Internal Revenue Service

Index Number: 877.01-00

Number: **199916038**
Release Date: 4/23/1999

Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
PLR-114625-97
Date:
January 26, 1999

A =

Country B =

Date C =

Country D =

Date E =

Company =

Date F =

Country G =

Date H =

Date I =

Dear

This is in response to your letter dated July 4, 1997, requesting a ruling under section 877(c) of the Internal Revenue Code of 1986 ("Code") that A's surrender of his U.S. Alien Registration Card (Green Card) did not have for one of its principal purposes the avoidance of U.S. taxes under subtitle A or subtitle B of the Code. Additional information was submitted in letters dated November 5, 6, 25 and December 15, 1997. The information submitted for consideration is substantially as set forth below.

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

A was born in Country B on Date C and had been a citizen of Country B until his death. His parents and his wife were also born in Country B. A was killed in Country D on Date E, while on consulting assignment for his former employer, the Company, a domestic corporation. Prior to his death, A was domiciled in Country B and was subject to Country B income taxes at a rate comparable to the applicable U.S. income tax base and rate.

A had retired from the Company on Date F. A's three children are all Country B citizens. Two of them reside in Country B and one resides with his wife and children in the United States.

A received his Green Card in 1975. A resided in the United States from 1975 to 1977 during which time he was employed by the Company at its headquarters in the United States. Previously, A had been employed by a Country B subsidiary of the Company, but subsequently was transferred to the Company's headquarters in the United States .

In 1977, A and his family relocated to Country G, where they resided for four years. Subsequently, A and his family returned to the United States in 1981 in connection with his employment. In 1986, A and his wife relocated to Country B where they remained until 1990, when the Company again asked them to return to the United States.

For more than 30 years prior to A's initial move to the United States he had his main residence and his tax home in Country B. Further, Country B had been A's tax home at all times when he was not residing in the United States or Country G and was his tax home for two years prior to his death. Despite frequent periods of time spent outside Country B, A always maintained a permanent home in Country B. All of the chattels owned by A's estate are physically located in Country B as are all of his personal records.

At least six months before A retired from the Company, he and his wife decided that they would return to Country B. In preparation for this they terminated the tenancy on their home in Country B and arranged for building works to be undertaken to their home. On Date H, A returned (expatriated for gift and estate tax purposes) to Country B with the intent to be domiciled there. On Date I, A formally surrendered his Green Card (expatriated for income tax purposes) at the U.S. Embassy in Country B.

A was not, after giving up his Green Card, a member of any clubs or of any professional organizations based in the United States. He was cremated in Country B.

On the date of A's expatriation, his net worth exceeded $500,000. However, the fair market value of his gross assets did not exceed $2,500,000. A's assets consist primarily of Country B real estate, U.S. marketable securities, and two deferred compensation plans (qualified and nonqualified). A's wife will be subject to Country B tax during her life on any income earned by A's assets at Country B tax rates that are comparable to the applicable U.S. income tax rate.

Prior to and following Date H, A made substantial intra-familial gifts to his wife. The gifts made prior to Date H were reported on A's U.S. gift tax returns. The gifts made subsequent to Date H qualified for the Country B marital deduction for Country B gift and estate tax purposes. Both the gifts made to A's wife and the assets transferred to her from A's estate will be includible in her estate and will be subject to Country B tax at rates that are comparable to the applicable U.S. rate

Section 877, as amended by the Health Insurance Portability and Accountability Act of 1996, generally provides that a U.S. citizen who loses citizenship or a long-term resident who ceases to be taxed as a resident of the United States within the 10-year period immediately preceding the close of the taxable year will be taxed on all of his or her U.S. source income (as modified by section 877(d)) for such taxable year, unless such loss or cessation did not have for one of its principal purposes the avoidance of U.S. taxes under subtitle A or subtitle B of the Code.

Section 2107(a)(1) generally provides that U.S. estate tax will be imposed on the transfer of the taxable estate of every nonresident decedent if the individual lost U.S. citizenship within the 10-year period ending on the date of death, unless such loss did not have for one of its principal purposes the avoidance of U.S. taxes.

Section 2501(a)(1) of the Code generally provides that a tax will be imposed for each calendar year on the transfer of property by gift during such year by any individual, resident or nonresident. Section 2501(a)(2) of the Code provides that section 2501(a)(1) will not apply to the transfer of intangible property made by a nonresident not a citizen of the United States. However, section 2501(a)(3)(A) of the Code provides that this exception does not apply in the case of a donor who, within the 10-year period ending with the date of a transfer, lost U.S. citizenship, unless such loss did not have

for one of its principal purposes the avoidance of U.S. taxes.

Section 877(e) of the Code generally provides that any long-term resident who ceases to be a lawful permanent resident of the United States or commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country shall be treated for purposes of this section and sections 2107, 2501 and 6039 [sic 6039G] in the same manner as if such resident were a citizen of the United States who lost United States citizenship on the date of such cessation or commencement.

For purposes of applying the foregoing provisions, a former citizen is considered to have lost U.S. citizenship with a principal purpose to avoid U.S. citizenship if either (i) the individual's average annual net U.S. income tax for the five taxable years prior to expatriation exceeded $100,000 (as modified by post-1996 cost-of-living adjustments); or (ii) the net worth of the individual on the date of expatriation was at least $500,000 (as modified by post-1996 cost-of-living adjustments). Section 877(a)(2) of the Code. See also sections 2107(a)(2)(A) and 2501(a)(3)(B) of the Code.

However, a former citizen will not be considered to have lost citizenship with a principal purpose to avoid U.S. taxes as a result of the individual's tax liability or net worth if he or she qualifies for an exception under section 877(c) of the Code. To qualify for an exception, a former citizen must be described in certain statutory categories and submit a ruling request for a determination by the Secretary as to whether the individual's expatriation had for one of its principal purposes the avoidance of U.S. taxes. Section 877(c)(1) of the Code. See also sections 2107(a)(2)(B) and 2501(a)(3)(C) of the Code.

Under Notice 97-19, 1997-1 C.B. 394, as modified by Notice 98-34, 1998-27 I.R.B. 30, a former long-term resident whose net worth or average tax liability exceeds the applicable thresholds will not be presumed to have a principal purpose of tax avoidance if that former resident is described within certain categories and submits a complete and good faith request for a ruling as to whether such loss had for one of its principal purposes the avoidance of U.S. taxes.

Notice 97-19, as modified by Notice 98-34, requires that certain information be submitted with a request for a ruling that an individual's expatriation did not have for one of its principal purposes the avoidance of U.S. taxes.

A is eligible to request a ruling pursuant to Notice 97-19, because he is described in two categories of individuals eligible to submit ruling requests prior to the issuance of Notice 98-34. First, on the date of A's expatriation, A was, and continued to be, until his death, a citizen and resident fully liable to income tax in Country B, the

country where A was born. Second, A was also eligible to submit a request because his parents were born in Country B.

All of the information required by Notice 97-19, as modified by Notice 98-34, was submitted including any additional information requested by the Service after review of the submission.

Accordingly, based solely on the information submitted and the representations made, it is held that A has made a complete and good faith submission in accordance with section 877(c)(1)(B) and Notice 97-19, as modified by Notice 98-34. It is further held that A will not be treated under section 877(a)(2) as having as one of his principal purposes for expatriating the avoidance of U.S. taxes because the information submitted clearly established the lack of a principal purpose to avoid taxes under subtitle A or B of the Code.

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 as to A's U.S. tax liability for the taxable years prior to expatriation or his United States tax liability for periods after his expatriation under sections of the Code other than sections 877, 2107, and 2501(a)(3).

A copy of this letter must be attached to any U.S. tax return filed on behalf of A or his estate for the year in which this ruling was obtained (whether or not a return is otherwise required to be filed).

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

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

Sincerely yours,

_____

Allen Goldstein
Reviewer
Office of Associate Chief Counsel
(International)