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Person to Contact:

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Date:
July 12, 2000

Parent =

Holdings =

Distributing2 =

Distributing1 =

Controlled =

FSub1 =

FSub2 =

FSub3 =

FSub4 =

Business A =

Business B =

Business C =

Country X =

Country Y =

Country Z =

Date 1 =

PLR-119241-99

Date 2 =

Date 3 =

a =b =c =d =e =f =g =

Dear:

This is in reply to a letter dated December 7, 1999, in which rulings were requested as to the federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated February 7, March 16, April 7, April 10, June 2 and July 10, 2000. The information submitted for consideration is summarized below.

Parent is a domestic corporation whose stock is publicly traded. Parent joins with its includible affiliates in filing a consolidated U.S. federal income tax return. Parent owns all of the outstanding stock of Holdings, a domestic corporation.

Distributing2 was incorporated in Country X on Date 1, to hold and administer the Country X affiliates. Distributing2 is a corporation within the meaning of § 7701(a)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and a controlled foreign corporation (CFC) as defined in § 957. Distributing2 has outstanding a equity shares, all of which are owned by Holdings.

Distributing1 was incorporated in Country X on Date 2, and is a corporation within the meaning of § 7701(a)(3), and a CFC as defined in § 957. Distributing1 has outstanding b shares of voting common stock. Holdings and Distributing2 own c percent and d percent (greater than 80 percent), respectively, of the outstanding shares of Distributing1 stock. Distributing1 is engaged in Business A and Business B. Business B is operated by a branch of Distributing1 located in Country Y. On Date 3,

PLR-119241-99

Holdings contributed e million Euros and f million Euros, to Distributing2 and Distributing1, respectively. Immediately thereafter, Distributing2 contributed the e million Euros that it received from Holdings to Distributing1. The total g million Euros was contributed to Distributing1 to satisfy Country X regulatory capital requirements.

In order to effectuate the proposed transaction, described below, Controlled will be incorporated under the laws of Country Z. Controlled will be a corporation within the meaning of § 7701(a)(3), and a CFC as defined in § 957. The authorized capital of Controlled will consist of one class of voting common stock all of which will be owned by Distributing1 immediately before the First Distribution, described below.

Holdings owns all of the outstanding common stock of FSub1, a Country Z corporation. Parent owns all of the outstanding voting preferred stock of FSub1, which represents c percent (less than 20 percent) of the total combined voting power of FSub1 stock. The FSub1 stock owned by Holdings and Parent are the only classes of FSub1 stock outstanding.

FSub1 owns all of the outstanding stock of FSub2, a Country Z corporation.

FSub2 owns all of the common stock of FSub3, a Country Z corporation. FSub1 owns all of the outstanding voting preferred stock of FSub3, which represents c percent (less than 20 percent) of the total combined voting power of FSub3 stock. The FSub3 stock owned by FSub2 and FSub1 are the only classes of FSub3 stock outstanding.

Each of FSub1, FSub2 and FSub3 is a corporation within the meaning of § 7701(a)(3), and a CFC as defined in § 957.

FSub3 owns all of the outstanding equity interest of FSub4, a Country Z corporation. Pursuant to an election under Treas. Reg. § 301.7701-3, FSub4 is disregarded as an entity separate from its owner for U.S. tax purposes. FSub4 is engaged in Business C.

The proposed transaction will allow for the expansion of Business B operations while removing significant Country X regulatory burdens on Business B. Moreover, under Country Y law, Business B is unable to provide certain enhanced services while operating as a division of Distributing1. After the transfer of Business B to Controlled, as described below, Country Y law will not prevent Controlled from expanding services for its customers.

In addition, Distributing1, including Business B operated by Distributing1, is currently subject to substantial regulation in Country X. Such regulations require compliance with Country X rules and regulations that include a host of reporting requirements. As a subsidiary of a Country X entity, Controlled would continue to be subject to the regulatory oversight of the Country X regulatory authorities. The

PLR-119241-99

proposed transaction described below will entirely eliminate any Country X regulatory reporting requirements with respect to Controlled (and Business B).

The following transactions are proposed for the reasons set forth above:

- (1) Distributing1 will form Controlled in Country Z by contributing the assets and liabilities associated with Business B (the branch operation located in Country Y) to Controlled in exchange for all of the stock of Controlled. Hereinafter, Distributing1's transfer of the Business B assets to Controlled is sometimes referred to as the "Asset Transfer."
- (2) Distributing1 will distribute (the "First Distribution") all of the Controlled stock pro rata to its shareholders, Holdings and Distributing2.
- (3) Distributing2 will distribute (the "Second Distribution") all of the Controlled stock that Distributing2 receives in the First Distribution to its shareholder, Holdings.
- (4) Holdings will contribute ("Contribution1") all of the outstanding stock of Controlled to FSub1 solely in exchange for additional shares of FSub1 common stock.
- (5) FSub1 will contribute ("Contribution2") all of the outstanding stock of Controlled received in Contribution1 to FSub2 solely in exchange for additional shares of FSub2 common stock.
- (6) FSub2 will contribute ("Contribution3") all of the outstanding stock of Controlled received in Contribution2 to FSub3 solely in exchange for additional shares of FSub3 common stock.
- (7) FSub3 will contribute ("Contribution4") all of the equity interest of FSub4 (a disregarded entity under Treas. Reg. § 301.7701-3) to Controlled solely in exchange for additional shares of Controlled common stock following Contribution3.
- (8) Controlled will contribute the assets and liabilities associated with Business B to FSub4.

Financial information has been received which indicates that Distributing1 has gross receipts and operating expenses in each of Business A and Business B representative of the active conduct of a trade or business for each of the past five years.

PLR-119241-99

The following representations are made with respect to the Asset Transfer and First Distribution:

- (a) The indebtedness, if any, owed by Controlled to Distributing1 after the First Distribution will not constitute stock or securities.
- (b) No part of the Controlled stock to be distributed by Distributing1 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing1.
- (c) The five years of financial information submitted on behalf of Distributing1 is representative of the business' present operations, and with regard to such corporation there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) The five years of financial information submitted on behalf of Controlled is representative of the business' present operation, and there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) Following the First Distribution, Distributing1 and Controlled will each continue the active conduct of its business, independently and with its separate employees.
- (f) The First Distribution is carried out for the corporate business purpose of expanding the operations of Business B and removing significant Country X regulatory burdens on the operation of Business B. The First Distribution is motivated, in whole or substantial part, by such corporate business purpose.
- (g) Except for the Second Distribution, Contribution1, Contribution2, and Contribution3, there is no plan or intention by the shareholders or security holders of Distributing1 to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in, or securities of, either Distributing1 or Controlled after the transaction.
- (h) There is no plan or intention by Distributing1 or Controlled, directly or through any subsidiary corporation, to purchase any stock of Distributing1 or Controlled after the transaction.
- (i) There will be no plan or intention to liquidate either Distributing1 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.

PLR-119241-99

- (j) The total adjusted bases and the fair market value of the assets transferred to Controlled by Distributing1 will each equal or exceed the sum of the liabilities assumed by Controlled plus any liabilities to which the transferred assets are subject.
- (k) The liabilities, if any, assumed in the transaction and the liabilities, if any, to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.
- (l) Distributing1 will neither accumulate its receivables nor make extraordinary payments of its payables in anticipation of the First Distribution.
- (m) Except for liabilities that might arise under the stock transfer agreements between Distributing1 and Distributing2, and Distributing1 and Holdings, no intercorporate debt will exist between Distributing1 and Controlled at the time of, or subsequent to, the First Distribution.
- (n) Payments made in connection with all continuing transactions, if any, between Distributing1 and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (o) No two parties to the First Distribution are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (p) The First 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 percent or more of the total combined voting power of all classes of stock of Distributing1 or Controlled or stock possessing 50 percent or more of the total value of all classes of stock of Distributing1 or Controlled.
- (q) Less than 50 percent of the total combined voting power of all classes of Distributing1 stock entitled to vote and less than 50 percent of the total value of shares of all classes of Distributing1 stock will have been acquired by purchase under § 355(d)(5) or (8) during the five-year period ending on the date of the First Distribution (determined after applying § 355(d)(6)).

The following representations are made with respect to the Second Distribution:

- (r) The indebtedness, if any, owed by Controlled to Distributing2 after the Second Distribution will not constitute stock or securities.

PLR-119241-99

- (s) No part of the Controlled stock to be distributed by Distributing2 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing2.
- (t) The five years of financial information submitted on behalf of Distributing2 is representative of the business' present operations, and with regard to such corporation there have been no substantial operational changes since the date of the last financial statements submitted.
- (u) The five years of financial information submitted on behalf of Controlled is representative of the business' present operation, and there have been no substantial operational changes since the date of the last financial statements submitted.
- (v) Immediately after the Second Distribution, at least 90 percent of the fair market value of the gross assets of Distributing2 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).
- (w) Following the Second Distribution, Distributing2 (through its ownership of Distributing1) and Controlled will each continue the active conduct of its business, independently and with its separate employees.
- (x) The Second Distribution is carried out for the corporate business purpose of expanding the operations of Business B and removing significant Country X regulatory burdens on the operation of Business B. The Second Distribution is motivated, in whole or substantial part, by such corporate business purpose.
- (y) Except for Contribution1, Contribution2 and Contribution3, there is no plan or intention by the shareholders or security holders of Distributing2 to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in, or securities of, either Distributing2 or Controlled after the transaction.
- (z) There will be no plan or intention by Distributing2 or Controlled, directly or through any subsidiary corporation, to purchase any stock of Distributing2 or Controlled after the distribution.
- (aa) There is no plan or intention to liquidate either Distributing2 or Controlled, to merge any of the corporations 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.
- (bb) Except for liabilities that might arise under the stock transfer agreement between Distributing2 and Holdings, no intercorporate debt will exist

PLR-119241-99

between Distributing2 and Controlled at the time of, or subsequent to, the Second Distribution.

- (cc) Payments made in connection with all continuing transactions, if any, between Distributing2 and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (dd) The Second 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 equity interests possessing 50 percent or more of the total combined voting power of all classes of equity interests of Distributing2 or Controlled or equity interests possessing 50 percent or more of the total value of all classes of equity interests of Distributing2 or Controlled.
- (ee) Less than 50 percent of the total combined voting power of all classes of Distributing2 stock entitled to vote and less than 50 percent of the total value of shares of all classes of Distributing2 stock will have been acquired by purchase under § 355(d)(5) or (8) during the five-year period ending on the date of the Second Distribution (determined after applying § 355(d)(6)).

The following representations are made with respect to Contribution1, Contribution2, Contribution3, and Contribution4:

- (ff) Holdings' contribution of all of the outstanding stock of Controlled to FSub1 solely in exchange for additional shares of FSub1 common stock will qualify as an exchange described in § 351(a).
- (gg) FSub1's contribution of all of the outstanding stock of Controlled to Fsub2 solely in exchange for additional shares of FSub2 common stock will qualify as an exchange described in § 351(a).
- (hh) FSub2's contribution of all of the outstanding stock of Controlled to FSub3 solely in exchange for additional shares of FSub3 common stock will qualify as an exchange described in § 351(a).
- (ii) FSub3's contribution of all of the equity interest of FSub4 (a disregarded entity under Treas. Reg. § 301.7701-3) to Controlled solely in exchange for additional shares of Controlled common stock will qualify as an exchange described in § 351(a).
- (jj) With respect to Contribution1, Contribution2, and Contribution3, Holdings

PLR-119241-99

will comply with the requirements of Treas. Reg. § 1.367(a)-3(b) and Treas. Reg. § 1.367(b)-4, including executing a five-year Gain Recognition Agreement in accordance with Treas. Reg. § 1.367(a)-8(a).

The following additional representations are made:

- (kk) The notice requirement of Treas. Reg. § 1.367(b)-1(c)(1) will be met for each of steps (1) through (7) of the proposed transaction, described above.
- (ll) Distributing1's transfer of Business B to Controlled in exchange for all the outstanding Controlled stock is not an exchange described in Treas. Reg. § 1.367(b)-4(b)(1)(i), -4(b)(2)(i), or -4(b)(3).
- (mm) Holdings' transfer of all of the outstanding stock of Controlled to FSub1 solely in exchange for additional shares of FSub1 common stock is not an exchange described in Treas. Reg. § 1.367(b)-4(b)(1)(i), -4(b)(2)(i), or -4(b)(3).
- (nn) FSub1's transfer of all of the outstanding stock of Controlled to FSub2 solely in exchange for additional shares of FSub2 common stock is not an exchange described in Treas. Reg. § 1.367(b)-4(b)(1)(i), -4(b)(2)(i), or -4(b)(3).
- (oo) FSub2's transfer of all of the outstanding stock of Controlled to FSub3 solely in exchange for additional shares of FSub3 common stock is not an exchange described in Treas. Reg. § 1.367(b)-4(b)(1)(i), -4(b)(2)(i), or -4(b)(3).
- (pp) FSub1, FSub2, and FSub3 are not passive foreign investment corporations within the meaning of § 1297.
- (qq) Distributing1, Distributing2, and Controlled are corporations within the meaning of § 7701(a)(3) and CFCs as defined in § 957.
- (rr) Controlled will be a CFC immediately before and after the First Distribution, and before and after the Second Distribution.
- (ss) FSub1, FSub2, and FSub3 are each a corporation within the meaning of § 7701(a)(3).
- (tt) Distributing1 will not have been a United States real property holding corporation as defined under § 897(c)(2) at any time during the 5-year period ending on the date of the First Distribution.

PLR-119241-99

- (uu) Neither Distributing1 nor Controlled will be a United State real property holding corporation immediately after the First Distribution.
- (vv) Distributing1, Distributing2, Controlled, FSub1, FSub2, FSub3, and FSub4 are not passive foreign investment corporations (as defined in § 1296(a)).
- (ww) With respect to Contribution1, Contribution2, Contribution3, and Contribution 4, Parent will comply with the requirements of § 1.367(a)-3(b) and § 1.367(b)-4, including executing a 5-year gain recognition agreement in accordance with § 1.367(a)-8(a).
- (xx) The notice requirements of § 1.367(b)-1(c)(1) will be met for each of the Asset Transfer, the First Distribution, the Second Distribution, Contribution1, Contribution2, Contribution3, and Contribution4.
- (yy) FSub3's transfer of the equity interest of FSub4 to Controlled in exchange for additional Controlled stock in Contribution4 is not an exchange described in § 1.367(b)-4(b)(1)(i), -4(b)(2)(i), or -4(b)(3).

Based solely on the information submitted and the representations set forth above, and provided that: (1) Distributing1, Distributing2, Controlled, FSub1, FSub2, and FSub3 are each a corporation within the meaning of § 7701(a)(3), and (2) the requirements of § 1.367(b)-1(c)(1) are met for the proposed transaction, as described above, we rule as follows:

- (1) The transfer by Distributing1 to Controlled of the assets associated with Business B in exchange for all of the outstanding stock of Controlled, plus the assumption by Controlled of liabilities associated with the transferred assets, will qualify as a reorganization under § 368(a)(1)(D) of the Code. Distributing1 and Controlled will each be "a party to a reorganization" within the meaning of § 368(b).
- (2) No gain or loss will be recognized by Distributing1 upon the transfer of the Business B assets to Controlled in exchange for Controlled stock and Controlled's assumption 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 receipt of the Business B assets in exchange for Controlled stock (Section 1032(a)).
- (4) The basis of each asset of Distributing1 received by Controlled will be the same as the basis of that asset in the hands of Distributing1 immediately before the Asset Transfer (Section 362(b)).

PLR-119241-99

- (5) The holding period of each asset of Distributing1 received by Controlled will include the period during which that asset was held by Distributing1 (Section 1223(2)).
- (6) No gain or loss will be recognized by Distributing1 upon the distribution of the Controlled stock to Distributing1's shareholders (Section 361(c)).
- (7) No gain or loss will be recognized by (and no amount will be included in the income of) the shareholders of Distributing1 upon the receipt of Controlled stock pursuant to the First Distribution, as described above (Section 355(a)).
- (8) The aggregate basis of the Distributing1 stock and the Controlled stock in the hands of each Distributing1 shareholder immediately after the First Distribution will be the same as the aggregate basis of the Distributing1 stock held by each shareholder immediately before the First Distribution, allocated between the Distributing1 stock and Controlled stock in proportion to the relative fair market value of each corporation in accordance with Treas. Reg. § 1.358-2(a)(2). (Sections 358(a)(1) and (b)).
- (9) Each Distributing1 shareholder's holding period of the Controlled stock received in the First Distribution will include such shareholder's holding period of the Distributing1 stock with respect to which the distribution will be made, provided that such shareholder holds the Distributing1 stock as a capital asset on the date of the First Distribution (Section 1223(1)).
- (10) No gain or loss will be recognized by Distributing2 upon the distribution of the Controlled stock to Holdings (Section 355(c)).
- (11) No gain or loss will be recognized by (and no amount will be included in the income of) Holdings upon its receipt of Controlled stock pursuant to the Second Distribution, as described above (Section 355(a)).
- (12) The aggregate basis of the Distributing2 equity interests and the Controlled stock in the hands of Holdings immediately after the distribution will be equal to Holdings' basis of its Distributing2 equity interests held immediately before the Second Distribution, allocated between the Distributing2 equity interests and Controlled stock in proportion to the relative fair market value of each corporation in accordance with Treas. Reg. § 1.358-2(a)(2). (Sections 358(a)(1) and 358(b)).
- (13) Holdings' holding period of the Controlled stock received in the Second Distribution will include such shareholder's holding period of the Distributing2 equity interests with respect to which the distribution will be made, provided that such shareholder holds the Distributing2 equity interests as a capital asset on the date of the Second Distribution (Section 1223(1)).

PLR-119241-99

- (14) Distributing1's transfer of Business B to Controlled in the Asset Transfer, as described above, is an exchange to which § 1.367(b)-1(c) and § 1.367(b)-4(a) apply.
- (15) No gain or loss will be recognized under § 367(b) on Distributing1's transfer of Business B to Controlled in the Asset Transfer, as described above. Treas. Reg. § 1.367(b)-4(b).
- (16) Distributing1's transfer of the Controlled stock in the First Distribution 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 Holdings' postdistribution amount with respect to Distributing1 or Controlled is less than Holdings' predistribution amount with respect to Distributing1 or Controlled, Holdings' basis in such stock immediately after the distribution must be reduced by the amount of the difference. However, Holdings' basis in such stock must not be reduced below zero, and to the extent the foregoing reduction would have reduced basis below zero, Holdings must instead include such amount in income as a deemed dividend from such corporation. Similarly, if Distributing2's postdistribution amount with respect to Distributing1 or Controlled is less than Distributing2's predistribution amount with respect to Distributing1 or Controlled, Distributing2's basis in such stock immediately after the distribution must be reduced by the amount of the difference. However, Distributing2's basis in such stock must not be reduced below zero, and to the extent the foregoing reduction would have reduced basis below zero, Distributing2 must instead include such amount in income as a deemed dividend from such corporation.
- (17) Distributing2's transfer of the Controlled stock in the Second Distribution 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 Holdings' postdistribution amount with respect to Distributing2 or Controlled is less than Holdings' predistribution amount with respect to Distributing2 or Controlled, Holdings' basis in such stock immediately after the distribution must be reduced by the amount of the difference. However, Holdings' basis in such stock must not be reduced below zero, and to the extent the foregoing reduction would have reduced basis below zero, Holdings must instead include such amount in income as a deemed dividend from such corporation.
- (18) Upon the filing of a 5-year gain recognition agreement by Parent pursuant to § 1.367(a)-8 with respect to Contribution1, Contribution2, and Contribution3, Holdings will recognize no gain or loss under § 367(a)(1) related to Contribution1, Contribution2, Contribution3, and Contribution4. Treas. Reg. § 1.367(a)-3(b)(1)(ii).

PLR-119241-99

- (19) Contribution1, Contribution2, Contribution3, and Contribution4 are exchanges to which § 1.367(b)-1(c) and § 1.367(b)-4(a) apply.
- (20) No gain or loss will be recognized under § 367(b) for the Contribution1, Contribution2, Contribution3, and Contribution4 exchanges. Treas. Reg. § 1.367(b)-4(b).
- (21) Contribution1, Contribution2, and Contribution3 will be treated as separate transactions for the purposes of satisfying the requirements of § 351. Rev. Rul. 77-449, 1977-2 C.B. 110, and Rev. Rul. 83-34, 1983-1 C.B. 79.

No opinion is expressed about the tax treatment of the transactions 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 transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed about the effectiveness of FSub4's election under § 301.7701-3 to be treated as a disregarded entity, or about the characterization of Controlled's contribution of the assets and liabilities of Business B to FSub4.

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 transaction.

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. No opinion is expressed about the application of § 987 (foreign branch earnings remittances) on the proposed transaction.

No opinion is expressed as to whether Contributions 1, 2, 3 and 4 each qualify as exchanges to which § 351(a) applies.

The rulings in this letter are based on the 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.

This ruling letter is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that this letter may not be used or cited as precedent.

PLR-119241-99

A copy of this letter should be attached to the federal income tax of the taxpayers involved for the taxable year in which the transactions covered by this ruling letter are consummated.

Sincerely,

Associate Chief Counsel (Corporate)

By: _____

Lewis K Brickates
Assistant to Chief, Branch 2