

Internal Revenue Service

Department of the Treasury

Index No. 0884.12-50

Washington, DC 20224

Number: **199912029**

Person to Contact:

Release Date: 3/26/1999

Telephone Number:

Refer Reply to:

PLR-117991-98

Date: December 23, 1998

Re: .

Corp X =

Corp Y =

Country A =

Country B =

Country C =

Country D =

Country E =

Dear

This is in response to your letter dated September 14, 1998, in which you requested that, pursuant to section 884 of the Internal Revenue Code, Corp X be treated as a qualified resident of Country B for Corp X's taxable year ending December 31, 1997. The information submitted for consideration is summarized below.

The ruling contained in this letter is predicated upon facts and representations submitted by, or on behalf of, Corp X and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

In a letter dated July 28, 1993, and modified August 23, 1993 (collectively, "the 1993 Ruling"), we held that Corp X would be treated as a qualified resident of Country B for its taxable years beginning in 1987, 1988 and 1989 for purposes of section 884 of the Code,

provided that Corp X, for those taxable years, met certain conditions. In a letter dated June 6, 1995 (collectively, "the 1995 Ruling"), we held that Corp X would be treated as a qualified resident of Country B for its taxable years beginning in 1991, 1992 and 1993 for purposes of section 884 of the Code, provided that Corp X, for those taxable years, met certain conditions. In a letter dated February 22, 1996, and modified March 21, 1996 (collectively, "the 1996 Ruling"), we held that Corp X would be treated as a qualified resident of Country B for its taxable years beginning in 1994, 1995 and 1996 for purposes of section 884 of the Code, provided that Corp X, for those taxable years, met certain conditions.

For the tax years included in the 1993 Ruling, the 1995 Ruling, and the 1996 Ruling, and in this ruling, Corp X did not meet the requirements of Treas. Reg. § 1.884-5(b) and (c) (the stock ownership and base erosion tests), (d) (the publicly traded stock test) or (e) (the active trade or business test). The favorable 1993 Ruling, the favorable 1995 Ruling, and the favorable 1996 Ruling, issued pursuant to Treas. Reg. § 1.884-5(f) were based on the relevant factors discussed in that ruling, including the extent to which the tests referred to in the preceding sentence were satisfied. Corp X has represented that no material facts, except those noted below, have changed since the tax year beginning in 1997.

Corp X did not meet the stock ownership test of section 1.884-5(b) of the regulations because its stock was ultimately owned, through Corp Y, by its employees, the majority of whom were resident outside Country B and the United States. In 1997, about percent (in value) of Corp X was beneficially owned through Corp Y, by residents of Country C. Corp Y is subject to tax in Country E on income derived from all sources. For its taxable year ending in 1997, over 50% of the stock of Corp X was indirectly owned by employees who were residents of Country B, Country C, Country D and residents and citizens of the United States. Corp X represents that it claimed no benefit in 1997 under any article of the Income Tax Treaty between Country B and the United States with respect to any tax imposed by the United States that is more favorable than the benefit it could claim under the treaties of Countries A, C, or D, if it were a qualified resident of one of those countries for its taxable year ending in 1997; and

Corp X represents that in 1997, the base erosion test was not met because 1997 was a poor profit year.

Accordingly, based on the information submitted and the representations made, and considering the effects of the material changes in facts, it is held that Corp X will be treated as a qualified resident of Country B for its taxable years ending December 31, 1997 for purposes of section 884, provided that Corp X, for the taxable year at issue:

(1) Obtains documentation proving that fifty percent or more of its stock is indirectly owned by individual residents of Country B, Country C, or Country D or by citizens or residents of the United States for its taxable year ending in 1997, in accordance with the documentation requirements set forth in Treas. Reg. § 1.884-5(b)(3);

(2) Agrees to maintain all documentation used in computing its U.S. tax liability either in the United States in the custody of its U.S. permanent establishment (or in the custody of an agent designated for that purpose), or outside of the United States (in compliance with the rules of Treas. Reg. § 1.6038A-3(f)(2)) for the entire period commencing six months from the date of this ruling and ending with the expiration date of the period of limitations for assessment of tax for such year; and

(3) Agrees that it will not rely on the internal laws of any foreign country as a reason not to provide the documentation at the request of the U.S. tax authorities.

If Corp X does not comply with the conditions of this letter ruling, it will not be considered to be a qualified resident of Country B for purposes of section 884 and will be subject to branch profits tax at a rate of 30 percent.

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

In accordance with a 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 should be attached to any federal income tax return to which it is relevant.

Sincerely yours,

W. Edward Williams
Senior Technical Reviewer
Branch 1
Associate Chief Counsel (International)