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Date:

August 8, 2000

Distributing =

S1 =

S3 =

S4 =

AF1 =

AF3 =

AF4 =

AF5 =

Year 1 =

Year 2 =

Year 3 =

Country A =

Business A =

Business B =

Asset =

We respond to your April 28, 2000 request for rulings on certain federal income tax consequences of several proposed transactions. Distributing's predecessors received rulings on prior transactions during Year 1, Year 2, and Year 3 (the "Prior Ruling Letters"). Further, this ruling letter, two other ruling letters issued with this letter (PLR-109432-00 and PLR-109435-00), and a ruling letter issued to Distributing on June

15, 2000 (PLR-105240-00) all address aspects of the same overall transaction (the "Overall Transaction").

The rulings in this letter are based on facts and representations submitted under penalties of perjury in support of the request. Verification of that information may be required as part of the audit process.

Summary of Facts

Publicly traded Distributing (a domestic corporation) is the common parent of a corporate group whose includible affiliates join in filing a consolidated return. Distributing wholly owns S1 (also domestic), S1 wholly owns S3 and S4 (both domestic); S3 and S4 jointly own AF1 (a Country A entity classified as a partnership for U.S. federal income tax purposes); AF1 wholly owns AF2 (a Country A corporation); AF2 and S3 jointly own AF3 (a Country A corporation); AF3 wholly owns AF4 (a Country A corporation); and AF4 wholly owns AF5 (a Country A corporation). Distributing, S4, AF1, AF2, and AF3 are holding companies.

S1 and AF4 each conducts Business A, S3 owns branches and subsidiaries engaged in Business A and Business B, and AF5 conducts Business B. We have received financial information indicating that each of these business operations has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

The operation of Business A and Business B within the same group creates managerial, systemic, and other problems and produces no significant synergies. Distributing's management has therefore decided, based on the advice of consultants and other information, that the two businesses should be separated (the "Separation").

Proposed Transactions

To accomplish the Separation, Distributing has proposed the following transactions to be carried out in conjunction with the other steps of the Overall Transaction:

- (i) AF4 will distribute the AF5 stock to AF3 as a reduction of capital under Country A law on the AF4 preferred stock held by AF3 ("Distribution 1").
- (ii) AF3 will distribute the AF5 stock to AF2 as a reduction of capital under Country A law on the AF3 stock held by AF2 ("Distribution 2").
- (iii) AF2 will distribute the AF5 stock to AF1 as a reduction of capital under Country A law on the AF2 stock held by AF1 ("Distribution 3").
- (iv) AF1 will distribute the AF5 stock to S3 as a reduction of AF1 preferred stock

having a fair market value approximately equal to the fair market value of the AF5 shares (the "AF1 Distribution").

(v) S3 will distribute the AF5 stock to S1 ("Distribution 4").

(vi) S1 will transfer the Asset to newly formed domestic Newco in exchange for part of the Newco stock (the "Contribution") and will transfer the AF5 stock to Newco in exchange for the remaining Newco stock (the "AF5 Transfer").

(vii) An election will be made under § 301.7701-3(c) of the Procedure and Administration Regulations to disregard AF5 as an entity separate from its owner.

(viii) S1 will distribute the Newco stock to Distributing ("Distribution 5").

Representations

Distribution 1

Distributing has made the following representations concerning Distribution 1:

(1a) The fair market value of the AF5 stock to be received by AF3 will approximately equal the fair market value of the AF4 stock deemed surrendered by AF3 in the exchange.

(1b) No part of the AF5 stock distributed by AF4 will be received by AF3 as a creditor, employee, or in any capacity other than that of an AF4 shareholder.

(1c) The five years of financial information submitted for AF4 (regarding its Business A) and AF5 (regarding its Business B) represents the present business operations of AF4 and AF5, and regarding each business, there have been no substantial operational changes since the date of the last financial statements submitted.

(1d) Following Distribution 1, AF4 and AF5 each will continue the active conduct of its business, independently and with its separate employees.

(1e) Distribution 1 is being undertaken to resolve managerial, systemic, and other problems that have arisen from operating Business A and Business B within a single affiliated group. Distribution 1 is motivated, in whole or substantial part, by this corporate business purpose and for other business reasons.

(1f) Except for Distribution 2, there is no plan or intention by AF3 to sell, exchange, transfer by gift, or otherwise dispose of any stock in AF4 or AF5 after Distribution 1.

(1g) There is no plan or intention by AF4 or AF5, directly or through any subsidiary corporation, to purchase any of its outstanding stock after Distribution 1.

(1h) There is no plan or intention to liquidate AF4 or AF5, to merge either corporation with any other corporation, or to sell or otherwise dispose of any of the assets of either corporation after Distribution 1, except as described herein and in the ordinary course of business.

(1i) Any indebtedness owed by AF5 to AF4 following the Separation will not be stock or securities within the meaning of § 355.

(1j) Immediately before Distribution 1, any items of income, gain, loss, deduction, and credit will be taken into account as required by applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 of the Income Tax Regulations as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597).

(1k) Payments made in any continuing transactions between AF4 and AF5 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(1l) Distribution 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 either AF4 or AF5 stock entitled to vote, or stock possessing 50 percent or more of the total classes of stock of either AF4 or AF5.

Distribution 2

Distributing has made the following representations concerning Distribution 2:

(1m) The fair market value of the AF5 stock to be received by AF2 will approximately equal the fair market value of the AF3 stock deemed surrendered by AF2 in the exchange.

(1n) No part of the AF5 stock distributed by AF3 will be received by AF2 as a creditor, employee, or in any capacity other than that of an AF3 shareholder.

(1o) The five years of financial information submitted for AF4 and AF5 represents the present business operations of AF4 and AF5, and regarding each business, there have been no substantial operational changes since the date of the last financial statements submitted.

(1p) Immediately after Distribution 2, at least 90 percent of the fair market value of the gross assets of AF3 will consist of the stock and securities of AF4, a controlled

corporation that is engaged in the active conduct of a trade or business as defined in § 355(b). Following Distribution 2, AF4 and AF5 each will continue the active conduct of its business, independently and with its separate employees.

(1q) Distribution 2 is being undertaken to resolve managerial, systemic, and other problems that have arisen from operating Business A and Business B within a single affiliated group. Distribution 2 is motivated, in whole or substantial part, by this corporate business purpose and for other business reasons.

(1r) Except for Distribution 3, there is no plan or intention by AF2 to sell exchange, transfer by gift, or otherwise dispose of any stock in AF5 or any of its remaining stock in AF3 after Distribution 2.

(1s) There is no plan or intention by AF3 or AF5, directly or through any subsidiary corporation, to purchase any of its stock after Distribution 2.

(1t) There is no plan or intention to liquidate AF3 or AF5, to merge either corporation with any other corporation, or to sell or otherwise dispose of any of the assets of either corporation after Distribution 2, except as described herein and in the ordinary course of business.

(1u) Any indebtedness owed by AF5 to AF3 following the Separation will not be stock or securities within the meaning of § 355.

(1v) Immediately before Distribution 2, any items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597 and as currently in effect; § 1.1502-13 as published by T.D. 8597).

(1w) Payments made in any continuing transactions between AF3 and AF5 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(1x) Distribution 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 either AF3 or AF5 stock entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either AF3 or AF5.

Distribution 3

Distributing has made the following representations concerning Distribution 3:

(1y) The fair market value of the AF5 stock to be received by AF1 will

approximately equal the fair market value of the AF2 stock deemed surrendered by AF1 in the exchange.

(1z) No part of the AF5 stock distributed by AF2 will be received by AF1 as a creditor, employee, or in any capacity other than that of an AF2 shareholder.

(2a) The five years of financial information submitted for AF4 and AF5 represents the present business operations of AF4 and AF5, and regarding each business, there have been no substantial operational changes since the date of the last financial statements submitted.

(2b) Immediately after Distribution 3, at least 90 percent of the fair market value of the gross assets of AF2 will consist of stock and securities of AF3, a controlled corporation, and at least 90 percent of the fair market value of the gross assets of AF3 will consist of stock and securities of AF4, a controlled corporation that is engaged in the active conduct of a trade or business as defined in § 355(b). Following Distribution 3, AF4 and AF5 each will continue the active conduct of its business, independently and with its separate employees.

(2c) Distribution 3 is being undertaken to resolve managerial, systemic, and other problems that have arisen from operating Business A and Business B within a single affiliated group. Distribution 3 is motivated, in whole or substantial part, by this corporate business purpose and for other business reasons.

(2d) Except for the AF1 Distribution described above in step (iv), there is no plan or intention by AF1 to sell, exchange, transfer by gift, or otherwise dispose of any stock in AF2 or AF5 after Distribution 3.

(2e) There is no plan or intention by AF2 or AF5, directly or through any subsidiary corporation, to purchase any of its outstanding stock after Distribution 3.

(2f) There is no plan or intention to liquidate AF2 or AF5, to merge either corporation with any other corporation, or to sell or otherwise dispose of any of the assets of either corporation after Distribution 3, except as described herein and in the ordinary course of business.

(2g) Any indebtedness owed by AF5 to AF2 following the Separation will not be stock or securities within the meaning of § 355.

(2h) Immediately before Distribution 3, any items of income, gain, loss, deduction, and credit will be taken into account as required by applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597 and as currently in effect; § 1.1502-13 as published by T.D. 8597).

(2i) Payments made in any continuing transactions between AF2 and AF5 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(2j) Distribution 3 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 either AF2 or AF5 stock entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either AF2 or AF5.

Distribution 4

Distributing has made the following representations concerning Distribution 4:

(2k) No part of the stock of AF5 distributed by S3 will be received by S1 as a creditor, employee, or in any capacity other than that of an S3 shareholder.

(2l) The five years of financial information submitted for S3 (regarding its Business A and Business B) and AF5 represents the present business operations of S3 and AF5, and regarding each business, there have been no substantial operational changes since the date of the last financial statements submitted.

(2m) Following Distribution 4, S3 and AF5 each will continue the active conduct of its business(es), independently and with its separate employees.

(2n) Distribution 4 is being undertaken to resolve managerial, systemic, and other problems that have arisen from operating Business A and Business B within a single affiliated group. Distribution 4 is motivated, in whole or substantial part, by this corporate business purpose and for other business reasons.

(2o) Except for the Contribution and Distribution 5 and except for the transfer of the S3 stock to a new corporation to be distributed to the shareholders of Distributing (described in step (vi) of the ruling letter issued to Distributing on June 15, 2000 (PLR-105240-00)), there is no plan or intention by S1 to sell, exchange, transfer by gift, or otherwise dispose of any stock in S3 or AF5 after Distribution 4.

(2p) There is no plan or intention by S3 or AF5, directly or through any subsidiary corporation, to purchase any of its outstanding stock after Distribution 4.

(2q) There is no plan or intention to liquidate S3 or AF5, to merge either corporation with any other corporation, or to sell or otherwise dispose of any of the assets of either corporation after Distribution 4, except as described herein and in the ordinary course of business.

(2r) Any indebtedness owed by AF5 to S3 following the Separation will not be

stock or securities within the meaning of § 355.

(2s) Immediately before Distribution 4, any items of income, gain, loss, deduction, and credit will be taken into account as required by applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597 and as currently in effect; § 1.1502-13 as published by T.D. 8597).

(2t) Payments made in any continuing transactions between S3 and AF5 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(2u) Distribution 4 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 either S3 or AF5 stock entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either S3 or AF5.

AF5 Transfer

Distributing has made the following representations concerning the AF5 Transfer and the related election under § 301.7701-3 (see steps (vi) and (vii) above) based on the characterization of the transaction in ruling (18) below:

(2v) The fair market value of the Newco stock received by S1 in the transaction will approximately equal the fair market value of the AF5 stock surrendered in the exchange.

(2w) There is no plan or intention by Distributing to sell, exchange, or otherwise dispose of any Newco stock.

(2x) Newco will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by AF5 immediately before the transaction. For purposes of this representation, amounts used by AF5 to pay its reorganization expenses and all redemptions and distributions (except for regular, normal dividends) made by AF5 immediately before the transfer are included as assets of AF5 held immediately before the transaction.

(2y) After the transaction, Distributing will be in control of Newco within the meaning of § 368(a)(2)(H).

(2z) There is no plan or intention for Newco, directly or indirectly or through any subsidiary corporation, to purchase any of its outstanding stock after the transaction.

(3a) There is no plan or intention for Newco to sell or otherwise dispose of any

of the assets of AF5, except for dispositions made in the ordinary course of business.

(3b) The liabilities of AF5 assumed (as determined under § 357(d)) by Newco were incurred in the ordinary course of business and are associated with the assets being transferred.

(3c) Following the transaction, Newco will continue the historic business of AF5 or use a significant portion of AF5's historic business assets in a business.

(3d) At the time of the transaction, Newco will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Newco that, if exercised or converted, would affect the acquisition or retention of control of Newco, as defined in § 368(a)(2)(H).

(3e) Newco, AF5, and S1 will pay their respective expenses, if any, incurred in connection with the transaction.

(3f) There is no intercorporate indebtedness existing between Newco and AF5 that was issued, acquired, or will be settled at a discount.

(3g) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(3h) The fair market value of assets of AF5 transferred to Newco will equal or exceed the liabilities assumed (as determined under § 357(d)) by Newco.

(3i) The total adjusted basis of the assets of AF5 transferred to Newco will equal or exceed the liabilities assumed (as determined under § 357(d)) by Newco.

(3j) AF5 is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

Contribution and Distribution 5

Distributing has made the following representations concerning the Contribution and Distribution 5:

(3k) No part of the Newco stock distributed by S1 will be received by Distributing as a creditor, employee, or in any capacity other than that of an S1 shareholder.

(3l) The five years of financial information submitted for S1 (regarding its Business A) and AF5 represents the present business operations of S1 and AF5, and regarding each business, there have been no substantial operational changes since the date of the last financial statements submitted.

(3m) Following Distribution 5, S1 and Newco each will continue the active conduct of its business, independently and with its separate employees.

(3n) Distribution 5 is being undertaken to resolve managerial, systemic, and other problems that have arisen from operating Business A and Business B within a single affiliated group. Distribution 5 is motivated, in whole or substantial part, by this corporate business purpose and for other business reasons.

(3o) Except for the transfer of S1 to a new corporation to be distributed to the shareholders of Distributing (described in step (v) of the ruling letter issued to Distributing on June 15, 2000 (PLR-105240-00)), there is no plan or intention by Distributing to sell, exchange, transfer by gift, or otherwise dispose of any stock in S1 or Newco after Distribution 5.

(3p) There is no plan or intention by S1 or Newco, directly or through any subsidiary corporation, to purchase any of its outstanding stock after Distribution 5.

(3q) There is no plan or intention to liquidate S1 or Newco, to merge either corporation with any other corporation, or to sell or otherwise dispose of any of the assets of either corporation after Distribution 5, except in the ordinary course of business.

(3r) The total adjusted basis and the fair market value of the assets transferred to Newco by S1 in the Contribution will, in each instance, equal or exceed the liabilities, if any, assumed (as determined under § 357(d)) by Newco.

(3s) The liabilities assumed (as determined under § 357(d)) in the Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.

(3t) None of the transferred assets will include property that will be subject to investment tax credit recapture.

(3u) Any indebtedness owed by Newco to S1 following the Separation will not be stock or securities within the meaning of § 355.

(3v) Immediately before Distribution 5, any items of income, gain, loss, deduction, and credit will be taken into account as required by applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597 and as currently in effect, § 1.1502-13 as published by T.D. 8597).

(3w) Payments made in any continuing transactions between S1 and Newco will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(3x) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(3y) Distribution 5 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 either S1 or Newco stock entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either S1 or Newco.

International

(3z) AF4, AF3, and AF2 are corporations for federal tax purposes and will be controlled foreign corporations within the meaning of § 957 immediately before and immediately after the proposed transactions.

(4a) AF5 will be a corporation for federal tax purposes and a controlled foreign corporation within the meaning of § 957 at the time of Distribution 1, Distribution 2, Distribution 3, the AF1 Distribution, and Distribution 4.

(4b) S3 will comply with the reporting requirements of §§ 6038 or 6046A or both, as applicable.

Rulings

Distribution 1

Based on the information submitted and the representations made, we rule as follows on Distribution 1:

(1) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) AF3 on Distribution 1 (§ 355(a)(1)).

(2) No gain or loss will be recognized by AF4 on Distribution 1 (§ 355(c)).

(3) The holding period of AF5 stock received by AF3 in Distribution 1 will include the holding period of the AF4 stock for which the AF5 stock is deemed exchanged, provided the AF4 stock is held as a capital asset on the date of Distribution 1 (§ 1223(1)).

(4) AF4's transfer of the AF5 stock in Distribution 1 is a distribution to which §§ 1.367(b)-1(c), 1.367(b)-5(a), 1.367(b)-5(c), and 1.367(b)-5(f) apply. If AF3's postdistribution amount with respect to AF4 or AF5 is less than AF3's predistribution amount with respect to AF4 or AF5, AF3's basis in such stock immediately after the distribution must be reduced by the amount of the difference. However, AF3's basis in such stock must not be reduced below zero, and to the extent the foregoing reduction would have reduced basis below zero, AF3 must instead include such amount in

income as a deemed dividend from such corporation. Such income shall not be foreign personal holding company income under § 954(c).

Distribution 2

Based on the information submitted and the representations made, we rule as follows on Distribution 2:

(5) No gain or loss will be recognized by (and no amount will be otherwise be included in the income of) AF2 on Distribution 2 (§ 355(a)(1)).

(6) No gain or loss will be recognized by AF3 on Distribution 2 (§ 355(c)).

(7) The holding period of AF5 stock received by AF2 in Distribution 2 will include the holding period of the AF3 stock for which the AF5 stock is deemed exchanged, provided the AF3 stock is held as a capital asset on the date of Distribution 2 (§ 1223(1)).

(8) For purposes of the § 367(b) regulations, both AF2 and S3 will be treated as distributees in Distribution 2.

(9) AF3's transfer of the AF5 stock in Distribution 2 is a distribution to which §§ 1.367(b)-1(c), 1.367(b)-5(a), 1.367(b)-5(d), and 1.367(b)-5(f) apply. If AF2's or S3's postdistribution amount with respect to AF3 or AF5 is less than AF2's or S3's predistribution amount with respect to AF3 or AF5, AF2 or S3 or both must include such amount in income as a deemed dividend from such corporation. Such income shall not be foreign personal holding company income under § 954(c). Any basis increase provided in § 1.367(b)-2(e)(3)(ii) shall apply to a deemed dividend that is included in income pursuant to § 1.367(b)-5(d)(3) only to the extent that such basis increase does not increase the distributee's basis above the fair market value of such stock and does not diminish the distributee's postdistribution amount with respect to such corporation.

Distribution 3

Based on the information submitted and the representations made, we rule as follows on Distribution 3:

(10) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) AF1 on Distribution 3 (§ 355(a)(1)).

(11) No gain or loss will be recognized by AF2 on Distribution 3 (§ 355(c)).

(12) The holding period of AF5 stock received by AF1 in Distribution 3 will include the holding period of the AF2 stock for which the AF5 stock is deemed exchanged, provided the AF2 stock is held as a capital asset on the date of Distribution 3 (§ 1223(l)).

(13) AF2's transfer of the AF5 stock in Distribution 3 is a distribution to which §§ 1.367(b)-1(c), 1.367(b)-5(a), 1.367(b)-5(c) and 1.367(b)-5(f) apply. If AF1's postdistribution amount with respect to AF2 or AF5 is less than AF1's predistribution amount with respect to AF2 or AF5, AF1's basis in such stock immediately after the distribution must be reduced by the amount of the difference. However, AF1's basis in such stock must not be reduced below zero, and to the extent the foregoing reduction would have reduced basis below zero, AF1 must instead include such amount in income as a deemed dividend from such corporation. Such income shall not be foreign personal holding company income under § 954(c).

Distribution 4

Based on the information submitted and the representations made, we rule as follows on Distribution 4:

(14) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) S1 on Distribution 4 (§ 355(a)(1)).

(15) No gain or loss will be recognized by S3 on Distribution 4 (§ 355(c)).

(16) Immediately following Distribution 4, the basis of the AF5 stock in the hands of S1 will be the lesser of the adjusted basis of the AF5 stock in the hands of S3 or the substituted basis allocated to the AF5 stock in accordance with § 1.358-2(a)(2) (§ 1248(f)(2); Notice 87-64, 1987-2 C.B. 375).

(17) Immediately following Distribution 4, S1's holding period in the AF5 stock received in the § 355 distribution will be the greater of the holding period of the AF5 stock in the hands of S3 or the holding period of the S3 stock in the hands of S1 (§ 1248(f)(2); Notice 87-64).

AF5 Transfer

Based on the information submitted and representations made, we rule as follows on the AF5 Transfer and the related election pursuant to § 301.7701-3:

(18) For federal income tax purposes, the transfer by S1 of the AF5 stock to Newco and the election under § 301.7701-3 to disregard AF5 as an entity separate from Newco will be treated as if AF5 had transferred all of its assets to Newco in exchange for Newco stock and the assumption by Newco of the AF5 liabilities, and AF5 had transferred the Newco stock to S1 (see Rev. Rule. 67-274, 1967-2 C.B. 141).

(19) The transfer by AF5 of substantially all of its assets to Newco in exchange for Newco stock and the assumption by Newco of the liabilities of AF5, followed by the distribution of Newco shares to S1, will be a reorganization under § 368(a)(1)(D). For purposes of this ruling, "substantially all" means at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross

assets of AF5. Newco and AF5 each will be a “party to a reorganization” under § 368(b).

(20) No gain or loss will be recognized by AF5 on the transfer of substantially all of its assets to Newco in exchange for Newco stock and the assumption by Newco of the liabilities of AF5, or on the distribution of Newco stock to S1 (§§ 361(a), 357(a), and 361(c)).

(21) No gain or loss will be recognized by Newco on the receipt of the assets of AF5 in exchange for Newco stock and the assumption by Newco of the liabilities of AF5 (§ 1032(a)).

(22) The basis of each AF5 asset in the hands of Newco will equal the basis of that asset in the hands of AF5 immediately before the transaction (§ 362(b)).

(23) The holding period for each AF5 asset in the hands of Newco will include the period during which that asset was held by AF5 (§ 1223(2)).

(24) S1 will include in income its “all earnings and profits amount” within the meaning of § 1.367(b)-2(d) with respect to its AF5 stock pursuant to § 1.367 (b)-3 at the time of the transaction (inbound § 368(a)(1)(D) reorganization). No gain or loss will otherwise be recognized by S1 on the exchange of AF5 stock for Newco stock (§ 354(a)(1)).

(25) The basis of the Newco stock received by S1 will equal the basis of the AF5 stock surrendered in exchange therefor (§ 358(a)(1)).

(26) The holding period of the Newco stock received by S1 will include the holding period of the AF5 stock surrendered in exchange therefor, provided the AF5 stock is held as a capital asset on the date of the exchange (§ 1223(1)).

Contribution and Distribution 5

Based on the information submitted and the representations made, we rule as follows on the Contribution and Distribution 5:

(27) The Contribution, followed by Distribution 5, will be treated as a reorganization within the meaning of § 368(a)(1)(D). S1 and Newco each will be “a party to a reorganization” under § 368(b).

(28) No gain or loss will be recognized by S1 on the Contribution (§§ 357(a) and 361(a)).

(29) No gain or loss will be recognized by Newco on the Contribution (§ 1032(a)).

(30) The basis of each asset received by Newco in the Contribution will equal the basis of that asset in the hands of S1 immediately before the Contribution (§ 362(b)).

(31) The holding period of each asset received by Newco from S1 in the Contribution will include the period during which S1 held the asset (§ 1223(2)).

(32) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing on Distribution 5 (§ 355(a)(1)).

(33) No gain or loss will be recognized by S1 on Distribution 5 (§ 361(c)).

(34) The holding period of Newco stock received by Distributing in Distribution 5 will include the holding period of the S1 stock on which Distribution 5 is made, provided the S1 stock is held as a capital asset on the date of Distribution 5 (§ 1223(l)).

Miscellaneous

(35) The proposed transactions will not adversely affect the Prior Ruling Letters, which will retain full force and effect.

Caveats

We express no opinion on the tax effects of the transactions under any other provisions of the Code or regulations, or the tax effects of any conditions existing at the time of, or effects resulting from, the transactions that are not specifically covered by the rulings. In particular, no opinion was requested and we express no opinion on the AF1 Distribution described above in step (iv).

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

Further, if Prop. Reg. § 301.7701-3(h) is made final before completion of the proposed transactions, such final regulation would determine whether the election under § 301.7701-3(c) to treat AF5 as a disregarded entity is invalidated.

Procedural Statements

This ruling is directly only to the taxpayers who 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 letter to the taxpayer's federal income tax return for the taxable year in which the transactions covered by this ruling letter are consummated.

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