Internal Revenue Service

Number: **200518044**
Release Date: 5/6/2005
Index Number: 884.12-50

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:INTL:B01
PLR-151004-04
Date:
January 21, 2005

TY: , , and

Legend

Taxpayer	=	
		EIN:
Parent Co	=	
		EIN:
Acquiring Co	=	
Acquiring Group	=	
Country A	=	
Country B	=	
Country C	=	
Business D	=	
Business E	=	
Number F	=	
Number G	=	
Number H	=	
i-percent	=	
j-percent	=	
Year 1	=	
Year 2	=	
Year 3	=	
Year 4	=	
Year 5	=	
Year 6	=	
Year 7	=	
Year 8	=	
Year 9	=	

Year 10	=
Year 11	=
Year 12	=
Year 13	=
Year 14	=
Year 15	=
Year 16	=
Year 17	=

Dear :

This is in response to your letter dated September 13, 2004, in which a ruling was requested under section 884 of the Internal Revenue Code that Taxpayer be treated as a qualified resident of Country A for its taxable years Year 15, Year 16, and Year 17. The information submitted for consideration is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination.

Taxpayer, a Country A corporation, is a wholly owned subsidiary of Parent Co, also a Country A corporation. Taxpayer currently owns interests in two U.S. real estate partnerships acquired prior to Year 5 (before the branch profits tax was enacted). Between Year 3 and Year 4, Taxpayer entered into these partnerships with U.S. entities. Taxpayer elected under section 882(d) to treat the real property income derived through the partnerships as income which is effectively connected with the conduct of a U.S. trade or business.

In Year 15, Parent Co was acquired by Acquiring Co, a Country B corporation. Acquiring Co is owned by members of Acquiring Group, which is privately held and owned by individuals resident in Country C. Following the Year 15 acquisition of Taxpayer by Acquiring, Taxpayer was no longer to meet any of the requirements in Treas. Reg. § 1.884-5(a)(1), (2), or (3) for qualified resident status.

In a letter dated September 21, 1990, we held that Taxpayer would be treated as a qualified resident of Country A within the meaning of section 884(e)(4) and Temp. Treas. Reg. § 1.884-5T for its taxable years Year 7, Year 8, and Year 9. Then, in a letter dated January 18, 1991, we held that Taxpayer would be treated as a qualified resident of Country A within the meaning of section 884(e)(4) and Temp. Treas. Reg. § 1.884-5T for its taxable years Year 10, Year 11, and Year 12. Taxpayer represents that Parent Co met the publicly-traded corporation test of Treas. Reg. § 1.884-5(d) and that Taxpayer was thus a qualified resident of Country A for its taxable years Year 13 through Year 14 based on Parent Co's status as a publicly-traded corporation in those years.

Under section 884, for taxable years beginning on or after January 1, 1987, a foreign corporation that is engaged in a trade or business in the United States, or that has income treated as effectively connected with the conduct of a trade or business in the United States, is generally subject to the branch profits tax. The branch profits tax is imposed on the foreign corporation's section 884(b) "dividend equivalent amount" at the rate of 30%, except as reduced by treaty.

In general, the provisions of an income tax treaty between the United States and a foreign corporation's country of residence will not apply to exempt the foreign corporation from the branch profits tax, or reduce the rate of the branch profits tax, unless the foreign corporation meets the requirements, if any, of the limitation on benefits article in such treaty with respect to the dividend equivalent amount and either (1) the foreign corporation is a "qualified resident" of such country or (2) the limitation on benefits article entered into force after December 31, 1986. See I.R.C. § 884(e), Treas. Reg. § 1.884-1(g)(1). Treas. Reg. § 1.884-1(g)(3) provides that the branch profits tax will not be imposed on the portion of the dividend equivalent amount with respect to which a Country A corporation satisfies the requirements of Treas. Reg. § 1.884-1(g)(1) and (2), so long as the United States-Country A income tax treaty (the "Treaty") remains in effect.

The term "qualified resident" is defined by section 884(e)(4) and Treas. Reg. § 1.884-5(a). In general, a foreign corporation is a qualified resident of a treaty country if it is a resident of that country (within the meaning of such treaty) and it meets the requirements of one of the following four tests:

(1) The stock ownership and base erosion tests of Treas. Reg. § 1.884-5(b) and (c);

(2) The publicly-traded corporation test of Treas. Reg. § 1.884-5(d);

(3) The active trade or business test of Treas. Reg. § 1.884-5(e); or

(4) The corporation obtains a ruling as provided in Treas. Reg. § 1.884-5(f) that it will be treated as a qualified resident of its country of residence.

Under Treas. Reg. § 1.884-5(f)(1), the Commissioner, in his or her sole discretion, may rule that a foreign corporation is a qualified resident of its country of residence if the Commissioner determines that individuals who are not residents of the foreign country of which the foreign corporation is a resident do not use the treaty between that country and the United States in a manner inconsistent with the purposes of section 884, which include (but are not limited to) the prevention of treaty shopping. Treas. Reg. § 1.884-5(f)(2) provides that in making the determination whether a foreign corporation will be treated as a qualified resident of its country of residence, the Commissioner may take into account factors including:

(i) The business reasons for establishing and maintaining the foreign corporation in the country of residence;

(ii) The date of incorporation of the foreign corporation in relation to the date that an income tax treaty between the United States and the foreign corporation's country of residence entered into force;

(iii) The continuity of the historical business and ownership of the foreign corporation;

(iv) The extent to which the foreign corporation meets the requirements of one or more of the tests described in paragraphs (b) through (e) of this section;

(v) The extent to which the U.S. trade or business is dependent on capital, assets, or personnel of the foreign trade or business;

(vi) The extent to which the foreign corporation receives special tax benefits in its country of residence.

(vii) Whether the foreign corporation is a member of an affiliated group (as defined in section 1504 without regard to section 1504(b)(2) or (3)), that has no members resident outside the country of residence of the foreign corporation; and

(viii) The extent to which the foreign corporation would be entitled to comparable treaty benefits with respect to all articles of an income tax treaty that would apply to that corporation if it had been incorporated in the country or countries of residence of the majority of its shareholders. For purposes of the preceding sentence, shareholders taken into account shall generally be limited to persons described in paragraph (b)(1)(i) of this section [relating to the stock ownership test] but for the fact that they are not residents of the foreign corporation's country of residence.

Taxpayer was originally incorporated in Year 1 in Country A, more than Number G years before the Treaty entered into force and more than Number H years before the branch profits tax was enacted. Taxpayer was engaged in the Business E business in Country A until it sold the business in Year 2. Upon the Year 2 sale of its business, Taxpayer retained some of the Country A real estate previously used in its business, and Taxpayer has been a real estate company since that date. None of Parent's non-Country A subsidiaries are real estate companies, and all of Parent's subsidiaries formed outside of Country A are exclusively involved in Parent's Business D business. Country A real estate represents virtually all (j-percent) of the (book) value of the real estate owned by Taxpayer. Taxpayer's U.S. real estate partnerships represent less than one percent of the Parent Group's total assets.

Taxpayer has been more than i-percent owned by Parent for more than Number F years and has been wholly owned by Parent since Year 6. Although Parent was acquired by Acquiring Group in Year 15, the acquisition does not appear to have had any effects on Taxpayer's business or Parent's ownership of Taxpayer.

Taxpayer's U.S. real estate partnerships continue to be operated by the U.S. partners, and only to the extent that capital needs are not met by the partnerships, Taxpayer must provide its proportionate share of the required capital from Country A.

Taxpayer represents that it does not receive special tax benefits in Country A. Under the Treaty, and pursuant to Taxpayer's section 882(d) election, Taxpayer represents that under Article of the Treaty, the income and losses from its U.S. real estate partnership interests (which include significant net operating losses that expired unused) are in effect subjected to tax only in the United States. Taxpayer represents that all of its other income, deductions, and credits are taken into account in computing the tax liability of Parent Group in Country A. According to Taxpayer, Acquiring Group's acquisition of Parent caused no change in Country A's taxation of Taxpayer's income.

No comparable treaty benefits would be available if Taxpayer were incorporated in the location of residence of its ultimate shareholders (Country C). The United States does not have an income tax treaty with Country C. Taxpayer represents, however, that Acquiring Group's acquisition of Parent Group was for business reasons wholly unrelated to Taxpayer's ownership of U.S. real estate partnership interests and the Treaty benefits potentially available with respect to income derived from such interests.

Based on the information submitted and the representations made, it is held that Taxpayer will be treated as a qualified resident of Country A within the meaning of section 884(e) and Treas. Reg. § 1.884-5. for its taxable years Year 15 and, assuming no change in material facts, Year 16 and Year 17.

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. In particular, no opinion is expressed concerning the application of the Treaty to Taxpayer or concerning the tax treatment of Taxpayer under any provision of the Code or regulations other than those set forth above.

This ruling is directed only to the taxpayer 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 Taxpayer.

Sincerely,

Elizabeth U. Karzon
Chief, Branch 1
Office of Associate Chief Counsel

(International)