

## Internal Revenue Service

## Department of the Treasury

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Parent	=
Sub 1	=
Sub 2	=
Sub 3	=
Foreign Distributing 1	=
Foreign Distributing 2	=
Foreign Distributing 3	=
Foreign Controlled 1	=
Foreign Controlled 2	=
Foreign Sub 1	=
Foreign Sub 2	=
Foreign Sub 3	=
Foreign Sub 4	=
Foreign Sub 5	=
Foreign Sub 6	=
Foreign Sub 7	=
Foreign Sub 8	=
Foreign Sub 9	=

Foreign Sub 10 =

Foreign Sub 11 =

Foreign Sub 12 =

Foreign Sub 13 =

Foreign Sub 14 =

Foreign Sub 15 =

Foreign Sub 16 =

Foreign Sub 17 =

Foreign Sub 18 =

Foreign Sub 19 =

Foreign Sub 20 =

Foreign Sub 21 =

Foreign Sub 22 =

Foreign Sub 23 =

Foreign Sub 24 =

Foreign Sub 25 =

Foreign Sub 26 =

Foreign Sub 27 =

Foreign Sub 28 =

Foreign Sub 29 =

Country A =

Country B =

Country C =

Business X =

Business Y =

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c =

d =

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h =

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j =

k =

Date A =

Date B =

Date C =

Date D =

Date E =

Date F =

Date G =

Date H =

Date I =

Date J =

Date K =

Date L =

Date M =

We reply to your November 2, 1999 request for rulings on certain federal income tax consequences of a series of transactions.

The rulings contained in this letter are based upon the 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 a ruling. Verification of the information, representations, and other data may be required as part of the audit process.

### Summary of Facts

Publicly traded Parent is the parent of an affiliated group that comprises both domestic and foreign corporations and conducts, among others, Business X and Business Y. Parent joins with its includible affiliates in filing a consolidated federal income tax return.

Before the transactions described below, Parent wholly owned Sub 1, Sub 2, Sub 3, Foreign Distributing 1, Foreign Distributing 3.

Also before the transactions described below, Foreign Distributing 1 wholly owned Foreign Sub 1, Foreign Sub 2, and Foreign Sub 3. Foreign Sub 1 wholly owned Foreign Sub 4, Foreign Sub 5, Foreign Sub 6, Foreign Sub 7, Foreign Sub 8, Foreign Sub 9, and Foreign Sub 10. Foreign Sub 2 wholly owned Foreign Sub 11, Foreign Sub 12, Foreign Sub 13, Foreign Sub 14, Foreign Sub 15, and Foreign Sub 16. Foreign Distributing 1 also owned a percent of Foreign Sub 17 and b percent of Foreign Sub 18. Unrelated parties own the remaining interests in these entities. Foreign Sub 18 wholly owned Foreign Sub 19, Foreign Sub 20, Foreign Sub 21, and Foreign Sub 22.

Also before the transactions described below, Foreign Distributing 3 wholly owned Foreign Distributing 2, Foreign Sub 23, and Foreign Sub 24. Foreign Distributing 2 owned c percent of Foreign Sub 25, and Parent owned the remaining d percent.

Also before the transactions described below, Parent owned (and continues to own) all of Foreign Sub 26 and k of percent Foreign Sub 28. Foreign Sub 26 owned

(and continues to own) all the stock of Foreign Sub 27 and the remaining j percent of Foreign Sub 28. Foreign Sub 28 wholly owned (and continues to own) Foreign Sub 29 and other subsidiaries.

We have received financial information indicating that Business X (as conducted by Foreign Distributing 1 and Foreign Distributing 2) and Business Y (as conducted by Foreign Sub 5, Foreign Sub 25, and Foreign Distributing 3 (through Foreign Sub 23 and Foreign Sub 24)) each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

A substantial part of the Business Y sales were (and continue to be) to Parent's Business X, in part because competitors of Business X were reluctant to purchase Business Y products while the two businesses were affiliated. To remove this impediment, all of the Business Y assets were associated with Sub 1 and, on Date A, Sub 1 was distributed to Parent stockholders (the "Distribution"). Previously, on Date B, the Internal Revenue Service had issued to Parent a private letter ruling concluding that the Distribution would qualify for nonrecognition treatment under § 355 of the Internal Revenue Code. The completed transactions described in the present letter were designed to move foreign Business Y assets to Sub 1 before the Distribution occurred.

### **The Country A Transactions**

(i) Effective Date D: To avoid allocation of Foreign Distributing 1's consolidated distributable earnings under Country A law:

(a) Foreign Sub 5, Foreign Sub 6, Foreign Sub 8, Foreign Sub 9, and Foreign Sub 10 together distributed a total of e to Foreign Sub 1. Foreign Sub 1 distributed the same amount to Foreign Distributing 1, and Foreign Distributing 1 distributed the same amount to Parent.

(b) Foreign Sub 11 distributed f to Foreign Sub 2, and Foreign Sub 2 distributed the same amount to Foreign Distributing 1, which distributed the same amount to Parent. Parent treated the distributions in steps (i)(a) and (b) as taxable distributions subject to § 301(a) and (c).

(ii) Effective Date E:

(a) Foreign Sub 1, Foreign Sub 2, Foreign Sub 3, and Foreign Sub 5 reorganized under Country A law to qualify as "foreign eligible entities" under § 301.7701-3 of the Procedure and Administrative Regulations.

(b) Foreign Sub 1, Foreign Sub 2, Foreign Sub 3, and Foreign Sub 5 each elected under § 301.7701-3 to be treated as an entity disregarded as separate from Foreign Distributing 1 for federal income tax purposes. The elections for Foreign Sub 1 and Foreign Sub 2 were made effective as of Date E.

The elections for Foreign Sub 3 and Foreign Sub 5 were made effective as of Date F.

(iii) Effective Date G:

(a) Foreign Sub 2 sold the stock of Foreign Sub 13, Foreign Sub 14, and Foreign Sub 15 to Foreign Distributing 1 for fair market value, as determined by independent appraisal.

(b) Foreign Sub 2 distributed to Foreign Distributing 1 the proceeds received in step (iii)(a).

(c) Foreign Sub 1 sold the stock of Foreign Sub 8, Foreign Sub 9, and Foreign Sub 10 to Foreign Distributing 1 for fair market value, as determined by independent appraisal.

(d) Foreign Sub 1 distributed to Foreign Distributing 1 the proceeds received in step (iii)(c).

(iv) Effective Date H:

(a) Parent formed Foreign Controlled 1 and received non-voting participating preferred stock (the "Foreign Controlled 1 Preferred Stock") and voting common stock (the "Foreign Controlled 1 Common Stock"). The Preferred Stock represented (and continues to represent) in excess of g percent of the total equity value of Foreign Controlled 1.

(b) Foreign Distributing 1 transferred to Foreign Controlled 1 cash equal to the aggregate fair market value of Foreign Sub 4, Foreign Sub 5, Foreign Sub 6, Foreign Sub 7, Foreign Sub 12, and Foreign Sub 16, as determined by independent appraisal.

(c) Foreign Controlled 1 purchased (i) from Foreign Sub 1 the stock of Foreign Sub 4, Foreign Sub 5, Foreign Sub 6, and Foreign Sub 7 and (ii) from Foreign Sub 2 the stock of Foreign Sub 12 and Foreign Sub 16. All purchases were for fair market value, as determined by independent appraisal, using the cash provided in step (iv)(b).

(d) Foreign Distributing 1 transferred to Foreign Controlled 1 its stock in Foreign Sub 8, Foreign Sub 9, Foreign Sub 10, Foreign Sub 13, Foreign Sub 14, Foreign Sub 15, Foreign Sub 17, and Foreign Sub 18.

(e) Parent transferred h percent of the Foreign Controlled 1 Common Stock and all of the Foreign Controlled 1 Preferred Stock to Sub 2, and retained legal title to i percent of the Foreign Controlled 1 Common Stock, solely to satisfy

Country A law requirements.

(v) In connection with the transfer of Foreign Controlled 1 stock to Sub 2 as described in step (iv)(e) above, Parent and Sub 2 entered into a shareholders' agreement providing for offsetting put and call rights, at the same strike price, on the Foreign Controlled 1 Common Stock, exercisable on Date I. The shareholders' agreement provides that if Parent attempts to sell the Foreign Controlled 1 common stock before Date I, the put and call rights will become exercisable immediately. It is represented that the put/call option was exercised in accordance with its terms, and Sub 2 obtained full legal title to those shares on or about Date J.

(vi) Effective Date C, Parent transferred the Sub 2 stock to Sub 1 in a transaction intended to qualify under § 351(a).

### **Country A Transaction Representations**

The taxpayer has made the following representations concerning this transaction (based on the characterization of steps (iv) and (v) above by ruling (1) below):

(a) No part of the consideration distributed by Foreign Distributing 1 was received by Parent as a creditor, employee, or in any capacity other than that of a shareholder of Foreign Distributing 1.

(b) The five years of financial information submitted for Business X (as conducted by Foreign Distributing 1) and Business Y (as conducted by Foreign Sub 5) represents the present operation of each business, and with regard to each, there have been no substantial operational changes since the date of the last financial statements submitted.

(c) Following the Country A Transaction, Foreign Distributing 1 and Foreign Controlled 1 (with the business formerly conducted by Foreign Sub 5) each has continued (and will continue) the active conduct of its business, independently and with its separate employees.

(c)(i) The fair market value of Foreign Sub 5's gross assets represents more than five percent of the fair market value of Foreign Controlled 1's gross assets.

(d) The Country A Transaction was carried out to increase the amount of Business Y that Sub 1 conducts with unrelated parties. The Country A Transaction was motivated, in whole or substantial part, by this corporate business purpose.

(e) There is no plan or intention by Parent to sell, exchange, transfer by gift, or otherwise dispose of any of its stock in, or securities of, Foreign Distributing 1, and Sub 2 has no plan or intention to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, Foreign Controlled 1.

(f) There is no plan or intention by either Foreign Distributing 1 or Foreign Controlled 1, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the Country A Transaction, other than through stock purchases meeting the requirements of § 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696, 705.

(g) There is no plan or intention to liquidate either Foreign Distributing 1 or Foreign Controlled 1, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the Country A Transaction, except in the ordinary course of business.

(h) The total adjusted basis and the fair market value of the assets transferred to Foreign Controlled 1 by Foreign Distributing 1, in each instance, equalled or exceeded the liabilities assumed (as determined under § 357(d)) by Foreign Controlled 1.

(i) The liabilities assumed (as determined under § 357(d)) in Contribution A were incurred in the ordinary course of business and were (are) associated with the assets transferred.

(j) No intercorporate debt existed between Foreign Distributing 1 and Foreign Controlled 1 at the time of, or after, Distribution A.

(k) Except during a transition period expected to last one year or less, payments made in all continuing transactions between Foreign Distributing 1 and Foreign Controlled 1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(l) Neither Foreign Distributing 1 nor Foreign Controlled 1 is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).

(m) The Country A Transaction is not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire directly or indirectly stock possessing 50 percent or more of the total combined voting power of all classes of stock of either Foreign Distributing 1 or Foreign Controlled 1 entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either Foreign Distributing 1 or Foreign Controlled 1.

(n) Each of Foreign Distributing 1 and Foreign Controlled 1 was a controlled foreign corporation ("CFC"), within the meaning of § 957(a), at all times during the five-year period immediately before the date of Distribution A (defined in Ruling (1) below), and each of Foreign Distributing 1 and Foreign Controlled 1 was a CFC immediately thereafter.

(o) With respect to each of Foreign Distributing 1 and Foreign Controlled 1, Parent was a "United States shareholder", within the meaning of § 7.367(b)-2(b) of the Temporary Income Tax Regulations, on the date immediately preceding Distribution A, and Parent was a United States shareholder immediately thereafter.



(p) Neither Foreign Distributing 1 nor Foreign Controlled 1 was a passive foreign investment corporation ("PFIC"), within the meaning of § 1297(a), on the date immediately preceding Distribution A, and neither Foreign Distributing 1 nor Foreign Controlled 1 was a PFIC immediately thereafter.

(q) In connection with the Country A Transaction, there were no transfers of property within the meaning of § 367(a).

(r) In connection with the Country A Transaction, there were no transfers of intangible property within the meaning of § 367(d).

(s) In connection with the Country A Transaction, there were no transfers of property to a foreign partnership that would be subject to the reporting requirements of § 6038B.

(t) Any royalty payments on licenses of intangible property to Foreign Controlled 1 following the Country A Transaction have been, or will be, for fair market value consideration and on terms and conditions that are consistent with standards for § 482.

### **Country A Transaction Rulings**

Based solely on the information submitted and the representations set forth above, and provided that the requirements of paragraph (c)(1) of § 1.367(b)-1 of the Income Tax Regulations and paragraphs (c)(2) and (d) of § 7.367(b)-1 of the Temporary Regulations are met, we rule as follows regarding the Country A Transaction:

(1) For federal income tax purposes, the transactions described in steps (iv) and (v) are treated as if (a) Foreign Distributing 1 had transferred its Business Y assets, including the stock of its Business Y subsidiaries (Foreign Subs 4 through 16), to newly formed Foreign Controlled 1 ("Contribution A"), (b) Foreign Distributing 1 had distributed all the stock of Foreign Controlled 1 to Parent ("Distribution A"), and (c) Parent had transferred the stock of Foreign Controlled 1 to Sub 2 (see Rev. Rul 77-191, 1977-1 C.B. 94).

(2) Contribution A, followed by Distribution A, is a reorganization under § 368(a)(1)(D). Foreign Distributing 1 and Foreign Controlled 1 each is "a party to a reorganization" under § 368(b).

(3) No gain or loss was recognized by Foreign Distributing 1 on Contribution A (§§ 361(a) and 357(a)).

(4) No gain or loss was recognized by Foreign Controlled 1 on Contribution A (§ 1032(a)).

(5) The basis of each Business Y asset received by Foreign Controlled 1 equals the basis of that asset in the hands of Foreign Distributing 1 immediately before Contribution A (§ 362(b)).

(6) The holding period of each Business Y asset received by Foreign Controlled 1 includes the period during which that asset was held by Foreign Distributing 1 (§ 1223(2)).

(7) No gain or loss was recognized by (and no amount will otherwise be included in the income of) Parent on its receipt of the Foreign Controlled 1 stock in Distribution A (§ 355(a)(1)).

(8) No gain or loss was recognized by Foreign Distributing 1 on Distribution A (§ 361(c)).

(9) The holding period of the Foreign Controlled 1 stock received by Parent includes the holding period of the Foreign Distributing 1 stock on which Distribution A was made, provided the Foreign Distributing 1 stock was held as a capital asset on the date of Distribution A (§ 1223(1)).

(10) Distribution A is an exchange to which § 7.367(b)-10(c) of the Temporary Regulations applies, and the requirements of paragraphs (d) through (j) of § 7.367(b)-10 must be satisfied.

(11) If Parent recognizes no gain under § 1248 by virtue of the contribution of the stock of Foreign Controlled 1 to the capital of Sub 2, the earnings and profits of Foreign Controlled 1, to the extent attributable to such stock under § 1.1248-2 or 1.1248-3 (whichever is applicable), that were accumulated in taxable years of such corporation beginning after December 31, 1962 and during the period in which Foreign Controlled 1 was a CFC, shall be attributable to such stock now held by Sub 2 (see § 1248-1(a)(1)).

### **The Country B Transactions**

(vii) Before Date K:

(a) Foreign Sub 25 reorganized under Country B law.

(b) Foreign Distributing 2 formed Foreign Controlled 2 under Country B law.

(viii) On Date K, Parent sold its d percent interest in Foreign Sub 25 to Foreign Distributing 2 for fair market value.

(ix) Effective Date L:

(a) Foreign Distributing 2 underwent a de merger under Country B law, pursuant to which the (i) Foreign Sub 25 stock was transferred to Foreign Controlled 2 and (ii) Foreign Controlled 2 was transferred to Foreign Distributing 3 ("Country B Transaction 1").

(b) Foreign Distributing 3 sold Foreign Distributing 2 to Parent for fair market value in cash, and Foreign Distributing 3 distributed the cash back to Parent ("Country B Transaction 2").

(x) On Date L, Parent transferred the stock of Foreign Distributing 3 to Sub 2 in a transaction intended to qualify under § 351(a).

(xi) Effective Date C, Parent transferred the Sub 2 stock to Sub 1 in a transaction intended to qualify under § 351(a).

### **Country B Transaction 1 Representations**

The taxpayer has made the following representations concerning Country B Transaction 1 (based on its characterization by ruling (12) below):

(u) No part of the consideration distributed by Foreign Distributing 2 was received by Foreign Distributing 3 as a creditor, employee, or in any capacity other than that of a shareholder of Foreign Distributing 2.

(v) The five years of financial information submitted on behalf of Foreign Distributing 2 (for Business X) and Foreign Sub 25 (for Business Y) represents the present operation of each business, and with regard to each, there have been no substantial operational changes since the date of the last financial statements submitted.

(w) Immediately after Country B Transaction 1, at least 90 percent of the fair market value of the gross assets of Foreign Controlled 2 consisted (and consists) of the stock of a controlled corporation (Foreign Sub 25) that was (is) engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(x) Following Country B Transaction 1, Foreign Distributing 2 and Foreign Controlled 2 each has continued (and will continue) the active conduct of its business, independently and with its separate employees.

(y) Country B Transaction 1 was carried out to increase the amount of Business Y that Sub 1 conducts with unrelated parties. Country B Transaction 1 was motivated, in whole or substantial part, by this corporate business purpose.

(z) There is no plan or intention by Foreign Distributing 3 to sell, exchange, transfer by gift, or otherwise dispose of any of its stock in Foreign Distributing 2 or Foreign Controlled 2 after the Country B Transaction 1, except as part of the overall

Distribution transaction, and Sub 2 has no plan or intention to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, Foreign Distributing 3 after Country B Transaction 1.

(aa) There is no plan or intention by either Foreign Distributing 2 or Foreign Controlled 2, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the transaction, other than through stock purchases meeting the requirements of § 4.05(1)(b) of Rev. Proc. 96-30.

(bb) There is no plan or intention to liquidate Foreign Distributing 2 or Foreign Controlled 2, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after Country B Transaction 1, except in the ordinary course of business.

(cc) Foreign Controlled 2 did not assume any liabilities in Country B Transaction 1.

(dd) No intercorporate debt existed between Foreign Distributing 2 and Foreign Controlled 2 at the time of, or after, Country B Transaction 1.

(ee) Except during a transition period expected to last one year or less, payments made in all continuing transactions between Foreign Distributing 2 and Foreign Controlled 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(ff) Neither Foreign Distributing 2 nor Foreign Controlled 2 is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).

(gg) Country B Transaction 1 is not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire directly or indirectly stock possessing 50 percent or more of the total combined voting power of all classes of stock of either Foreign Distributing 2 or Foreign Controlled 2 entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either Foreign Distributing 2 or Foreign Controlled 2

(hh) Each of Foreign Distributing 2 and Foreign Controlled 2 was a CFC, within the meaning of § 957(a), at all times during the five-year period immediately preceding the date of Distribution B-1 (defined below in Ruling (12)) and each of Foreign Distributing 2 and Foreign Controlled 2 was a CFC immediately thereafter.

(ii) With respect to each of Foreign Distributing 2 and Foreign Controlled 2, Parent was a "United States shareholder", within the meaning of § 7.367(b)-2(b), on the date immediately preceding Distribution B-1, and Parent was a United States shareholder immediately thereafter.

(jj) Neither Foreign Distributing 2 nor Foreign Controlled 2 was a PFIC, within

the meaning of § 1297(a), on the date immediately preceding Distribution B-1, and neither Foreign Distributing 2 nor Foreign Controlled 2 was a PFIC immediately thereafter.

### **Country B Transaction 2 Representations**

The taxpayer has made the following representations concerning Country B Transaction 2 (based on its characterization by ruling (22) below):

(kk) No part of the consideration distributed by Foreign Distributing 3 was received by Parent as a creditor, employee, or in any capacity other than that of a shareholder of Foreign Distributing 3.

(ll) The five years of financial information submitted on behalf of Foreign Distributing 2, Foreign Sub 23, and Foreign Sub 24 represent the present operations of each corporation, and, with regard to each corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(mm) Immediately after Country B Transaction 2, at least 90 percent of the fair market value of the gross assets of Foreign Distributing 3 consisted (and consists) of the stock of controlled corporations (Foreign Sub 23 and Foreign Sub 24) that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).

(nn) Following Country B Transaction 2, Foreign Distributing 2, Foreign Sub 23, and Foreign Sub 24 each has continued (and will continue) the active conduct of its business, independently and with its separate employees.

(oo) Country B Transaction 2 was carried out to increase the amount of Business Y that Sub 1 conducts with unrelated parties. Country B Transaction 2 was motivated, in whole or substantial part, by this corporate business purpose.

(pp) There is no plan or intention by Parent to sell, exchange, transfer by gift, or otherwise dispose of any of its stock in Foreign Distributing 2 or Foreign Distributing 3 after Country B Transaction 2, except as part of the overall Distribution transaction, and there is no plan or intention by Sub 2 to sell, exchange, transfer by gift, or otherwise dispose of any of its stock in Foreign Distributing 3 after Country B Transaction 2.

(qq) There is no plan or intention by either Foreign Distributing 3 or Foreign Distributing 2, directly or through any subsidiary corporation, to purchase any of its outstanding stock after Country B Transaction 2, other than through stock purchases meeting the requirements of § 4.05(1)(b) of Rev. Proc. 96-30.

(rr) There is no plan or intention to liquidate either Foreign Distributing 3 or Foreign Distributing 2, to merge either corporation with any other corporation, or to sell or otherwise dispose of any of the assets of either corporation after the transaction, except in the ordinary course of business.

(ss) Foreign Distributing 2 did not assume any liabilities in Country B Transaction 2.

(tt) No intercorporate debt existed between Foreign Distributing 3 and Foreign Distributing 2 at the time of, or after, Country B Transaction 2.

(uu) Except during a transition period expected to last one year or less, payments made in all continuing transactions between Foreign Distributing 3 and Foreign Distributing 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(vv) Neither Foreign Distributing 3 nor Foreign Distributing 2 is an investment company as defined in §368(a)(2)(F)(iii) and (iv).

(ww) Country B Transaction 2 is not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire directly or indirectly stock possessing 50 percent or more of the total combined voting power of all classes of stock of either Foreign Distributing 3 or Foreign Distributing 2 entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either Foreign Distributing 3 or Foreign Distributing 2.

(xx) Each of Foreign Distributing 3 and Foreign Distributing 2 was a CFC, within the meaning of § 957(a), at all times during the five-year period immediately preceding the date of Distribution B-2 (defined below in Ruling (22)), and each of Foreign Distributing 3 and Foreign Distributing 2 was a CFC immediately thereafter.

(yy) With respect to each of Foreign Distributing 3 and Foreign Distributing 2, Parent was a "United States shareholder", within the meaning of § 7.367(b)-2(b), on the date immediately preceding Distribution B-2, and Parent was a United States shareholder immediately thereafter.

(zz) Neither Foreign Distributing 3 nor Foreign Distributing 2 was a PFIC, within the meaning of § 1297(a), on the date immediately preceding Distribution B-2, and neither Foreign Distributing 3 nor Foreign Distributing 2 was a PFIC immediately thereafter.

(aaa) In connection with Country B Transaction 2, there were no transfers of property within the meaning of § 367(a).

(bbb) In connection with Country B Transaction 2, there were no transfers of intangible property within the meaning of § 367(d).

(ccc) In connection with Country B Transaction 2, there were no transfers of property to a foreign partnership that would be subject to the reporting requirements of § 6036 B.

(ggg) Any royalty payments on licenses of intangible property to Foreign Distributing 2 following Country B Transaction 2 have been, or will be for fair market value consideration and on terms and conditions that are consistent with standards for § 482.

### **Country B Transaction 1 Rulings**

Based solely on the information submitted and the representations set forth above, and provided that the requirements of paragraph (c)(1) of 1.367(b)-1 and paragraphs (c)(2) and (d) of § 7.367(b)-1 are met, we rule as follows regarding Country B Transaction 1:

(12) For federal income tax purposes, the transactions described in steps (vii)(b) through (ix)(a) are treated as if (a) Foreign Distributing 2 had transferred the stock in Foreign Sub 25 to newly formed Foreign Controlled 2 in exchange for Foreign Controlled 2 stock ("Contribution B-1") and (b) Foreign Distributing 2 had distributed the stock of Foreign Controlled 2 to Foreign Distributing 3 ("Distribution B-1") (see Rev. Rul. 77-191).

(13) Contribution B-1, followed by Distribution B-1, is a reorganization under § 368(a)(1)(D). Foreign Distributing 2 and Foreign Controlled 2 each is "a party to a reorganization" under § 368(b).

(14) No gain or loss was recognized by Foreign Distributing 2 on Contribution B-1 (§§ 361(a) and 357(a)).

(15) No gain or loss was recognized by Foreign Controlled 2 on Contribution B-1 (§ 1032(a)).

(16) The basis of the Foreign Sub 25 stock received by Foreign Controlled 2 equals the basis of that stock in the hands of Foreign Distributing 2 immediately before Contribution B-1 (§ 362(b)).

(17) The holding period of the Foreign Sub 25 stock received by Foreign Controlled 2 includes the period during which that stock was held by Foreign Distributing 2 (§ 1223(1)).

(18) No gain or loss was recognized by (and no amount was otherwise included in the income of) Foreign Distributing 3 on its receipt of the Foreign Controlled 2 stock in Distribution B-1 (§ 355(a)(1)).

(19) No gain or loss was recognized by Foreign Distributing 2 on Distribution B-1 (§ 361(c)).

(20) The holding period of the Foreign Controlled 2 stock received by Foreign

Distributing 3 includes the holding period of the Foreign Distributing 2 stock on which Distribution B-1 was made, provided Foreign Distributing 2 held the Foreign Controlled 2 stock as a capital asset on the date of Distribution B-1 (§ 1223(1)).

(21) Distribution B-1 is an exchange to which § 7.367(b)-10(c) applies, and the requirements of paragraphs (d) through (j) of § 7.367(b)-10 must be satisfied.

### **Country B Transaction 2 Rulings**

Based solely on the information submitted and the representations set forth above, and provided that the requirements of paragraph (c)(1) of § 1.367(b)-1 and paragraphs (c)(2) and (d) of § 7.367(b)-1 are met, we rule as follows regarding Country B Transaction 2:

(22) For federal income tax purposes, the cash transfers described in step (ix)(b) are disregarded, and the transaction is treated as if Foreign Distributing 3 had distributed its Foreign Distributing 2 stock to Parent ("Distribution B-2") (see Rev. Rul. 77-191).

(24) No gain or loss was recognized by Foreign Distributing 3 on Distribution B-2 (§ 355(c)(1)).

(25) No gain or loss was recognized by (and no amount was otherwise included in the income of) Parent on Distribution B-2 (§ 355(a)(1)).

(26) The holding period of the Foreign Distributing 2 stock received by Parent in Distribution B-2 will include the holding period of the Foreign Distributing 3 stock on which Distribution B-2 is made, provided Parent held the Foreign Distributing 3 stock as a capital asset on the date of Distribution B-2 (§ 1223(1)).

(27) Distribution B-2 is an exchange to which § 7.367(b)-10(c) applies, and the requirements of paragraphs (d) through (j) of § 7.367(b)-10 must be satisfied.

(28) If Parent recognizes no gain under § 1248 on the contribution of the stock of Foreign Distributing 3 to the capital of Sub 2, the earnings and profits of Foreign Distributing 3, to the extent attributable to such stock under § 1.1248-2 or 1.1248-3 (whichever is applicable), that were accumulated in taxable years beginning after December 31, 1962 and during the period in which Foreign Distributing 3 was a CFC, shall be attributable to such stock now held by Sub 2 (see § 1248-1(a)(1)).

### **Country C Restructuring**

During the period of Date M, Parent, Sub 1, Sub 2, Foreign Sub 26, Foreign Sub 27, Foreign Sub 28, Foreign Sub 29, and other Country C subsidiaries were part of a Country C restructuring (the "Country C Restructuring").



### **Caveats**

We express no opinion on the tax treatment of the transactions under other provisions of the Code or regulations, or the tax treatment of any conditions existing at the time of, or resulting from, the transactions that are not specifically covered in the above rulings. In particular, we express no opinion regarding:

(a) Whether the transfer by Parent of Foreign Controlled 1 stock to Sub 2 described above in ruling (1)(c) qualified under § 351.

(b) Whether the transfer by Parent of Sub 2 stock to Sub 1 described above in steps (vi) and (xi) qualified under § 351.

(c) Whether the distributions described above in steps (i)(a) and (b) are taxable distributions subject to § 301(a) and (c).

(d) The reorganization of Foreign Sub 1, Foreign Sub 2, Foreign Sub 3, and Foreign Sub 5 under Country A law described above in step (ii)(a).

(e) Whether the elections by Foreign Sub 1, Foreign Sub 2, Foreign Sub 3 and Foreign Sub 5 under § 301.7701-3 as described above in step (ii)(b) were effective and whether such entities should be treated as "disregarded entities" for federal income tax purposes.

(f) Whether the transfer by Parent of Foreign Distributing 3 stock to Sub 2 described above in step (x) qualified under § 351.

(g) Whether Sub 2 attained full legal title to Foreign Controlled 1 stock on or about Date J as described above in step (v).

(h) The reorganization of Foreign Sub 25 under Country B law as described above in step (vii)(a).

(i) The tax treatment of payments made between parties during the transition periods described above in representations (k), (ee), and (uu).

(j) The tax consequences resulting from the sale by Parent of its interest in Foreign Sub 25 to Foreign Distributing 2 as described in step (viii).

(k) The applicability of any transfer pricing issues under § 482 to the continuing transactions, or other transactions contemplated in the ruling request.

(l) Whether the distributions in step (i)(a) and (b) result in subpart F income.

(m) Whether the reorganization of Foreign Sub 1, Foreign Sub 2, Foreign Sub 3, and Foreign Sub 5 under Country A law, as described above in step (ii)(a), and the

reorganization of Foreign Sub 25 under Country B law, as described above in step (vii)(a), would result in dividend income or gain recognition, if any, and whether such income, if recognized, would be treated as Subpart F income.

(n) Whether Parent is entitled to claim the benefit of any foreign tax credits in connection with Distribution B-2.

(o) Whether any or all of the above-referenced foreign corporations are passive foreign investment companies (within the meaning of § 1297(a) and the regulations to be promulgated thereunder). If it is determined that any or all of the above-described foreign corporations are passive foreign corporations, no opinion is expressed on the application of §§ 1291 through 1298 to the proposed transactions. In particular, in a transaction in which gain is not otherwise recognized, regulations under § 1291(f) may require gain recognition notwithstanding any other provision of the Code.

(p) The tax consequences resulting from any of the Country C Restructuring transactions.

(q) The tax consequences of the sale by Parent of its interest in Foreign Sub 25 to Foreign Distributing 2 described above in step (viii).

### **Procedural Statements**

Temporary or final regulations pertaining to one or more issues addressed in this ruling letter (including regulations under § 358(g)) have yet to be adopted. Therefore, this ruling letter may be revoked or modified if adopted temporary or final regulations are inconsistent with any conclusions reached herein. See § 12.04 of Rev. Proc. 2000-1, 2000-1 I.R.B. 46, which addresses in greater detail when a ruling will be revoked or modified. However, when the criteria in § 12.05 of Rev. Proc. 2000-1 are satisfied, a ruling is seldom revoked or modified retroactively, except in rare or unusual circumstances.

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

Each taxpayer involved in these transactions should attach a copy of this ruling letter to the taxpayer's federal income tax return for the taxable year in which the transactions covered by this letter are completed.

In accordance with the power of attorney on file in this office, the taxpayer and one other authorized representative each will receive a copy of this letter.

Sincerely yours,  
Assistant Chief Counsel (Corporate)  
By: Wayne T. Murray  
Senior Technician/Reviewer, Branch 4