pp. 15 of the Prior Ruling Letter, representation (nn) at p. 16 of the Prior Ruling Letter, and representation (III) at pp. 19-20 of the Prior Ruling Letter have been modified to take into account the additional facts discussed above, as follows:

(mm) No assets of Holding 1 have been, or will be, disposed of by either Holding 1 or Distributing, except for (1) the post-Transaction 6 (discussed in the Prior Ruling Letter) transfer of the stock of the subsidiaries engaged in Business D (the "Business D Subsidiaries") by Distributing to Controlled and Consub; (2) the taxable dispositions of stock interests in FSub21 and in Country L, Country M, and Country N corporations; (3) dispositions in the ordinary course of business; and (4) dispositions occurring more than three years prior to the adoption of the plan of complete liquidation.

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(nn) Except for the post-Transaction 6 transfer of the stock of the Business D subsidiaries by Distributing to Controlled and Consub, the liquidation of Holding 1 will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation of any of the businesses or assets of Holding 1 if persons holding, directly or indirectly, more than 20 percent of the value of the Holding 1 stock also hold, directly or indirectly, more than 20 percent of the value of the stock of the recipient corporation. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of section 318(a), as modified by section 304(c)(3).

(III) The transfer, or deemed transfer (in the case of FSubs2 and 9), by Distributing to Controlled of stock of the Financing Subsidiaries and FSub9 is, in each instance, not an exchange described in § 354 or § 356.

Additionally, the following new representations are made with respect to the transfer of FD1, Sub17, Corporation, FSub1, FSub2, FSub3, FSub4, FSub8, FSub9, FSub12, FSub15, FSub16, FSub18, FSub19, FSub19A, FSub22, FSub23, FSub25, FSub30 (the Business D Subsidiaries) and \$z in cash and marketable securities (the "Transfer") as of the date of the Transaction:

- (a) No stock or securities were issued for services rendered to or for the benefit of Controlled in connection with the Transfer.
- (b) No stock or securities were issued for indebtedness of Controlled that is not evidenced by a security or for interest on indebtedness of Controlled which accrued on or after the beginning of the holding period of Distributing for the debt.
- (c) The Transfer was not the result of the solicitation by a promoter, broker, or investment house.
- (d) Distributing did not retain any rights in the stock of the Business D subsidiaries or the cash/marketable securities transferred to Controlled.
- (e) At the time of the Transfer, there was no indebtedness between Distributing and Controlled. There will be no indebtedness created in favor of Distributing as a result of Transfer, other than (i) certain nominal promissory notes to be issued by Controlled; and (ii) debt obligations created in the ordinary course of business in accordance with the terms of agreements between Distributing and Controlled with respect to certain continuing relationships following the Transfer. None of the obligations of Controlled under these arrangements will constitute stock or securities of controlled within the meaning of section 355 of the Internal Revenue Code.

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- (f) The transfers and exchanges occurred under a plan agreed upon before the transaction in which the rights of the parties are defined.
- (g) All exchanges occurred on approximately the same date.
- (h) There was no plan or intention on the part of Controlled to redeem or otherwise reacquire any stock or indebtedness to be issued in the Transfer.
- (i) Immediately after the transfers contemplated herein, Distributing will be in “control” of Controlled within the meaning of section 368(c) of the Code.
- (j) Distributing will constructively receive stock or other property approximately equal to the fair market value of the property transferred to Controlled.
- (k) Controlled will remain in existence. The property transferred will be used in a trade or business by Controlled or a subsidiary of Controlled.
- (l) There is no plan or intention by Controlled to dispose of the transferred property other than in the ordinary course of business operations.
- (m) Each of the parties will pay its own expenses, if any, incurred in connection with the proposed transaction.
- (n) Controlled is not an investment company within the meaning of section 351(e)(1) of the Code and section 1.351-1(c)(1)(ii) of the regulations.
- (o) Distributing is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)), and the stock or securities received in the Transfer will not be used to satisfy the indebtedness of such debtor.
- (p) Controlled is not a “personal services corporation” within the meaning of section 269A of the Code.
- (q) The deemed transfer of FSub9 stock by Distributing to Controlled in constructive exchange for Controlled stock and in exchange for the a portion of the Controlled notes is not part of an exchange described in section 354.

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- (r) The deemed transfer of FSub9 stock by Controlled to Consub in constructive exchange for Consub stock and in exchange for the Consub note is not part of an exchange described in section 354.
- (s) Any transfer of FSub2 stock to Consub prior to July 20, 1998, was not part of an exchange described in section 354.

Issue 4 (Retention of Controlled Shares by Rabbi Trust)

On Date B, Distributing established a “rabbi trust” (the “Trust”) for obligations under certain unfunded deferred compensation arrangements. The Trust was initially funded with ll shares of Distributing common stock. At the time of the transaction, the Trust, due to reinvested dividends, held mm shares, or oo percent, of the total outstanding common stock. Pursuant to section 671 of the Internal Revenue Code, the Trust was a grantor trust, and, accordingly, the shares of Distributing stock held by the Trust were treated for federal income tax purposes as if they were owned by Distributing.

In the Transaction, the Trust received nn shares of Controlled stock as part of the spinoff. Under section 671, these shares were deemed retained by Distributing for federal income tax purposes.

The Trustee of Trust intended prior to the transaction to dispose of the entire block of Controlled stock as soon as practicable. This intention was not feasible, however, because a thin trading market developed for Controlled stock immediately after the spinoff. On Date C, the Trust sold pp shares of Controlled stock. During Month D (less than 3 months after the Transaction), it sold the remaining shares.

In preparing the ruling request for the Prior Ruling Letter, Distributing's taxpayer representative did not know that the Trust would be participating in the spinoff, and therefore, did not focus on the implications of the Trust on the section 355 spinoff.

As a result, with respect to ***Issue 4***, representation (zz) at pp. 17-18 of the Prior Ruling Letter has been modified to take into account the additional facts discussed above, as follows:

(zz) The management of Distributing, to its best knowledge, is not aware of any plan or intention on the part of any shareholder or security holder of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any of the stock in, or securities of, either Distributing or Controlled after the transaction, except for (1) dispositions by the trustees of Distributing's 401(k) Plan and Retirement Plan (qualified under section 401(a)) and Controlled's 401(k) Plan; (2) dispositions of fractional shares of Controlled stock deemed issued to Distributing shareholders in Transaction 7 (described in the Prior Ruling Letter); (3) possible sales of

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Controlled stock pursuant to the odd-lot program Controlled will adopt after the transaction; and (4) dispositions of Controlled stock received in the spinoff by the Trust.

Issue 5 (Country U Restructuring)

FSub12 was another of the subsidiaries transferred to Controlled in the Transaction. Currently, Controlled owns qq percent of the stock of FSub12. FSub12 holds rr percent of the stock of FSub13 and ss percent of FSub34 stock. A subsidiary of FSub13 holds the remainder of the FSub13 stock. FSub13 owns tt percent of the stock of FSub32, while the remainder is held by Consub. FSub13 also owns uu percent of the FSub33 stock. FSub34 holds a parcel of land which is being offered for sale. FSub35 is a Country V corporation which is wholly-owned by the Distributing consolidated group.

Controlled proposes the following transaction (Country U Restructuring):

1. FSub35 will reincorporate in Country U.
2. FSub35 will merge into FSub13.
3. FSub12 will redeem its minority shareholders for cash and merge downstream into FSub13.
4. If a purchaser is found for the FSub34 land, the purchaser will be offered the opportunity to instead purchase the FSub34 stock (in order to avoid the land transfer costs). If the purchase occurs before the merger of FSub12 into FSub13, FSub34 will first merge upstream into FSub12. FSub34 will otherwise become a subsidiary of FSub13 pursuant to the downstream merger.

As a result, with respect to ***Issue 5***, representation (bbb) at p. 18 of the Prior Ruling Letter has been modified to take into account the additional facts discussed above, as follows:

(bbb) There is no plan or intention to liquidate either Distributing or Controlled, to merge either corporation with any other corporation, except for the merger of Holding 1 into Distributing prior to Transaction 7 (described in the Prior Ruling Letter), or to sell or otherwise dispose of the assets of either corporation after the transaction, except for (i) dispositions in the ordinary course of business; and (ii) the possible disposition by Controlled of the FSub12 stock, as a result of the merger of FSub12 into FSub13 pursuant to the Country U restructuring.

Issue 6 (Controlled Odd-lot Program)

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In connection with the Transaction, approximately vv shareholders of Distributing received less than 100 shares of Controlled stock. These shareholders hold approximately ww shares of the total outstanding shares, representing xx percent (less than five percent) of the outstanding Controlled stock.

Controlled recently decided to implement an odd-lot program. As part of such program, Controlled will offer to purchase all of the shares owned by shareholders of record who own less than 100 shares, at a price determined with reference to the average trading price of the Controlled stock for the approximately 60-day period during which the offer remains open.

Issue 7 (Minority stock ownership of FSub2 and FSub16)

Two of the subsidiaries transferred to Controlled prior to the spinoff, FSub2 (as discussed in ***Issue 3***), and FSub16, had and continue to have minority shareholders. These minority shareholders hold yy percent or less of the stock (a de minimis amount). The Prior Ruling Letter, based upon the facts submitted in the ruling request, incorrectly indicated that Distributing owned 100 percent of the stock of these subsidiaries. The minority stockholders in these subsidiaries hold a de minimis amount of the stock in order to comply with local law requirements.

Provided the requirements of paragraph (c) of § 1.367(b)-1 of the Income Tax Regulations, paragraphs (c) and (d) of § 7.367(b)-1 of the Temporary Regulations and all the conditions and requirements of §§ 1.367(b)-4 through 7.367(b)-12 are satisfied, the following rulings are substituted for rulings (27), (28), (29), (30), (31), (32), and (43) as stated in the Prior Ruling Letter:

- (27) In the transfer to Controlled of the Business D subsidiaries (including FSub9), \$z in cash and marketable securities and the assignment of all of the rights, title, and interest in and to certain trademarks used in Business D, in constructive exchange for Controlled stock and in exchange for Controlled notes, Distributing recognized gain, but only in an amount not in excess of the fair market value of the Controlled notes (section 351(b)).
- (28) No gain or loss was recognized by Controlled on the receipt of the Business D subsidiaries from Distributing in constructive exchange for Controlled stock and in exchange for Controlled notes (section 1032(a)).
- (29) The basis of the Business D subsidiaries which were received by Controlled was equal to the basis of such property in the hands of Distributing immediately prior to the transfer increased by the amount of gain recognized on the exchange (section 362(a)).

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- (30) The holding period of the assets received by Controlled included the period during which such property was held by Distributing (section 1223(2)).
- (31) No gain or loss will be recognized to Distributing on the distribution of all of the Controlled stock to Distributing's common shareholders, including fractional share interests to which they may be entitled and any share purchase rights associated with the Controlled stock (section 355(c) and Rev. Rul. 90-11, 1990-1 C.B. 10).
- (32) (a) To the extent, if any, Distributing recognizes gain on the transfer of the stock of any foreign corporation to Controlled or Controlled recognizes gain on the transfer of any foreign corporation to Consub, section 1248 will apply to any gain recognized on the transfer.
- (b) The earnings and profits of each transferred foreign corporation, to the extent attributable to such stock under section 1.1248-2 or section 1.1248-3 (whichever is applicable) in excess of the amount of gain recognized, if any, to which section 1248 was applicable as provided in ruling (a) above, accumulated in taxable years of such foreign corporation beginning after December 31, 1962, during the period Distributing held the stock of the foreign corporation (or was considered as holding the stock by reason of section 1223) while such foreign corporation was a controlled foreign corporation shall, in each instance, be attributable to such stock held by Controlled or Consub, as appropriate (section 1.1248-1(a)(1), sections 959, and 1248).

Based solely on the information submitted in this ruling request and in connection with the Prior Ruling Letter, and on the representations set forth above, we hold as follows:

- (43) The deemed retention of Controlled stock by Distributing, through the Trust, was not in pursuance of a plan having as one of its principal purposes the avoidance of income tax (section 355(a)(1)(D)(ii)).
- (44) Distributing's basis in the Controlled Stock deemed retained through the Trust was equal to 00 percent of Distributing's basis in all of the outstanding Controlled stock immediately before the spinoff, to be determined under the rules of section 358(a)(1) insofar as such Controlled stock was acquired by Distributing in constructive exchange for its transfer of assets to Controlled.
- (45) The transfer of the FSub9 stock by Distributing to Consub in exchange for Consub stock and the Consub note, followed by the transfer of Consub

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stock from Distributing to Controlled, will be treated for federal income tax purposes as if (i) Distributing had transferred the FSub9 stock to Controlled in constructive exchange for additional Controlled stock and the Controlled notes transferred as part of the Transaction; (ii) Controlled had immediately retransferred the FSub9 stock to Consub in constructive exchange for additional Consub stock and the Consub Note; and (iii) the Consub Note was immediately retransferred by Controlled to Distributing. See Rev. Rul. 77-449, 1977-2 C.B. 110.

- (46) Distributing will be treated for federal income tax purposes as having transferred ff percent of the FSub2 stock to Controlled in constructive exchange for Controlled stock and one of the Controlled Notes, followed by Controlled's deemed transfer of gg percent of the FSub2 stock to Consub in constructive exchange for Consub stock. See Rev. Rul. 77-449, 1977-2 C.B. 110.
- (47) Except for the rulings substituted or modified specifically herein, all other rulings in the Prior Ruling Letter shall remain in full force and effect.

No opinion is expressed about the tax treatment of the proposed transaction under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction that are not specifically covered by the above rulings. In particular, no rulings are requested, and none are given, whether the Country U restructuring constitutes a series of tax-free reorganizations. Further, no opinion is expressed whether gain, if any, that may be recognized by any of the foreign corporations as a result of the Country U restructuring described above results in subpart F income or could result in any subpart F income when taken in conjunction with the steps described in the Prior Ruling Letter. (See section 951-964). Finally, in accordance with the no-rule policy contained in Rev. Proc. 99-3, 1999-1 I.R.B. 105, sec. 3.01(22), no opinion is expressed upon whether section 351 applies to the deemed transfers of FSub9 and FSub2 from Controlled to Consub, and the proposed transfer of the financing subsidiaries from Controlled to Consub.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter and the Prior Ruling Letter should be attached to the federal income tax returns of the taxpayers involved for the taxable year in which the transaction covered by this ruling is consummated.

Sincerely yours,

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Assistant Chief Counsel (Corporate)

By: _____
Mark S. Jennings
Senior Technician Reviewer
Branch 1