

Internal Revenue Service

Department of the Treasury

Index Number: 0301.00-00, 0355.00-00,
0355.01-00, 0368.04-00

Washington, DC 20224

Number: **200029037**
Release Date: 7/21/2000

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:CORP:4 PLR-106664-99
Date:
August 3, 1999

Distributing =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Controlled =

Controlled Sub 1 =

Controlled Sub 2 =

Financial Advisor 1 =

Financial Advisor 2 =

A =

B =

Business C =

Business D =

Country E =

a =
b =
c =
d =

This letter responds to your March 31, 1999 request for rulings on certain federal income tax consequences of a proposed transaction.

Summary of Facts

Distributing is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Distributing has outstanding one class of common stock ("Distributing Common Stock"), which is widely held and publicly traded. A, an individual who owns Distributing Common Stock directly and through one or more domestic grantor trusts (of which A is both the grantor and a trustee), and B, a tax-exempt organization described in § 501(c)(3) of the Internal Revenue Code, are the only shareholders owning five percent or more of the Distributing Common Stock.

Distributing wholly owns domestic Sub 1, which wholly owns foreign subsidiaries Sub 2, Sub 3, Sub 4, and Sub 5. Distributing and Sub 1 each is engaged, directly and through its direct and indirect subsidiaries, in Business C and Business D.

We have received financial information indicating that: (i) Business C and Business D, as directly conducted by Distributing, each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years; and (ii) Business C and Business D, as directly and indirectly conducted by Sub 1, each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Proposed Transactions

To separate Business D from Business C for the business reasons described below, Distributing intends to undertake the following transactions:

(i) Distributing will restructure its foreign operations in a series of taxable and nontaxable transactions designed to separate the Business D assets from Business C (the "Restructuring").

(ii) As part of the Restructuring, Sub 2 will transfer its Business D assets to a newly formed Country E subsidiary ("Controlled Sub 2"), and will distribute all of the

stock of Controlled Sub 2 to Sub 1 in a transaction intended to qualify as a reorganization under §§ 355 and 368(a)(1)(D) (the "Restructuring Spin-off").

(iii) Sub 1 will contribute all of its Business D assets, including all of the stock of Controlled Sub 2, to newly formed domestic Controlled Sub 1 in exchange for Controlled Sub 1 stock and the assumption by Controlled Sub 1 of related liabilities ("Contribution 1").

(iv) Sub 1 will distribute all of the stock of Controlled Sub 1 to Distributing ("Distribution 1").

(v) Distributing will contribute all of its Business D assets, including all of the stock of Controlled Sub 1, to a newly formed domestic Controlled in exchange for Controlled stock ("Controlled Common Stock") and the assumption by Controlled of related liabilities ("Contribution 2").

(vi) Controlled will conduct an initial public offering (the "IPO") in which it will issue an amount of Controlled Common Stock representing less than a percent of the voting power and value of all Controlled Common Stock outstanding after the IPO.

(vii) In connection with Contribution 2, Controlled will make a distribution of approximately \$b of cash to Distributing (the "Cash Payment"). Distributing will segregate the proceeds of the Cash Payment for payment to its creditors or Distributing shareholders within one year after receipt of the Cash Payment.

(viii) Distributing will distribute all of its remaining Controlled Common Stock to its shareholders ("Distribution 2"). A distribution agent will aggregate any fractional shares distributed, sell them on the market, and remit the proceeds to the distributees who would have received the fractional shares.

In detailed and reasoned letters, each of Financial Advisor 1 and Financial Advisor 2 has concluded that an offering following an announced intention to separate Business D from the Distributing group will permit Controlled to issue equity on materially enhanced terms. Further, the managements of Business C and Business D believe that such a separation will enhance the future success and efficiency of Business C and Business D by removing limitations and internal conflicts resulting from Distributing's ownership of Business D and by permitting the management of each business to focus exclusively on its business plan.

In all events, shares of Controlled Sub 1 stock representing control of Controlled Sub1 under § 368(c) will be distributed in Distribution 1, and shares of Controlled Common Stock representing control of Controlled under § 368(c) will be distributed in Distribution 2.

Distributing and Controlled (and their respective subsidiaries) have agreed to indemnify each other regarding certain securities law, tax, and other matters related to their respective businesses (the "Indemnification Payments"). In addition, Distributing and Controlled (and their respective subsidiaries) may, for a transitional period of not more than c years, (i) share the services of some employees for the performance of corporate services, (ii) supply products to one another for use in their retained businesses, (iii) share certain physical facilities, and (iv) license certain intellectual property rights to each other (collectively, the "Transitional Arrangements"). Certain intellectual property, generally technology rights, may be licensed on a permanent basis rather than just for the transitional period.

Representations

Distribution 1

The taxpayer has made the following representations regarding Distribution 1:

- (a) Any indebtedness owed by Controlled Sub 1 to Sub 1 after Distribution 1 will not constitute stock or securities.
- (b) No part of the consideration to be distributed by Sub 1 will be received by Distributing as a creditor, employee, or in any capacity other than that of a shareholder of Sub 1.
- (c) The five years of financial information submitted on behalf of Sub 1's Business C and Business D represents the present operations of each business, and with regard thereto, there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) Immediately after Distribution 1, at least 90 percent of the fair market value of the gross assets of Sub 1 will consist of the stock and securities of controlled corporations that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).
- (e) Immediately after Distribution 1, at least 90 percent of the fair market value of the gross assets of Controlled Sub 1 will consist of the stock and securities of controlled corporations that are engaged in the active conduct of a trade or business as defined in § 355(b)(2).
- (f) Immediately after Distribution 1, the gross assets of the trade or business directly conducted by each controlled corporation described in representations (d) and (e) (other than corporations substantially all the assets of which consist of stock and securities of one or more other controlled corporations directly conducting a trade or business) will have a fair market value of at least five percent of the total fair market value of each corporation's gross assets.

(g) Following Distribution 1, Sub 1 and Controlled Sub 1, directly and through controlled subsidiaries, will continue the active conduct of its business, independently and with its separate employees.

(h) Distribution 1 is being carried out for the corporate business purpose of making possible Distribution 2, the corporate business purposes for which are (i) to permit Controlled to issue equity on materially enhanced terms, and (ii) to enhance the future success and efficiency of Business C and Business D by removing limitations and internal conflicts resulting from Distributing's ownership of Business D and by permitting the management of each business to focus exclusively on its business plan. Distribution 1 is motivated, in whole or substantial part, by one or more of these corporate business purposes.

(i) Except for the contribution of Business D (including Controlled Sub 1) to Controlled by Distributing in Contribution 2, there is no plan or intention by Distributing to sell, exchange, transfer by gift, or otherwise dispose of any of its stock in, or securities of, either Sub 1 or Controlled Sub 1 after Distribution 1.

(j) There is no plan or intention by either Sub 1 or Controlled Sub 1, directly or through any subsidiary corporation, to purchase any of its outstanding stock after Distribution 1.

(k) There is no plan or intention to liquidate either Sub 1 or Controlled Sub 1, to merge either corporation with any corporation, or to sell or otherwise dispose of the assets of either corporation after Distribution 1, except in the ordinary course of business. However, existing or newly formed subsidiaries of Sub 1 or Controlled Sub 1 (or Sub 1 or Controlled Sub 1 themselves) may seek to acquire related businesses, and some of these acquisitions may be structured as mergers.

(l) The total adjusted bases and the fair market value of the assets transferred to Controlled Sub 1 by Sub 1 in Contribution 1 each equals or exceeds the sum of the liabilities assumed (within the meaning of § 357(d)) by Controlled Sub 1.

(m) The liabilities assumed (within the meaning of § 357(d)) in Contribution 1 were incurred in the ordinary course of business and are associated with the assets being transferred.

(n) The income tax liability for the taxable year in which any investment credit property (including any building to which § 47(d) applies) is transferred will be adjusted pursuant to § 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable), to reflect an early disposition of the property.

(o) Sub 1 uses, and Controlled Sub 1 will use, the accrual method of accounting.

(p) No intercorporate debt will exist between Sub 1 and Controlled Sub 1 at the time of, or subsequent to, Distribution 1, except for any indebtedness incurred in the ordinary course or pursuant to any Indemnification Payments or Transitional Arrangements.

(q) Immediately before Distribution 1, 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 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). Further, any excess loss account Sub 1 may have in Controlled Sub 1 stock will be included in income immediately before Distribution 1 (see §1.1502-19).

(r) Payments made in connection with any continuing transactions between Sub 1 and Controlled Sub 1 (or between controlled subsidiaries of each) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length, except for certain payments to be made under the Transitional Arrangements that will be based on cost or cost-plus terms or, in the case of leasing and licensing agreements, will be for nominal consideration or royalty-free.

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

(t) 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 stock of either Sub 1 or Controlled Sub 1 entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either Sub 1 or Controlled Sub 1.

Distribution 2

The taxpayer has made the following representations regarding Distribution 2:

(u) Any indebtedness owed by Controlled to Distributing after Distribution 2 will not constitute stock or securities.

(v) No part of the consideration to be distributed by Distributing will be received by a Distributing shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

(w) The five years of financial information submitted on behalf of Distributing's Business C and Business D represents the present operations of each business, and with regard thereto, there have been no substantial operational changes since the date of the last financial statements submitted.

(x) Immediately after Distribution 2, the gross assets of Business C directly conducted by Distributing, and the gross assets of Business D directly conducted by Controlled, will have a fair market value of at least five percent of the total fair market value of each corporation's respective gross assets.

(y) Following Distribution 2, Distributing and Controlled will each continue the active conduct of its business, independently and with its separate employees, except that the services of certain employees may be shared in the Transitional Arrangements.

(z) Distribution 2 is being carried out for the following corporate business purposes: (i) to permit Controlled to issue equity on materially enhanced terms, and (ii) to enhance the future success and efficiency of Business C and Business D by removing limitations and internal conflicts resulting from Distributing's ownership of Business D and by permitting the management of each business to focus exclusively on its business plan. Distribution 2 is motivated, in whole or substantial part, by one or more of these corporate business purposes.

(aa) There is no plan or intention by A, with respect to the shares that A owns or is deemed to own under the grantor trust rules of §§ 671 through 678, and the management of Distributing, to its best knowledge, is not aware of any plan or intention on the part of any particular remaining shareholder or security holder of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any stock in, or securities of, either Distributing or Controlled after Distribution 2, except for possible dispositions by A (or grantor trusts of which A is considered an owner) consisting of (i) gifts of Distributing or Controlled stock to charitable organizations, charitable trusts, or charitable split-interest trusts (the non-charitable beneficiary or beneficiaries of which are A or one or more family members (as defined in § 267(c)(4)) of A), (ii) gifts of Distributing or Controlled stock for estate planning purposes to one or more family members (as defined in § 267(c)(4)) of A or to entities if A or such family members are considered under the constructive ownership rules under § 267(c) to own the Distributing or Controlled stock owned by such entities, and (iii) simultaneous sales of Distributing and Controlled stock in amounts that represent equal proportions of the Distributing and Controlled stock owned, or considered owned under the grantor trust rules, by A immediately following Distribution 2, provided that, for purposes of this representation, all dispositions described in the foregoing clauses (i), (ii), and (iii) will not exceed in the aggregate the number of shares of stock of either Distributing or Controlled having a fair market value, immediately following Distribution 2, equal to d percent of the fair market value of all of such corporation's outstanding stock at such time.

(bb) 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 Distribution 2, other than through stock purchases meeting the requirements of § 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696, 705.

(cc) There is no plan or intention to liquidate either Distributing or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after Distribution 2, except for dispositions in the ordinary course of business. However, existing or newly formed subsidiaries of Distributing or Controlled (or Distributing or Controlled themselves) may seek to acquire related businesses, and some of these acquisitions may be structured as mergers.

(dd) The total adjusted bases and the fair market value of the assets transferred to Controlled by Distributing in Contribution 2 each equals or exceeds the sum of the liabilities assumed (within the meaning of § 357(d)) by Controlled plus the amount of the Cash Payment.

(ee) The liabilities assumed (within the meaning of § 357(d)) in Contribution 2 were incurred in the ordinary course of business and are associated with the assets being transferred.

(ff) The income tax liability for the taxable year in which any investment credit property (including any building to which § 47(d) applies) is transferred will be adjusted pursuant to § 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable), to reflect an early disposition of the property.

(gg) Distributing uses, and Controlled will use, the accrual method of accounting.

(hh) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, Distribution 2, except for any indebtedness incurred in the ordinary course or pursuant to any Indemnification Payments or Transitional Arrangements.

(ii) Immediately before Distribution 2, 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, 1995-2 C.B. 147, and as currently in effect; §1.1502-13 as published by T.D. 8597). Further, any excess loss account Distributing may have in Controlled stock will be included in income immediately before Distribution 2 (see §1.1502-19).

(jj) Payments made in connection with any continuing transactions between Distributing and Controlled (or between controlled subsidiaries of each) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length, except for certain payments to be made under the Transitional Arrangements that will be based on cost or cost-plus terms or, in the case of leasing and licensing agreements, will be for nominal consideration or royalty-free.

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

(ll) 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 stock of either Distributing or Controlled entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either Distributing or Controlled.

(mm) Distributing will complete Distribution 2 within nine months after the IPO or 12 months after the receipt of a ruling letter from the Internal Revenue Service, whichever is earlier.

(nn) Cash will be distributed in lieu of fractional shares. The cash will be provided through a sale by a distribution agent of aggregated fractional shares of Controlled Common Stock. The sale of fractional shares is merely a method of rounding off fractional share interests, and is undertaken solely for the purpose of avoiding the expense and inconvenience of issuing and transferring fractional shares and does not represent separately bargained for consideration. The method used for handling fractional share interests is intended to limit the amount of cash received by any one shareholder to less than the value of one full share of Controlled Common Stock.

International

(oo) Each of Sub 2 and Controlled Sub 2 will be a corporation, within the meaning of § 7701(a)(3), at all times before and immediately after the Restructuring Spin-off.

(pp) Each of Sub 2 and Controlled Sub 2 will be a controlled foreign corporation, within the meaning of § 957(a), before and immediately after the Restructuring Spin-off.

(qq) Neither Sub 2 nor Controlled Sub 2 has been or will be a United States real property holding corporation ("USRPHC"), within the meaning of § 897(c)(2), at any time during the five-year period ending on the date of the Restructuring Spin-off, and neither Sub 2 nor Controlled Sub 2 will be a USRPHC immediately thereafter.

(rr) With respect to each of Sub 2 and Controlled Sub 2, Sub 1 will be a United States shareholder, within the meaning of § 7.367(b)-2(b) of the Temporary Regulations, immediately before and after the Restructuring Spin-off.

(ss) Neither Sub 2 nor Controlled Sub 2 is, or will be, a passive foreign investment corporation, within the meaning of §1297(a), immediately before or after the Restructuring Spin-off.

(tt) All of the outstanding Controlled Sub 2 stock will be distributed by Sub 2 to Sub1 in the Restructuring Spin-off.

(uu) Neither Sub 1 nor Controlled Sub 1 has been or will be a United States real property holding corporation, within the meaning of § 897(c)(2), at any time during the five-year period ending on the date of Distribution 1, and neither Sub 1 nor Controlled Sub1 will be a USRPHC immediately after Distribution 1.

(vv) At no time during the five-year period ending on the date of Distribution 1 (nor at the moment immediately after Distribution 1) will any non-resident alien individual or foreign corporation hold any of the stock of Sub 1 or Controlled Sub 1.

(ww) Immediately prior to Distribution 1, Sub 1 will own all of the issued and outstanding shares of Controlled Sub 1's common stock.

(xx) Neither Distributing nor Controlled has been or will be a United States real property holding corporation, as defined in § 897(c)(2), at any time during the five-year period ending on the date of Distribution 2, and neither Distributing nor Controlled will be a USRPHC immediately after Distribution 2.

(yy) A is not the grantor of a foreign trust, within the meaning of § 679, that owns Distributing Common Stock.

(zz) Based on public filings, no person who is not a qualified U.S. person, within the meaning of § 1.367(e)-1T(b)(1)(i), currently owns five percent or more of the Distributing Common Stock.

(aaa) Controlled Common Stock with a value of more than 80 percent of the outstanding stock of Controlled will be distributed by Distributing in Distribution 2 pro rata with respect to Distributing Common Stock, which is regularly traded on an established securities market, within the meaning of § 1.367(e)-1T(c)(2)(i)(A), located in the United States.

(bbb) In connection with the transactions contemplated in the ruling request, neither Distributing nor its domestic subsidiaries contemplate that they will transfer, directly or indirectly, any intangible property to a foreign corporation in an exchange described in § 367(d).

(ccc) In connection with the transactions contemplated in the ruling request, it is not contemplated that there will be any outbound transfers of property by Distributing or Controlled to foreign subsidiaries, within the meaning of § 367(a). Controlled may license certain property rights to one or more of its foreign subsidiaries, but any such license(s) will be entered into for fair market value consideration based on terms and conditions that are contemplated by the parties to be consistent with standards for § 482.

(ddd) In connection with the transactions contemplated in the ruling request, it is not

contemplated that there will be any outbound transfers of property to a foreign partnership that would be subject to the reporting requirements of § 6038B.

Rulings

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

Distribution 1

- (1) Contribution 1 followed by Distribution 1 will be a reorganization under § 368(a)(1)(D) (see § 368(a)(2)(H)(ii); Rev. Rul. 98-44, 1998-37 I.R.B. 4). Sub 1 and Controlled Sub 1 each will be "a party to a reorganization" under § 368(b).
- (2) No gain or loss will be recognized by Sub 1 on Contribution 1 (§§ 361(a) and 357(a)).
- (3) No gain or loss will be recognized by Controlled Sub 1 on Contribution 1 (§1032(a)).
- (4) The basis of each asset received by Controlled Sub 1 in Contribution 1 will equal the basis of that asset in the hands of Sub 1 immediately before its transfer (§362(b)).
- (5) The holding period of each asset received by Controlled Sub 1 in Contribution 1 will include the period during which Sub 1 held that asset (§1223(2)).
- (6) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing on Distribution 1 (§ 355(a)(1); see Rev. Rul. 62-138, 1962-2 C.B. 95; Rev. Rul. 98-27, 1998-22 I.R.B. 4; Rev. Rul. 98-44).
- (7) No gain or loss will be recognized by Sub 1 on Distribution 1 (§361(c)).
- (8) The holding period of the Controlled Sub 1 stock received by Distributing in Distribution 1 will include the holding period of the Sub 1 stock on which Distribution 1 will be made, provided the Sub 1 stock is held as a capital asset on the date of Distribution 1 (§ 1223(1)).
- (9) The earnings and profits of Sub1 and Controlled Sub 1 will be allocated in accordance with §§ 312(h) and 1.312-10(a).

Distribution 2

- (10) Contribution 2 followed by Distribution 2 will be a reorganization under § 368(a)(1)(D). Distributing and Controlled each will be "a party to a reorganization" under § 368(b).

(11) No gain or loss will be recognized by Distributing on Contribution 2 and receipt of the Cash Payment, followed by the transfer of the proceeds of the Cash Payment to Distributing's creditors or shareholders or both (§§361(a), 361(b)(1)(A), 361(b)(3), and 357(a)).

(12) No gain or loss will be recognized by Controlled on Contribution 2 (§1032(a)).

(13) The basis of each asset received by Controlled in Contribution 2 will equal the basis of that asset in the hands of Distributing immediately before its transfer (§362(b)).

(14) The holding period of each asset received by Controlled in Contribution 2 will include the period during which Distributing held that asset (§1223(2)).

(15) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing's shareholders on Distribution 2 (§ 355(a)(1); see Rev. Rul. 62-138).

(16) No gain or loss will be recognized by Distributing on Distribution 2 (§361(c)).

(17) The aggregate basis of the Distributing Common Stock and Controlled Common Stock (including fractional shares in Controlled Common Stock to which Distributing shareholders may have been entitled if cash were not distributed in lieu thereof) in the hands of each Distributing shareholder after Distribution 2 will equal the aggregate basis of the Distributing Common Stock held by that shareholder immediately before Distribution 2, allocated between the Distributing Common Stock and Controlled Common Stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§§358(a)(1), (b), and (c)).

(18) The holding period of the Controlled Common Stock (including any fractional shares) received by each Distributing shareholder in Distribution 2 will include the holding period of the Distributing Common Stock on which Distribution 2 will be made, provided the Distributing Common Stock is held as a capital asset on the date of Distribution 2 (§ 1223(1)).

(19) The earnings and profits of Distributing and Controlled will be allocated in accordance with §§ 312(h) and 1.312-10(a).

(20) If a shareholder of Distributing receives cash as the result of an independent distribution agent sale of a fractional share of Controlled Common Stock, gain or loss will be recognized by the shareholder measured by the difference between the basis of the fractional share interest and the amount of cash received. If the fractional share interest is a capital asset in the hands of the shareholder, the gain or loss will be capital gain or loss subject to the provisions and limitations of Subchapter P of Chapter 1 (§§ 1221 and 1222).

International

(21) With respect to the Restructuring Spin-off, provided that: (i) the Restructuring Spin-off qualifies as a reorganization under §§ 355 and 368(a)(1)(D), and (ii) Sub 1 satisfies the requirements of §§ 1.367(b)-1(c)(1) and 7.367(b)-1(c)(2) and (d) of the Temporary Regulations, Sub 2's distribution of all of its Controlled Sub 2 stock to Sub 1 is a distribution to which § 7.367(b)-10(c) of the Temporary Regulations applies, and the requirements of § 7.367(b)-10 (d) through (j) must be satisfied.

(22) With respect to Contribution 1, the earnings and profits of Controlled Sub 2, 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 corporation beginning after December 31, 1962, during the period Sub 1 held stock in Controlled Sub 2 (or was considered as holding it by reason of the application of § 1223) while Controlled Sub 2 was a controlled foreign corporation shall be attributable to such stock held by Controlled Sub 1 (§ 1.1248-1(a)(1)).

(23) With respect to Distribution 2, provided that at the time of the distribution, (i) Distributing does not know or have reason to know that any shareholder of Distributing, who is not a qualified U.S. person (within the meaning of § 1.367(e)-1T(b)(1)), is a five-percent shareholder of Distributing (within the meaning of § 1.367(e)-1T(c)(2)(ii)), and (ii) Distributing satisfies the requirements of §§ 1.367(e)-1T(c)(2)(i) and 1.367(e)-1T(c)(2)(iii), we rule that no gain will be recognized by Distributing under § 367(e)(1), with respect to the distribution by Distributing of the Controlled Common Stock to Distributing's shareholders.

Caveats

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

- (a) The tax treatment of any transaction undertaken as part of the Restructuring described in step (i).
- (b) Whether the Restructuring Spin-Off described in step (ii) qualifies as a reorganization under §§ 355 and 368(a)(1)(D).
- (c) The tax treatment of the IPO described in step (vi).
- (d) The tax treatment of the Transitional Arrangements.
- (e) The tax treatment of the transfer of any intellectual property in Contribution 1

or Contribution 2 (see, e.g., Rev. Rul. 69-156, 1969-1 C.B. 101).

(f) Whether the classification claimed for any foreign entity included among the "per se" corporation list (under §§ 301.7701-2(b)(8)(i) and (v) relating to multilingual countries) during the relevant transactions was proper under the authority of § 301.7701-2(d).

(g) Whether any gain that may be recognized by any of the entities in connection with the Restructuring Spin-off, the reorganization of the lower-tier foreign subsidiaries, or any other proposed Restructuring transaction would result in dividend income or gain recognition and whether such dividend income or gain recognition, if any, would be treated as subpart F income.

(h) The applicability of any transfer pricing issues under § 482 in connection with the Transitional Arrangements and certain other transactions contemplated in the ruling request.

(i) Whether any or all of the foreign corporations involved in the transactions described herein (including the Restructuring) are passive foreign investment companies (within the meaning of § 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 investment companies, we express no opinion with respect to 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.

Temporary or final regulations pertaining to one or more issues addressed in this ruling letter (including regulations under §§ 358(g), 367(b), and 367(e)) have not yet been adopted. Therefore, this ruling letter may be revoked or modified, in whole or in part, on the issuance of temporary or final regulations (or a notice with respect to their future issuance). See § 12.04 of Rev. Proc. 99-1, 1999-1 I.R.B. 6, 47, which discusses the revocation or modification of ruling letters. However, when the criteria in § 12.05 of Rev. Proc. 99-1 are satisfied, a ruling will not be revoked or modified retroactively except in rare or unusual circumstances.

The rulings contained in this letter are based on the facts and representations submitted by the taxpayer and accompanied by penalties of perjury statements 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.

Procedural Statements

This ruling has no effect on any earlier document and is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter should be attached to the federal income tax return of each affected taxpayer 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, a copy of this letter is being sent to the taxpayer and to the second authorized representative.

Sincerely,
Assistant Chief Counsel (Corporate)
By: Robert T. Hawkes
Assistant to the Chief
Branch 4