

rules regarding the treatment of transfers and licenses by domestic partnerships and transfers of interests in certain domestic partnerships.

(d) *Definitions.* The definitions provided in § 1.7874-12 apply for purposes of this section.

(e) *Example.* The following example illustrates the rules of this section.

*Example.* —(i) *Facts.* On July 1, 2016, FA, a foreign corporation, acquires all the stock of DT, a domestic corporation, in an inversion transaction. When the inversion transaction occurred, DT wholly owned FS, a foreign corporation that is a controlled foreign corporation (within the meaning of section 957(a)). During the applicable period, FS sells to FA property that is not described in section 1221(a)(1) in the hands of FS. Under section 951(a)(1)(A), DT has a \$80x gross income inclusion that is attributable to FS's gain from the sale of the property. Under section 960(a)(1), DT is deemed to have paid \$20x of the post-1986 foreign income taxes of FS by reason of this income inclusion and includes \$20x in gross income as a deemed dividend under section 78. Accordingly, DT recognizes \$100x (\$80x + \$20x) of gross income because of FS's sale of property to FA.

(ii) *Analysis.* Pursuant to section 7874(a)(2)(A), DT is an expatriated entity. Under paragraph (b)(1) of this section, DT's \$100x gross income recognized under sections 951(a)(1)(A) and 78 is inversion gain, because it is income recognized by an expatriated entity during the applicable period by reason of an indirect transfer of property by DT (through its wholly-owned CFC, FS) after the inversion transaction to a specified related person (FA). Sections 7874(a)(1) and (e) therefore prevent the use of certain tax attributes (such as net operating losses) to reduce the U.S. tax owed with respect to DT's \$100x gross income recognized under sections 951(a)(1)(A) and 78.

(f) *Applicability dates.* Except as otherwise provided in this paragraph (f), this section applies to transfers and licenses of property completed on or after November 19, 2015, but only if the inversion transaction was completed on or after September 22, 2014. For inversion transactions completed on or after September 22, 2014, however, taxpayers may elect to apply paragraph (b) of this section by excluding the phrase “(including an amount treated as a dividend under section 78)” for transfers and licenses of property completed on or after November 19, 2015, and before April 4, 2016.

[T.D. 9834, 83 FR 32559, July 12, 2018]

#### § 1.7874-12 Definitions.

(a) *Definitions.* Except as otherwise provided, the following definitions apply for purposes of this section and §§ 1.367(b)-4, 1.956-2, 1.7701(1)-4, and 1.7874-1 through 1.7874-11.

(1) An *affiliated group* has the meaning set forth in section 1504(a) but without regard to section 1504(b)(3), except that section 1504(a) is applied by substituting “more than 50 percent” for “at least 80 percent” each place it appears. A *member of the affiliated group* is an entity included in the affiliated group.

(2) The *applicable period* means, with respect to an inversion transaction, the period described in section 7874(d)(1). However, see also § 1.7874-2(b)(13) in the case of a subsequent acquisition (or a similar acquisition under the principles of § 1.7874-2(c)(4)(i)) that is an inversion transaction.

(3) The *completion date* means, with respect to a domestic entity acquisition, the date that the domestic entity acquisition and all transactions related to the domestic entity acquisition are complete.

(4) A *controlled foreign corporation* (or *CFC*) has the meaning provided in section 957.

(5) A *domestic entity acquisition* means an acquisition described in section 7874(a)(2)(B)(i).

(6) A *domestic entity* means, with respect to a domestic entity acquisition, a domestic corporation or domestic partnership described in section 7874(a)(2)(B)(i). A reference to a domestic entity includes a successor to such domestic corporation or domestic partnership, including a corporation that succeeds to and takes into account amounts with respect to the domestic entity pursuant to section 381.

(7) An *expanded affiliated group* (or *EAG*) means, with respect to a domestic entity acquisition, an affiliated group that includes the foreign acquiring corporation, determined as of the completion date. A *member of the EAG* is an entity included in the EAG, and a reference to a member of the EAG includes a predecessor with respect to such member.

(8) An *expatriated entity* means, with respect to an inversion transaction—

(i) The domestic entity; and

(ii) A United States person that, on any date on or after the completion date, is or was related (within the meaning of section 267(b) or 707(b)(1)) to the domestic entity.

(9) *Expatriated foreign subsidiary*—(i) *General rule.* Except as provided in paragraph (a)(9)(ii) of this section, an expatriated foreign subsidiary means a foreign corporation that is a CFC (determined without applying subparagraphs (A), (B), and (C) of section 318(a)(3) so as to consider a United States person as owning stock which is owned by a person who is not a United States person) and in which an expatriated entity is a United States shareholder (determined without applying subparagraphs (A), (B), and (C) of section 318(a)(3) so as to consider a United States person as owning stock which is owned by a person who is not a United States person).

(ii) *Exception to the general rule.* A foreign corporation is not an expatriated foreign subsidiary if, with respect to the inversion transaction as a result of which the foreign corporation otherwise would be an expatriated foreign subsidiary—

(A) On the completion date, the foreign corporation was both a CFC (determined without applying subparagraphs (A), (B), and (C) of section 318(a)(3) so as to consider a United States person as owning stock which is owned by a person who is not a United States person) and a member of the EAG; and

(B) On or before the completion date, the domestic entity was not a United States shareholder (determined without applying subparagraphs (A), (B), and (C) of section 318(a)(3) so as to consider a United States person as owning stock which is owned by a person who is not a United States person) with respect to the foreign corporation.

(10) A *foreign acquiring corporation* means, with respect to a domestic entity acquisition, the foreign corporation described in section 7874(a)(2)(B). A reference to a foreign acquiring corporation includes a successor to the 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.

(11) A *foreign related person* means, with respect to an inversion transaction, a foreign person that is related (within the meaning of section 267(b) or 707(b)(1)) to, or under the same common control as (within the meaning of section 482), a person that is an expatriated entity with respect to the inversion transaction.

(12) A *former domestic entity partner* of a domestic entity that is a domestic partnership is any person that held an interest in the partnership before the domestic entity acquisition, including any person that holds an interest in the partnership both before and after the domestic entity acquisition.

(13) A *former domestic entity shareholder* of a domestic entity that is a domestic corporation is any person that held stock in the domestic corporation before the domestic entity acquisition, including any person that holds stock in the domestic corporation both before and after the domestic entity acquisition.

(14) An *interest in a partnership* includes a capital or profits interest.

(15) An *inversion transaction* means a domestic entity acquisition in which the foreign acquiring corporation is treated as a surrogate foreign corporation under section 7874(a)(2)(B), taking into account section 7874(a)(3).

(16) A *non-EFS foreign related person* means, with respect to an inversion transaction, a foreign related person that is not an expatriated foreign subsidiary.

(17) The *ownership fraction* means, with respect to a domestic entity acquisition, the ownership percentage described in section 7874(a)(2)(B)(ii), expressed as a fraction.

(18) A *specified related person* means, with respect to an inversion transaction—

(i) A non-EFS foreign related person;

(ii) A domestic partnership in which a non-EFS foreign related person is a partner; and

(iii) A domestic trust of which a non-EFS foreign related person is a beneficiary.

(19) A *United States person* means a person described in section 7701(a)(30).

(20) A *United States shareholder* has the meaning provided in section 951(b).

(b) *Applicability dates.* Except as otherwise provided in this paragraph (b), this section applies to domestic entity acquisitions completed on or after September 22, 2014. The following apply to domestic entity acquisitions completed on or after April 4, 2016: paragraph (a)(8) of this section; in paragraph (a)(6) of this section, the phrase “, including a corporation that succeeds to and takes into account amounts with respect to the domestic entity pursuant to section 381”; and the second sentence of paragraph (a)(10) of this section. For domestic entity acquisitions completed on or after September 22, 2014, and before April 4, 2016, however, taxpayers, may elect to apply the provisions in the immediately prior sentence.

[T.D. 9834, 83 FR 32560, July 12, 2018]

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SOURCE: Sections 1.9000-1 through 1.9000-8 contained in T.D. 6500, 25 FR 12155, Nov. 26, 1960, unless otherwise noted.

**§ 1.9000-1 Statutory provisions.**

The Act of June 15, 1955 (Pub. L. 74, 84th Cong., 69 Stat. 134), provides as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. *Repeal of sections 452 and 462—(a) Prepaid income.* Section 452 of the Internal Revenue Code of 1954 is hereby repealed.

(b) Reserves for estimated expenses, etc. Section 462 of the Internal Revenue Code of 1954 is hereby repealed.

SEC. 2. *Technical amendments.* The following provisions of the Internal Revenue Code of 1954 are hereby amended as follows:

(1) Subsection (c) of section 381 is amended by striking out paragraph (7) (relating to carryover of prepaid income in certain corporate acquisitions).

(2) The table of sections for subpart B of part II of subchapter E of chapter 1 (relating to taxable year for which items of gross income included) is amended by striking out “Sec. 452. Prepaid income.”

(3) The table of sections for subpart C of such part II (relating to taxable year for which deductions are taken) is amended by striking out:

“Sec. 462. Reserves for estimated expenses, etc.”

SEC. 3. *Effective date.* The amendments made by this act shall apply with respect to

taxable years beginning after December 31, 1953, and ending after August 16, 1954.

SEC. 4. *Saving provisions—(a) Filing of statement.* If:

(1) the amount of any tax required to be paid for any taxable year ending on or before the date of the enactment of this act is increased by reason of the enactment of this act, and

(2) the last date prescribed for payment of such tax (or any installment thereof) is before December 15, 1955,

then the taxpayer shall, on or before December 15, 1955, file a statement which shows the increase in the amount of such tax required to be paid by reason of the enactment of this act.

(b) *Form and effect of statement—(1) Form of statement, etc.* The statement required by subsection (a) shall be filed at the place fixed for filing the return. Such statement shall be in such form, and shall include such information necessary or appropriate to show the increase in the amount of the tax required to be paid for the taxable year by reason of the enactment of this act, as the Secretary of the Treasury or his delegate shall by regulations prescribe.

(2) *Treatment as amount shown on return.* The amount shown on a statement filed under subsection (a) as the increase in the amount of the tax required to be paid for the taxable year by reason of the enactment of this act shall, for all purposes of the internal revenue laws, be treated as tax shown on the return. Notwithstanding the preceding sentence, that portion of the amount of increase in tax for any taxable year which is attributable to a decrease (by reason of the enactment of this act) in the net operating loss for a succeeding taxable year shall not be treated as tax shown on the return.

(3) *Waiver of interest in case of payment on or before December 15, 1955.* If the taxpayer, on or before December 15, 1955, files the statement referred to in subsection (a) and pays in full that portion of the amount shown thereon for which the last date prescribed for payment is before December 15, 1955, then for purposes of computing interest (other than interest on overpayments) such portion shall be treated as having been paid on the last date prescribed for payment. This paragraph shall not apply if the amount shown on the statement as the increase in the amount of the tax required to be paid for the taxable year by reason of the enactment of this act is greater than the actual increase unless the taxpayer establishes, to the satisfaction of the Secretary of the Treasury or his delegate, that his computation of the greater amount was based upon a reasonable interpretation and application of sections 452 and 462 of the Internal Revenue Code of 1954, as those sections existed before the enactment of this act.