

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202611004**
Release Date: 3/13/2026
Index Number: 865.01-05

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:INTL:B03
PLR-112766-24

Date:
December 12, 2025

In Re:

Legend

- Corporation A =
- Group =
- Corporation B =
- Corporation C =
- Corporation D =
- Country X =
- U.S.-Country X Treaty =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- Date 7 =
- Date 8 =
- Tax Year 1 =
- Tax Year 2 =
- Firm O =
- Firm P =
- Firm Q =

Dear _____ :

This is in response to your letter dated Date 1, and supplemental correspondence dated Date 2 and Date 3, submitted by Corporation A as the agent of Group through its authorized representatives, requesting an extension of time under Treas. Reg. § 301.9100-3 to file an election under section 865(h)(2)(A) to apply the sourcing rule in

paragraph 3 of Article 25 (Relief from Double Taxation) under the U.S.-Country X Treaty to treat gain from the sale of stock in Corporation D, a Country X corporation, as foreign source income.

The ruling contained in this letter is based upon information and representations submitted by Corporation A and accompanied by a penalty of perjury statement executed by an appropriate party. As this office has not verified any of the material submitted in support of the request for a ruling, it remains subject to verification on examination. The information submitted in the request is substantially as set forth below. Unless otherwise provided, all section references are to the Internal Revenue Code of 1986, as amended.

I. FACTS AND REPRESENTATION

During Tax Year 1, Corporation A, a domestic corporation, wholly owned Corporation B, a domestic corporation, which wholly owned Corporation C, a domestic corporation. Corporation A, Corporation B, and Corporation C are members of the U.S. federal consolidated group, Group, of which Corporation A is the common parent.

On Date 4 (during Tax Year 1), Corporation C sold shares of Corporation D, a Country X corporation. Corporation C realized gain from the sale in Tax Year 1. Corporation C was subject to tax in Country X with respect to the sale made on Date 4.

Corporation A engaged Firm O to prepare Group's Tax Year 1 income tax return. Firm O did not advise Group whether an election under section 865(h)(2)(A) could have been made to apply the sourcing rule in Article 25(3) of the U.S.-Country X Treaty (the Treaty sourcing rule) to treat the gain from the Date 4 sale as foreign source income. On Date 5, Corporation A filed Group's Tax Year 1 income tax return, reporting the gain from the Date 4 sale as U.S. source income.

On Date 6 of Tax Year 2, Corporation C sold additional shares of Corporation D. Corporation A engaged Firm P and Firm Q to provide Group advice with respect to the Date 6 sale. Firm P and Firm Q advised Group that an election under section 865(h)(2)(A) could be made to apply the Treaty sourcing rule to treat gain from the Date 6 sale as foreign source income. Firm P and Firm Q further advised Group that a section 865(h)(2)(A) election could have been made to source the gain from the Date 4 sale as foreign source income.

On Date 7, Corporation A engaged Firm P to file this request for relief under Treas. Reg. § 301.9100-3 for an extension of time to file an election under section 865(h)(2)(A) to apply the Treaty sourcing rule to treat the gain from the Date 4 sale as foreign source income. On Date 8, Corporation A filed a consent to extend the period of limitation on assessment under section 6501(c)(4) for Tax Year 1.

Corporation A represents that no facts have changed since the sale on Date 4 that make the election under section 865(h)(2)(A) more advantageous in hindsight.

II. LAW

Section 865(a) provides that, except as otherwise provided in section 865, income from the sale of personal property by a United States resident shall be sourced in the United States.

Section 865(h) provides that, in the case of gain to which the subsection applies, such gain shall be sourced outside the United States, but section 904(a), (b), and (c), and sections 907 and 960 shall be applied separately with respect to such gain.

Section 865(h)(2) states, in relevant part, that section 865(h) applies to any gain: (i) which is from the sale of stock in a foreign corporation and which would otherwise be sourced in the United States under section 865; (ii) which, under a treaty obligation of the United States (applied without regard to section 865), would be sourced outside the United States; and (iii) with respect to which the taxpayer chooses the benefits of section 865(h).

Article 13 (Gains) of the U.S.-Country X Treaty states that, in general, each Contracting State may tax capital gains in accordance with the provisions of its domestic law.

Paragraph 3 of Article 25 (Relief from Double Taxation) of the U.S.-Country X Treaty provides that:

For the purposes of allowing relief from double taxation pursuant to this Article, income shall be deemed to arise as follows:

(a) income derived by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention (other than solely by reason of citizenship in accordance with paragraph 3 of Article 1 (General Scope)) shall be deemed to arise in that other State;

(b) income derived by a resident of a Contracting State which may not be taxed in the other Contracting State in accordance with the Convention shall be deemed to arise in the first-mentioned State.

Notwithstanding the preceding sentence, the determination of the source of income for purposes of this Article shall be subject to such source rules in the domestic laws of the Contracting States as apply for the purpose of limiting the foreign tax credit. The preceding sentence shall not apply with respect to income dealt with in Article 12 (Royalties and Fees for Included Services). The rules of this paragraph shall not apply in determining credits

against United States tax for foreign taxes other than the taxes referred to in paragraphs 1(b) and 2 of Article 2 (Taxes Covered).

Treas. Reg. § 301.9100-8(a) provides the rules applicable to elections provided by the Technical and Miscellaneous Revenue Act of 1988, including section 865(h)(2).

Treas. Reg. § 301.9100-8(a)(2) provides that an election under Treas. Reg. § 301.9100-8(a) must be made by the later of (i) the due date (taking into account any extensions of time to file obtained by the taxpayer) of the tax return for the first taxable year for which the election is effective, or (ii) January 22, 1990.

Treas. Reg. § 301.9100-1(c) provides, in relevant part, that the Commissioner may grant a reasonable extension of time under the rules in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) defines the term “regulatory election” as an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-2 provides automatic extensions of time for making certain elections.

Treas. Reg. § 301.9100-3(a) provides rules for requesting extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2. It provides that requests for relief subject to the section will be granted when the taxpayer provides the evidence (including affidavits) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Treas. Reg. § 301.9100-3(b)(1)(v) provides that a taxpayer is generally deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional and the taxpayer professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if the granting of relief would result in the taxpayer (and other affected taxpayers, if applicable) having lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer(s) would have had if the election had been timely made.

III. CONCLUSION

Based solely on the information submitted and the representations made:

- A. Corporation A and Group satisfy Treas. Reg. § 301.9100-3(a).
- B. Corporation A and Group are granted an extension of time of 60 days from the date of this ruling letter to file the election described in Treas. Reg. § 301.9100-8(a)(1) with respect to section 865(h)(2)(A) for Tax Year 1.
- C. Upon filing the section 865(h)(2)(A) election, under section 865(h), Corporation A and Group may apply the sourcing rule in Article 25(3) of the U.S.-Country X Treaty to treat the gain from the Date 4 sale of Corporation D stock as foreign source income, provided that the U.S.-Country X Treaty conditions for obtaining treaty benefits are satisfied.

The above rulings are only applicable with respect to the Code sections addressed herein. We do not express or imply an opinion on the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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 representatives.

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,

Associate Chief Counsel
(International)

By: Tracy M. Villecco

Tracy M. Villecco
Senior Technical Reviewer, Branch 3
Office of Associate Chief Counsel (International)

Enclosure

Copy for § 6110 purposes.

cc: