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Department of the Treasury

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Third Party Communication: None

Date of Communication: Not Applicable

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PLR-123442-18

Date:

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Parent =

Distributing 1 =

Distributing 2 =

Controlled 1 =

Controlled 2 =

Controlled 3 =

Sub 1 =

Sub 2 =

Sub 3 =

DE 1 =

DE 2 =

Business A =

Business B =

Country A =

Country B =

Dear :

This letter responds to your letter dated July 27, 2018, requesting rulings on certain federal income tax consequences of a series of transactions (the “Proposed Transaction,” as defined below). The material information submitted in that request and subsequent correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. The 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 letter is issued pursuant to Rev. Proc. 2017-52, 2017-41 I.R.B. 283, regarding one or more “Covered Transactions” under §§ 355 and 368 of the Internal Revenue Code (the “Code”) and one or more significant issues under §§ 351 and 355 of the Code that only address one or more discrete legal issues involved in the transaction.

This office has made no determination regarding whether each of the Distributions (as 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 § 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. § 1.355-8T (see § 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

Summary of Facts

Parent is the common parent of an affiliated group of corporations whose includible corporations join in filing a consolidated federal income tax return. Parent is engaged in Business A and Business B through direct and indirect domestic and foreign subsidiaries.

Parent owns all of the stock of Distributing 2 and Sub 1, both domestic corporations. Sub 1 owns directly and indirectly all of the stock and interests in entities all of which are engaged in the conduct of Business B.

Distributing 2 owns all of the stock of Distributing 1, a Country A corporation, Sub 2, and DE 1, a Country B limited company treated as a disregarded entity for US federal income tax purposes (a “disregarded entity”).

Distributing 1 owns all the stock of Controlled 1, a Country A limited company treated as a corporation for US federal income tax purposes, as well as numerous other Country A subsidiaries engaged in Business A.

DE 1 owns all the stock of Sub 3.

Financial information has been submitted indicating each of Business A and Business B has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Proposed Transaction

Prior to engaging in the Proposed Transaction (as defined below), Parent will execute certain steps in Country B that are not within the scope of this ruling. In particular, these steps will separate the entities in Country B that operate Business A from the entities in Country B that operate Business B. At the conclusion of these steps, Distributing 2 will directly own all of the stock of Sub 3.

For what are represented to be valid business purposes, Parent proposes to engage in the following transactions to separate Business A from Business B (such steps comprise the “Proposed Transaction”):

- (i) Parent will transfer its stock of Sub 1 to Distributing 2 (the “Sub 1 Contribution”). The Sub 1 Contribution will be undertaken in connection with satisfying certain requirements under Country A law with respect to Step (iv).
- (ii) Distributing 2 will form Controlled 2.
- (iii) Distributing 2 will contribute Sub 1, Sub 2, and Sub 3 to Controlled 2 (the “Controlled 2 Contribution”).
- (iv) Pursuant to a binding agreement to undertake a three-party exchange (the “Country A Separation”):
 - (a) Controlled 2 will form DE 2, a Country A company treated as a disregarded entity for US federal income tax purposes;
 - (b) Distributing 1 will amend its articles of incorporation and issue new common shares and new preferred shares to Distributing 2 in exchange for all the existing Distributing 1 shares;
 - (c) DE 2 will issue common shares to Controlled 2, Controlled 2 will issue common shares to Distributing 2, and Distributing 2 will transfer the preferred shares of Distributing 1 to DE 2;
 - (d) Distributing 1 will transfer the shares of Controlled 1 and cash to DE 2 in exchange for (i) the assumption of liabilities (if any) associated with the transferred business, and (ii) preferred shares of DE 2;
 - (e) DE 2 will redeem the preferred shares held by Distributing 1 solely in exchange for a demand promissory note.
 - (f) Distributing 1 will redeem the preferred shares held by DE 2 solely in exchange for a demand promissory note; and
 - (g) Pursuant to an off-set agreement, the notes owed between DE 2 and Distributing 1 will be off-set and cancelled.

The Country A Separation is intended to be characterized as a distribution of Controlled 1 stock by Distributing 1 to Distributing 2 (“Distribution 1”) immediately followed by a contribution of the Controlled 1 stock by Distributing 2 to Controlled 2 (as part of the Controlled 2 Contribution).

- (v) Distributing 2 will distribute its shares of Controlled 2 to Parent (“Distribution 2”).
- (vi) Parent will form Controlled 3.
- (vii) Controlled 3 will borrow cash from third-party lenders.
- (viii) Parent will contribute the stock of Controlled 2 to Controlled 3 in exchange for Controlled 3 stock, Controlled 3 securities, and the cash received in Step (vii) (the “Controlled 3 Contribution”).
- (ix) Parent will distribute the stock of Controlled 3 pro rata to its shareholders and transfer the cash received in Step (vii) and the Controlled 3 securities to its creditors (the “External Distribution”).

In connection with Steps (viii) and (ix), Parent and Controlled 3 may consummate a debt exchange (the “Debt-for-Debt Exchange”). In the Debt-for-Debt Exchange, one or more investment banks (the “Exchange Banks”) may purchase a portion of Parent’s outstanding indebtedness (the “Exchange Debt”) on the open market, acting as principals on their own account and not as agents of Parent. Thereafter, the Exchange Banks (or their affiliates) may sell the Controlled 3 securities to third-party investors.

Representations

With respect to the Country A Separation, except as set forth below, Distributing 1 has made all of the representations in § 3 of the Appendix to Rev. Proc. 2017-52, 2017-41 I.R.B. 283.

Distributing 1 has made the following alternative representations:

Representations 3(a), 8(a), 11(a), 15(a), 22(a), 31(a), and 41(a).

Distributing 1 has not made the following representations, which do not apply to the Country A Separation:

Representations 7, 17, 18–20, 24, 25, 35–39 and 43.

Distributing 1 has modified the following representations:

The Country A Separation is intended to be characterized as Distribution 1 followed by the Controlled 2 Contribution. Thus, Distribution 1 is a deemed transaction for federal income tax purposes. As such, all representations in §3 of the Appendix to Rev. Proc. 2017-52 regarding Distribution 1 and the part of the Controlled 2 Contribution that includes the Country A

Separation are modified to include the language “deemed” where applicable.

With respect to Distribution 2, except as set forth below, Distributing 2 has made all of the representations in § 3 of the Appendix to Rev. Proc. 2017-52, 2017-41 I.R.B. 283.

Distributing 2 has made the following alternative representations:

Representations 3(a), 8(a), 11(a), 15(a), 22(a), 31(a), and 41(a).

Distributing 2 has not made the following representations, which do not apply to Distribution 2:

Representations 7, 19, 20, 24, 25, and 35.

Distributing 2 has not made the following representation:

Representation 40.

With respect to the External Distribution, except as set forth below, Parent has made all of the representations in § 3 of the Appendix to Rev. Proc. 2017-52, 2017-41 I.R.B. 283.

Parent has made the following alternative representations:

Representations 3(a), 11(a), 15(a), 22(a), 31(a), and 41(a).

Parent has not made the following representations, which do not apply to the External Distribution:

Representations 7, 24, and 25.

Parent has not made the following representation:

Representation 8.

In addition, except as set forth below, Parent has made all of the representations in § 3.04 of Rev. Proc. 2018-53, 2018-43 I.R.B. 667.

Parent has made the following modified representation:

Representation 3: The Exchange Banks will not acquire the Exchange Debt from Parent, Controlled 3, or any Related Person. Neither Parent, Controlled 3, nor any Related Person will participate in any profit gained by the Exchange Banks upon an exchange of § 361 Consideration (as

defined in Rev. Proc. 2018-53, 2018-43 I.R.B. 667, § 2); nor will any such profit be limited by agreement or other arrangement. The value of the § 361 Consideration received by the Exchange Banks in satisfaction of the Exchange Debt will be approximately equal to the fair market value of the Exchange Debt determined pursuant to arm's length negotiations.

Parent has made the following additional representation:

For purposes of Treas. Reg. § 1.367(b)-5(c), Distributing 2's predistribution amount with respect to Distributing 1 or Controlled 1 will not exceed Distributing 2's postdistribution amount with respect to both entities, or, if the predistribution amount does exceed the postdistribution amount, Distributing 2 will reduce its basis, or include an amount in income as a deemed dividend, to the extent provided in Treas. Reg. § 1.367(b)-5(c)(2).

Rulings

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

The Country A Separation

- (1) For federal income tax purposes, the Country A Separation described in Step (iv) will be treated as Distribution 1 followed by the contribution of Controlled 1 to Controlled 2 as part of the Controlled 2 Contribution.
- (2) Distribution 1 will qualify as a tax-free distribution. § 355.
- (3) No gain or loss will be recognized by Distributing 1. § 355(c)(1).
- (4) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 2 as a result Distribution 1. § 355(a)(1).
- (5) The aggregate basis of the Distributing 1 stock and the Controlled 1 stock in the hands of Distributing 2 immediately after Distribution 1 will be the same as the aggregate basis of the Distributing 1 stock held by Distributing 2 immediately before Distribution 1. § 358(a). Such basis will be allocated between the Distributing 1 and Controlled 1 stock in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(1) and § 358(b)(2) and (c).
- (6) The holding period of the Controlled 1 stock received by Distributing 2 will include the holding period of the Distributing 1 stock with respect to which Distribution 1 is made, provided that such Distributing 1 stock is held as a capital asset on the date of Distribution 1. § 1223(1).
- (7) Earnings and profits will be allocated between Distributing 1 and Controlled 1 in accordance with § 312(h) and Treas. Reg. § 1.312-10(b).

The Sub 1 Contribution

- (8) The Sub 1 Contribution will be treated as a separate transaction from Distribution 2 and will be treated as occurring prior to Step (iv).

Distribution 2

- (9) The Controlled 2 Contribution, together with Distribution 2, will be a “reorganization” within the meaning of § 368(a)(1)(D). Distributing 2 and Controlled 2 will each be a “party to a reorganization” within the meaning of § 368(b).
- (10) No gain or loss will be recognized by Distributing 2 on the Controlled 2 Contribution. §§ 361(a) and 357(a).
- (11) No gain or loss will be recognized by Controlled 2 on the Controlled 2 Contribution. § 1032(a).
- (12) Controlled 2’s basis in each asset received in the Controlled 2 Contribution will be the same as the basis of that asset in the hands of Distributing 2 immediately before the Controlled 2 Contribution. § 362(b).
- (13) Controlled 2’s holding period in each asset received from Distributing 2 in the Controlled 2 Contribution will include the period during which Distributing 2 held that asset. § 1223(2).
- (14) No gain or loss will be recognized by (and no amount will be included in the income of) Parent on its receipt of the Controlled 2 stock on Distribution 2. § 355(a)(1).
- (15) No gain or loss will be recognized by Distributing 2 on Distribution 2. § 361(c)(1).
- (16) The holding period of the Controlled 2 stock received by Parent in Distribution 2 will include the holding period of the Distributing 2 stock with respect to which Distribution 2 is made, provided that such Distributing 2 stock is held as a capital asset on the date of Distribution 2. § 1223(1).
- (17) Earnings and profits will be allocated between Distributing 2 and Controlled 2 in accordance with § 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33(b).

The External Distribution

- (18) The Controlled 3 Contribution, together with the External Distribution, will be a “reorganization” within the meaning of § 368(a)(1)(D). Parent and Controlled 3 will each be a “party to a reorganization” within the meaning of § 368(b).
- (19) No gain or loss will be recognized by Parent on the Controlled 3 Contribution. §§ 361(a), 361(b), and 357(a).
- (20) No gain or loss will be recognized by Controlled 3 on the Controlled 3 Contribution. § 1032(a).

- (21) Controlled 3's basis in each asset received in the Controlled 3 Contribution will be the same as the basis of that asset in the hands of Parent immediately before the Controlled 3 Contribution. § 362(b).
- (22) Controlled 3's holding period in each asset received from Parent in the Controlled 3 contribution will include the period during which Parent held that asset. § 1223(2).
- (23) No gain or loss will be recognized by (and no amount will be included in the income of) Parent's public shareholders on their receipt of the Controlled 3 stock in the External Distribution. § 355(a)(1).
- (24) No gain or loss will be recognized by Parent on the External Distribution. § 361(c)(1).
- (25) The aggregate basis of the Parent stock and the Controlled 3 stock in the hands of Parent's public shareholders immediately after the External Distribution will be the same as the aggregate basis of the Parent stock held by Parent's public shareholders immediately before the External Distribution. § 358(a). Such basis will be allocated between the Parent stock and the Controlled 3 stock in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2) and § 358(b)(2) and (c).
- (26) The holding period of the Controlled 3 stock received by Parent's public shareholders in the External Distribution will include the holding period of the Parent stock with respect to which the External Distribution is made, provided that such Parent stock is held as a capital asset on the date of the External Distribution. § 1223(1).
- (27) Earnings and profits will be allocated between Parent and Controlled 3 in accordance with § 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33(e)(3).
- (28) Parent will recognize no income, gain, deduction, or loss upon the Debt-for-Debt Exchange, other than any (i) deductions attributable to the redemption of any Exchange Debt at a premium, (ii) income attributable to the redemption of Exchange Debt at a discount, and (iii) interest expense accrued with respect to the Exchange Debt. § 361(c).

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.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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 of the letter ruling.

Sincerely,

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

cc: