

## Internal Revenue Service

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Washington, DC 20224

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July 27, 2023

### Legend

Parent =

Parent US Sub =

Parent Foreign Sub =

Purchaser =

Target =

Target Foreign Sub =

Target US Sub =

Country A =

Country B =

Dear :

This letter responds to your authorized representative's letter dated April 6, 2023, and additional correspondence dated July 24, 2023, requesting a ruling under section 7874 of the Code with respect to the proposed transactions described below (the "Proposed Transactions"). The information submitted in that request is summarized below. All Code and section references are to the Internal Revenue Code of 1986, as amended.

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

### **Summary of Facts**

Parent, a domestic corporation and parent of a multinational corporate group, directly owns all of the stock of Parent US Sub, which is also a domestic corporation. Parent US Sub directly owns all of the interests in Purchaser, a Country A entity that is disregarded for federal income tax purposes. Parent indirectly owns all of the stock of Parent Foreign Sub, a Country B entity that is treated as a corporation for federal income tax purposes.

Target, a Country A entity that is treated as a corporation for federal income tax purposes, directly owns all the stock of Target Foreign Sub, a Country A entity that is treated as a corporation for federal income tax purposes. Target Foreign Sub indirectly owns all the stock of Target US Sub, a domestic corporation. Before November 9, 2017, Target indirectly acquired all the stock of Target US Sub in a transaction that satisfied the conditions of section 7874(a)(2)(B)(i), (ii) and (iii). Thus, before November 9, 2017, Target became a surrogate foreign corporation within the meaning of section

7874(a)(2)(B), and Target US Sub became an expatriated entity within the meaning of section 7874(a)(2)(A).

### **Proposed Transactions**

The following transactions will occur after December 22, 2017.

**Step 1:** Parent US Sub, through Purchaser, will acquire 100% of the stock of Target in exchange for cash.

**Step 2:** Parent, on behalf of Parent US Sub, will make an election under section 338(g) with respect to Target, Target Foreign Sub, and some or all of the other foreign corporations owned, directly or indirectly, by Target.

**Step 3:** Following Step 2, Target will directly, or indirectly through intermediate entities, transfer a substantial portion of its properties held directly or indirectly, other than the stock or properties of Target US Sub, to Parent Foreign Sub in exchange for stock of Parent Foreign Sub.

**Step 4:** Following Step 3, Target will engage in a series of transactions pursuant to a plan that will cause it to be treated as transferring its properties to Sub 1, a domestic corporation newly formed by Parent US Sub, and liquidating and that are intended to qualify as a reorganization under section 368(a)(1)(F).

### **Representations**

Parent has made the following representations:

1. Target is a surrogate foreign corporation that first became a surrogate foreign corporation before November 9, 2017.
2. Target is not treated as a domestic corporation under section 7874(b).
3. No foreign corporation will be treated as a surrogate foreign corporation (other than as a successor to another surrogate foreign corporation) as a result of Parent undertaking the Proposed Transactions.
4. Step 4 of the Proposed Transactions will qualify as a reorganization described in section 368(a)(1)(F).

### **Law**

Section 7874 provides rules for expatriated entities and their surrogate foreign corporations. A foreign corporation that completes an acquisition described in section 7874(a)(2)(B)(i) ("foreign acquiring corporation") constitutes a surrogate foreign

corporation, and an inversion transaction will have occurred, if the three conditions set forth in section 7874(a)(2)(B) are satisfied. A foreign acquiring corporation also includes a successor to a foreign acquiring corporation, including a corporation that succeeds to and takes into account amounts with respect to the foreign acquiring corporation pursuant to section 381. Treas. Reg. §1.7874-12(a)(10). It follows that, in the case of a foreign acquiring corporation that is treated as a surrogate foreign corporation, a successor to that corporation also will be treated as a surrogate foreign corporation.

An expatriated entity is a domestic corporation (or domestic partnership) with respect to which a foreign corporation is a surrogate foreign corporation, and any United States person that is or becomes related to such domestic corporation (or domestic partnership) (within the meaning of sections 267(b) or 707(b)(1)). Section 7874(a)(2)(A); Treas. Reg. §1.7874-12(a)(8). Thus, for example, a United States person will obtain expatriated entity status by becoming related to a person that is an expatriated entity as a result of a previous inversion transaction.

In general, section 59A subjects certain corporations to a minimum tax that is calculated by reference to the corporation's base erosion payments. Under section 59A(d)(4), certain payments that would not otherwise constitute base erosion payments are base erosion payments if such payments are paid or accrued by a taxpayer with respect to a surrogate foreign corporation which is a related party of the taxpayer or a foreign person which is a member of the same expanded affiliated group (within the meaning of section 7874(c)(1)) as the surrogate foreign corporation. This rule applies only in the case where the applicable surrogate foreign corporation "first became a surrogate foreign corporation after November 9, 2017." Section 59A(d)(4)(B)(i).

Section 965(c) allowed a United States shareholder a deduction for a portion of the amount included in income under section 951(a) by reason of section 965. Under section 965(l), a United States shareholder that was allowed such deduction is subject to additional tax if such shareholder "first becomes an expatriated entity at any time during the 10-year period beginning on the date of the enactment of the Tax Cuts and Jobs Act (with respect to a surrogate foreign corporation which first becomes a surrogate foreign corporation during such period)." The Tax Cuts and Jobs Act was enacted on December 22, 2017. Pub. L. No. 115-97.

In describing changes from a prior draft of section 965(l), the Conference Report states: "the conference agreement clarifies that U.S. shareholders acquired by a surrogate [foreign] corporation are within the scope of [section 965(l)] only if the surrogate [foreign] corporation inverted post-enactment." H.R. Rep. No. 115-466 at 621 (Conf. Rep. 2017).

### **Ruling**

Based solely on the information submitted and representations made, we rule as follows with respect to the Proposed Transactions:

If any person is treated as a successor to a surrogate foreign corporation (within the meaning of section 7874 and Treas. Reg. §1.7874-12(a)(10)) as a result of the Proposed Transactions, such successor will not be treated as having first become a surrogate foreign corporation in a period after November 9, 2017.

### **Caveats**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transactions under any other provision of the Code or regulations, or the tax treatment of any condition existing at the time of, or effects resulting from, the Proposed Transactions that is not specifically addressed by the above ruling.

### **Procedural Statements**

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

*/s/ Andrew Wigmore*

Andrew Logan Wigmore  
Senior Counsel, Branch 4  
(International)

cc: