

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:CORP:1-PLR-108563-00
Date:
October 26, 2000

LEGEND:

Foreign Parent =

Parent =

Distributing =

Controlled 1 =

Controlled 2 =

Business =

State X =

State Y =

Country A =

Country B =

Country C =

Bank A =

Bank B =

Holding =

Dear:

We respond to your letter dated April 13, 2000, in which you requested rulings on behalf of Distributing regarding the federal income tax consequences of certain transactions. You submitted additional information in letters dated July 10 and October

13, 2000. The relevant information is summarized below.

Foreign Parent is a Country A corporation that is the parent of an affiliated group that comprises both domestic and foreign corporations (“Affiliated Group”). Foreign Parent wholly owns Parent, a State X holding company that wholly owns Distributing. Distributing is a State X corporation that operates in State Y. Distributing uses the accrual method of accounting and maintains its books and records on a calendar year basis.

Distributing wholly owns Controlled 1 and Controlled 2. Controlled 1 is a Country B corporation that uses the accrual method of accounting and maintains its books and records on a calendar year basis. Controlled 2 is a Country C corporation that uses the accrual method of accounting and maintains its books and records on a calendar year basis. Distributing, Controlled 1, and Controlled 2 engage in Business.

The taxpayer has submitted financial information indicating that Distributing and Controlled each have had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

The taxpayer has provided information showing that Distributing and Affiliated Group can significantly reduce their State Y and Country A taxes, respectively, if Parent directly owns Controlled 1 and Controlled 2. The projected cost savings exceed one percent of the base period net income of Affiliated Group. To obtain these cost savings, Distributing will distribute the stock of Controlled 1 and Controlled 2 to Parent (the “Spin-offs”).

Foreign Parent plans to consolidate its operations with those of unrelated Bank A and Bank B under to be formed Holding. The plan of consolidation contemplates restructuring of the operations of Foreign Parent, Bank A, and Bank B. The parties have considered the possibility of merging a US subsidiary of Bank A into Distributing, but have developed no specific plans in this regard. The taxpayer has represented that the Spin-offs are independent of any restructuring contemplated in relation to the consolidation of Foreign Parent, Bank A, and Bank B, and is being done for business reasons unrelated to any restructuring.

The taxpayer has made the following representations with respect to the proposed Spin-offs:

- (a) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a Distributing shareholder.
- (b) The five years of financial information submitted on behalf of Distributing, Controlled 1 and Controlled 2 is representative of each corporation's present

operations, and there will be no substantial operational changes since the date of the last financial statements submitted.

- (c) Following the Spin-offs, Distributing, Controlled 1 and Controlled 2 will each continue the active conduct of its business, independently and with their separate employees, but will continue their current service relationships.
- (d) The Spin-offs will be carried out entirely for the purpose of producing significant cost savings for the Affiliated Group through the reduction in State Y and Country A taxes. The distribution of Controlled 1 and Controlled 2 is motivated, in whole or substantial part, by this corporate business purpose.
- (e) No intercorporate debt will exist between Distributing and either Controlled 1 or Controlled 2 at the time of, or subsequent to, the distribution of the Controlled 1 and Controlled 2 stock. The indebtedness, if any owed by Controlled 1 or Controlled 2 to Distributing after the spin-offs will not constitute stock or securities.
- (f) There is no plan or intention by Parent to sell, exchange, transfer by gift, or otherwise dispose of any stock in either Distributing, Controlled 1, or Controlled 2 after the Distribution, except for any stock issuance of Distributing in connection with a possible merger of a US subsidiary of Bank A into Distributing.
- (g) At the time of the Spin-offs, there will be no plan or intention by Distributing, Controlled 1, or Controlled 2, directly or through any subsidiary corporation, to purchase any stock of Distributing, Controlled 1, or Controlled 2 after the Spin-offs, other than through stock purchases meeting the requirements of section 4.05(1)(b) of Rev. Proc. 96-30.
- (h) At the time of the Spin-offs, there will be no plan or intention to liquidate Distributing, Controlled 1, or Controlled 2, to merge Distributing, Controlled 1, or Controlled 2 with any other corporation, or to sell or otherwise dispose of the assets of Distributing, Controlled 1, or Controlled 2 after the Spin-offs, except in the ordinary course of business and except for a possible merger of a US subsidiary of Bank A into Distributing.
- (i) Immediately after the Spin-offs, no person will hold directly or indirectly disqualified stock, within the meaning of section 355(d) of the Code, in Distributing, Controlled 1, or Controlled 2 that constitutes a 50% or greater interest in Distributing, Controlled 1, or Controlled 2.
- (j) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.

- (k) No two parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (l) Distributing, Controlled 1, and Controlled 2 will each pay their own expenses, if any, incurred in connection with the Spin-offs.
- (m) The Spin-offs are not part of a plan or series of related transactions (within the meaning of section 355(e)) pursuant to which one or more persons will acquire directly or indirectly stock possessing 50% or more of the total combined voting power of all classes of stock of Distributing, Controlled 1, or Controlled 2 or stock possessing 50% or more of the total value of all classes of stock of Distributing, Controlled 1, or Controlled 2.
- (n) 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 1 and Controlled 2 stock, if applicable, will be included in income immediately before the distribution.
- (o) Payments made in connection with all continuing transactions, if any, between Distributing, Controlled 1, and Controlled 2 will be for fair market value based on terms and conditions arrived at by the parties at arm's length.
- (p) Controlled 1 and Controlled 2 are controlled foreign corporations, within the meaning of § 957(a), at all times during the five-year period immediately preceding the date of the distribution, and each will remain a controlled foreign corporation immediately thereafter.
- (q) With respect to Controlled 1 and Controlled 2, Distributing was a United States shareholder on the date immediately preceding the distribution.

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

- (1) Distributing will recognize no gain or loss upon the distribution of common stock of Controlled 1 or Controlled 2 to Parent. (Section 355(c)(1)).
- (2) No gain or loss will be recognized by, and no amount will be included in the income of, Parent upon the receipt of the common stock of Controlled 1 or Controlled 2. (Section 355(a)(1)).
- (3) The basis of the stock of each of Controlled 1 and Controlled 2 in the hands of Parent shall be the lesser of the adjusted basis of the respective stock in the hands of Distributing or the substituted basis allocated to the stock of Controlled 1 and Controlled 2, respectively, in accordance with § 1.358-2(a)(2). (Section

1248(f)(2); Notice 87-64, 1987-2 C.B. 375).

- (4) The holding period for the stock of each of Controlled 1 and Controlled 2 received by Parent will be the greater of the holding period of such stock in the hands of Distributing or the holding period of the stock of Distributing in the hands of Parent. (Section 1248(f)(2); Notice 87-64, 1987-2 C.B. 375).
- (5) Section 1248(f)(1) will not be applicable to the distribution by Distributing of the stock of Controlled 1 and Controlled 2 to Parent. (Section 1248(f)(2); Notice 87-64, 1987-2 C.B. 375).
- (6) If Parent does not recognize any gain under §124 by virtue of § 1248(f)(2), the earnings and profits of each of Controlled 1 and Controlled 2, respectively, to the extent attributable to such stock under § 1.1248-2 or § 1.1248-3 (whichever is applicable), which were accumulated in taxable years of such foreign corporations beginning after December 31, 1962, and during the periods that each of Controlled 1 and Controlled 2 was a controlled foreign corporation, shall be attributable to such stock. (§ 1.1248-1(a)(1)).
- (7) As provided in section 312(h), proper allocation of earnings and profits between Distributing and Controlled 1 and Controlled 2 will be made under § 1.312-10(a).

The rulings contained in this letter are predicated upon information 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 material 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.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express no opinion regarding the following:

- (1) The federal tax consequences of a possible merger of a US subsidiary of Bank A into Distributing.
- (2) The applicability of any transfer pricing issues under section 482 in connection with continuing transactions, or other transactions contemplated in the ruling request.
- (3) Whether any or all of the above-referenced foreign corporations are passive foreign investment companies (within the meaning of section 1297(a) of the Code 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 with respect to the application of sections 1291 through 1298 to the proposed transactions. In particular, in a transaction in

which gain is not otherwise recognized, regulations under section 1291(f) may require gain recognition notwithstanding any other provision of the Code.

This ruling 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 must be attached to any income tax return to which it is relevant. 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: Mark S. Jennings
Acting Chief, Branch 1