

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
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Date:
March 23, 1999

A =

Date B =

Country C =

Country D =

Country E =

F percent =

G percent =

Corp X =

FCo =

Partnership =

Country Y =

This responds to a letter dated July 3, 1997, submitted on your behalf by your authorized representative, requesting a ruling under section 877(c) of the Internal Revenue Code of 1986 ("Code") that A's loss of U.S. citizenship 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 October 21, 1997, December 5, 1997, and December 17, 1998. The information submitted for consideration is substantially as set forth below.

PLR-113169-97

The rulings contained in this letter are based upon information and representations submitted by the taxpayer 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 the ruling, it is subject to verification on examination.

A, a former U.S. citizen, relinquished her citizenship on Date B before a diplomatic officer of the United States pursuant to section 349(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)). A was born in the United States. A was born a dual national of the United States and Country C. On the date of A's expatriation, A was 37 years old and a resident of Country D. A is currently a resident of Country D.

A's net worth on Date B (the date that she expatriated) exceeded \$500,000. On such date, A's primary asset was her interest in FCo, a publicly traded corporation organized in Country E. The FCo stock was held indirectly by A through Partnership, a domestic partnership that elected under section 761 and the regulations thereunder not to be treated as a partnership for tax purposes. Partnership also held interests in other partnerships and stock of several companies. Aside from the FCo stock, however, most of the Partnership's assets were worthless. The value of A's interest in the FCo stock constitutes approximately 83 percent of the total value of all of A's assets. A's other assets on the date of expatriation included cash, marketable securities, a personal residence in Country D, and partial ownership of a residence located in the United States and a vacation home located in Country C. A has several bank accounts, and most of her cash is maintained in bank accounts in Country C and Country Y.

A's gross assets have a fair market value in excess of \$10,000,000. Aside from the changes described below, A represents that her current assets are representative of the assets she owned for the period that began five years prior to the date on which she expatriated and ending on the date that her ruling request (and any additional information in support of the request) was submitted. A represents that the changes in A's assets, as described below, are the only anticipated changes in her assets and liabilities for the 10-year period following expatriation. A's average annual net U.S. income tax for the five taxable years prior to her expatriation exceeded \$100,000.

Prior to the transaction described below, A and her family members directly held (for tax purposes) shares of FCo representing approximately F percent of the value of all shares and G percent of the voting power of all shares. One month after A's expatriation, the FCo shares held by Partnership were distributed to A. A and her

PLR-113169-97

family members then contributed their FCo stock to Corp X, a newly formed foreign holding company. One year after this transaction, A and her family directed Corp X to contribute the FCo stock to two foreign trusts. One trust was established by A and her siblings (Children's Trust). The second trust was established by A's father for the benefit of his children (Father's Trust). A is an income beneficiary of both trusts and it is anticipated that the trusts will currently distribute the dividend income received from Corp X to A. A represents that, at the time of her expatriation, she was unaware that she would be named a beneficiary of the Father's Trust.

Approximately two months after her expatriation, A represents that she sold her interest in Partnership to her brothers in exchange for cash and shares of domestic corporations. A represents that no gain was generated on this transaction. A also represents that Partnership liquidated and that the liquidation did not cause A to recognize any gain or loss in the United States.

A has been a resident of Country D for approximately 10 years. Although A is raising her children in Country D, A represents that she eventually plans to return to Country C. A represents that she expatriated because it was her desire to be an exclusive national of Country C. She represents that most of her political, family and social ties are in Country C.

Because A is a resident not domiciled in Country D, A represents that she is not taxed in Country D on non-Country D source income unless she remits such income to Country D. If A had remained a U.S. citizen, Children's Trust would be a grantor trust under section 677 of the Code. Accordingly, A would have been taxed directly on all the trust income (regardless of whether the income is distributed) under the grantor trust provisions. A represents that she will be taxed on the trust income from both trusts in Country D only if she remits such income to Country D. A represents that her tax liability in Country D for her 1997 taxable year was insignificant.

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 lawful permanent 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. See sections 877(a)(1) and (e).

Section 2107(a)(1) generally provides that U.S. estate tax will be imposed on

PLR-113169-97

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 877(e) provides that a long-term resident who ceases to be taxed as a lawful permanent resident of the United States will be treated in the same manner as a U.S. citizen who lost U.S. citizenship for purposes of section 2107.

Section 2501(a)(1) generally provides that a tax will be imposed for each calendar year on the transfer of property made by gift during such year by any individual, resident or nonresident. Section 2501(a)(3) 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) provides that this exception does not apply in the case of a donor who lost U.S. citizenship within the 10-year period ending on the date of the transfer, unless such loss did not have for one of its principal purposes the avoidance of U.S. taxes. Section 877(e) provides that a long-term resident who ceases to be taxed as a lawful permanent resident of the United States will be treated in the same manner as a U.S. citizen who lost U.S. citizenship for purposes of section 2501.

For purposes of the foregoing provisions, a former citizen or former long-term resident is considered to have lost U.S. citizenship or ceased to be taxed as a long-term U.S. resident with a principal purpose under section 877(a)(2) to avoid U.S. taxes if (i) the individual's average annual net U.S. income tax for the five taxable years prior to expatriation is greater than \$100,000, or (ii) the individual's net worth on the date of expatriation is \$500,000 or more (as modified by post-1996 cost-of-living adjustments). Section 877(a)(2) and (e) of the Code. See also sections 2107(a)(2)(A) and 2501(a)(3)(B) of the Code. Section 877, as amended, is generally effective after February 5, 1995.

Under Notice 98-34, 1998-27 I.R.B. 30, modifying Notice 97-19, 1997-1 C.B. 394, a former citizen whose net worth or average tax liability exceeds the applicable thresholds will not be presumed to have a principal purpose of tax avoidance under section 877(a)(2) if that former citizen is eligible to submit a ruling request under section 877 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. Although the presumption of tax avoidance under section 877(a)(2) will not apply to such an individual, he will be considered by the Service to have a principal purpose of tax avoidance under section 877(a)(1) based on facts and circumstances if he receives a ruling that his expatriation has for one of its principal purposes the avoidance of taxes under subtitle A or subtitle B of the Code.

PLR-113169-97

A is eligible to request a ruling pursuant to section 877(c)(2)(A)(i) because A was a citizen at birth of the United States and Country C and continues to be a citizen of Country C.

Notice 97-19, 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 submitted all the information required by Notice 97-19, including any additional information requested by the Service after review of the submission.

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 98-34. Accordingly, A will not be considered to have a principal purpose of tax avoidance by reason of section 877(a)(2). However, based on the information submitted and the representations made, it is also held that A's expatriation has for one of its principal purposes the avoidance of U.S. taxes under subtitle A or subtitle B of the Code within the meaning of section 877(a)(1).

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 taxable periods prior to his expatriation or for taxable periods after her loss of U.S. citizenship under sections of the Code other than sections 877, 2107, and 2501(a)(3).

A copy of this letter must be attached to A's U.S. income tax return for the year in which A obtained the ruling (whether or not A is otherwise required to file a return).

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 your authorized representative.

Sincerely,

W. Edward Williams

PLR-113169-97

Senior Technical Reviewer, Branch 1
Office of Associate Chief Counsel
(International)

CC: