

Internal Revenue Service

Department of the Treasury

Number: **200102036**
Release Date: 1/12/2001
Index Number: 355.01-00
368.04-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:B02-PLR-112578-00

Date:

October 12, 2000

LEGEND:

Foreign Parent =

Distributing =

Controlled =

Controlled Foreign
Subsidiary =

Corporation =

Business A =

Business B =

Business C =

Country D =

X% =

Y% =

Z =

Dear:

This letter responds to your letter dated June 22, 2000, in which you requested, on behalf of the above referenced taxpayer, rulings under section 355 of the Internal Revenue Code. Additional information regarding your request has been submitted in letters dated August 14, September 20, October 3, October 4, and October 11, 2000. The material information submitted for consideration is summarized below.

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Foreign Parent is a publicly traded, Country D z which is treated as a corporation for federal income tax purposes. Foreign Parent is engaged in Business A and Business B through its subsidiaries. Distributing, a wholly-owned subsidiary of Foreign Parent, is the common parent of the U.S. affiliated group filing a consolidated income tax return. Distributing is directly engaged in Business A and Business B in the United States. Controlled Foreign Subsidiary, a wholly-owned subsidiary of Foreign Parent, is a Country D z. Controlled Foreign Subsidiary is also engaged, indirectly through its wholly-owned subsidiary, in Business B.

Distributing has entered into an agreement with Corporation, an unrelated, publicly-traded corporation, to form a world-wide joint venture (the "Joint Venture") which will engage solely in Business C. Foreign Parent will have an X% interest in Joint Venture and Corporation will have a Y% interest in Joint Venture.

For a portion of the five-year period preceding the proposed transaction, Distributing was a member of one of two U.S. consolidated groups wholly-owned by Foreign Parent, both of which were actively engaged in Business A and Business B. Through a series of internal restructuring transactions (the "Internal Restructuring Transactions"), the U.S. operations for Business A and Business B have been concentrated in Distributing. Distributing represents that in each of these transactions, no gain or loss was recognized for federal income tax purposes. The taxpayer has supplied financial information which indicates that Distributing's Business A and Business B each have had gross receipts and operating expenses representative of the active conduct of such businesses for each of the past five years.

Accordingly, in order to implement the joint venture, the taxpayer has proposed the following transaction:

- (i) Distributing will transfer all of its Business B assets to Controlled in exchange for all of the issued and outstanding stock of Controlled and the assumption by Controlled of the liabilities associated with Business B.
- (ii) Distributing will then distribute all of the issued and outstanding stock of Controlled to Foreign Parent.
- (iii) Foreign Parent will transfer all of the Controlled stock to Controlled Foreign Subsidiary in exchange for shares of voting common stock of Controlled Foreign Subsidiary. Corporation will acquire a Y% interest in Controlled Foreign Subsidiary.

The following additional representations have been made in connection with the proposed transaction:

- (a) No part of the consideration to be distributed by Distributing will be

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received by the shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

- (b) The five years of financial information submitted on behalf of Distributing is representative of its present operations, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- (c) Following the transaction, Distributing and Controlled will each continue, independently and with its separate employees, the active conduct of its share of all the integrated activities of the business conducted by Distributing prior to consummation of the transaction.
- (d) The distribution of the stock of Controlled is being undertaken for the following corporate business purpose: to implement the joint venture. The distribution of the stock of Controlled is motivated, in whole or substantial part, by such corporate business purpose.
- (e) There is no plan or intention on the part of the shareholder of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in either Distributing or Controlled after the proposed transaction, except: (i) Foreign Parent will contribute Controlled to its subsidiary, Controlled Foreign Subsidiary.
- (f) There is no plan or intention by either Distributing or Controlled, 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 Section 4.05(1)(b) of *Rev. Proc. 96-30*.
- (g) There is no plan or intention to either liquidate Distributing or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the transaction, except in the ordinary course of business.
- (h) The total adjusted bases and the fair market value of the assets to be transferred to Controlled by Distributing each equals or exceeds the sum of the liabilities assumed by Controlled plus any liabilities to which the transferred assets are subject.
- (i) The liabilities assumed in the transaction and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.
- (j) Distributing neither accumulated its receivables nor made extraordinary

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payment of its payables in anticipation of the proposed transaction.

- (k) Except as described in the immediately following sentence, no intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the distribution of the Controlled stock. In order to fund the initial cash needs of Controlled, an entity, all of the interests of which are owned directly and indirectly by Distributing, will extend a short-term loan of less than 6 months to Controlled at a rate of interest not to exceed an arm's length rate. Such debt owed by Controlled to the entity after the distribution of the Controlled stock will not constitute stock or securities of Controlled.
- (l) Immediately before the distribution, items of income, gain, loss, deduction and credit will be taken into account as required by the applicable intercompany transaction regulations. Further, Distributing's excess loss account with respect to the Controlled stock, if any, will be included in income immediately before the distribution.
- (m) Payments made in connection with all continuing transactions, if any, between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (n) No two parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (o) Although there have been, and likely will continue to be, changes in the ownership of the stock of Foreign Parent that will be disregarded pursuant to section 355(e)(2)(C), the distribution 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% or more of the combined voting power of all classes of stock entitled to vote of either Distributing or Controlled, or stock possessing 50% or more of the total value of all classes of stock of either Distributing or Controlled.
- (p) In each of the Internal Restructuring Transactions, no gain or loss was recognized for U.S. federal income tax purposes.
- (q) There is no present plan or intention to issue or transfer shares of Controlled Foreign Subsidiary in any way which would reduce Foreign Parent's ownership of the stock of Controlled Foreign Subsidiary to less than 80% of the total voting power and value of the total outstanding stock of Controlled Foreign Subsidiary.
- (r) Neither Distributing nor Controlled has at any time been or will at any time

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be a United States real property holding corporation, as defined in § 897(c)(2) of the Code.

- (s) Controlled Foreign Subsidiary is a z which is a per se corporation for federal income tax purposes.

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

- (1) The transfer by Distributing to Controlled of the Business B assets, solely in exchange for all of the issued and outstanding stock of Controlled and the assumption by Controlled of the liabilities associated with Business B, followed by the distribution of all of the Controlled stock to Foreign Parent will be a reorganization within the meaning of section 368(a)(1)(D) of the Code. Distributing and Controlled will each be “a party to the reorganization” within the meaning of section 368(b).
- (2) No gain or loss will be recognized by Distributing upon the transfer of the assets to Controlled in exchange for the stock of Controlled and the assumption by Controlled of the liabilities associated with the transferred assets (sections 361(a) and 357(a)).
- (3) No gain or loss will be recognized by Controlled upon the receipt of Distributing assets in exchange for the Controlled stock (section 1032(a)).
- (4) The basis of the assets received by Controlled in the transaction will be the same as the basis of such assets in the hands of Distributing immediately prior to their transfer to Controlled (section 362(b)).
- (5) The holding period of the Distributing assets received by Controlled in the transaction will include the period during which such assets were held by Distributing (section 1223(2)).
- (6) No gain or loss will be recognized by (and no amount will be included in the income of) Foreign Parent upon the receipt of the Controlled stock (section 355(a)(1)).
- (7) No gain or loss will be recognized to (and no amount will be included in the income of) Distributing upon the distribution of the Controlled stock to Foreign Parent (sections 361(c); 355(d); and 355(e)(2)(C)).
- (8) The aggregate basis of the Distributing stock and the Controlled stock in the hands of Foreign Parent immediately after the distribution to Foreign Parent will be the same as the basis of the Distributing stock in the hands of Foreign Parent immediately prior to the distribution (section 358(a)(1) and section 1.358-1(a)). Such aggregate basis will be allocated between

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the Distributing stock and the Controlled stock in proportion to the relative fair market value of each corporation's stock in accordance with section 1.358-2(a)(2) of the Income Tax Regulations (section 358(b)).

- (9) The holding period of the Controlled stock received by Foreign Parent will include the holding period of the Distributing stock held by Foreign Parent with respect to which the distribution will be made, provided that the Distributing stock is held as a capital asset on the date of the distribution (section 1223(1)).
- (10) As provided in section 312(h), proper allocation of earnings and profits between Distributing and Controlled will be made under sections 1.312-10(a) and 1.1502-33 of the Income Tax Regulations.

No opinion is expressed or implied 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. No opinion is expressed about the tax effect of any subsequent distribution of assets by Distributing. In addition, no opinion is expressed about:

- (i) the tax treatment of the Internal Restructuring Transactions which occurred prior to the proposed transaction;
- (ii) the tax treatment of the proposed distribution by Distributing to Foreign Parent under section 367; and
- (iii) the tax treatment of the proposed transfer by Foreign Parent of all of the stock of Controlled to Controlled Foreign Subsidiary in exchange for shares of voting common stock of Controlled Foreign Subsidiary.

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

A copy of this letter should be attached to the federal income tax return(s) of the taxpayer(s) involved for the taxable year in which the transaction covered by this ruling letter is consummated.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

Sincerely,
Associate Chief Counsel (Corporate)
by Lewis K Brickates
Assistant to the Branch Chief, Branch 2