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[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9761]

RIN 1545-BM88

Inversions and Related Transactions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations; correcting amendment.

SUMMARY: This document contains corrections to final and temporary regulations (TD 9761) that were published in the **Federal Register** on April 8, 2016 (81 FR 20858). The temporary regulations address transactions that are structured to avoid the purposes of sections 7874 and 367 of the Internal Revenue Code and certain post-inversion tax avoidance transactions.

DATES: This correction is effective on **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]** and applicable on April 8, 2016.

FOR FURTHER INFORMATION CONTACT: Rose E. Jenkins at (202) 317-6934 (not a toll free number).

SUPPLEMENTARY INFORMATION:

**Background**

The final and temporary regulations (TD 9761) that are the subject of this correction are under sections 304, 367, 956, 7701(l), and 7874 of the Internal Revenue Code.

**Need for Correction**

As published, the final and temporary regulations (TD 9761) contain errors that may prove to be misleading and are in need of clarification.

### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

### **Correction of Publication**

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

### **PART 1—INCOME TAXES**

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.304-7T is amended by revising paragraph (f) to read as follows:

#### **§ 1.304-7T Certain acquisitions by foreign acquiring corporations (temporary).**

\* \* \* \* \*

(f) Expiration date. This section expires on or before April 4, 2019.

Par. 3. Section 1.367(a)-3T is amended by revising paragraph (k) to read as follows:

#### **§ 1.367(a)-3T Treatment of transfers of stock or securities to foreign corporations (temporary).**

\* \* \* \* \*

(k) Expiration date. Paragraph (c)(3)(iii)(C) of this section expires on or before April 4, 2019.

#### **§ 1.367(b)-4 [Amended]**

Par. 4. For each entry in § 1.367(b)-4 in the “Paragraph” column remove the language in the “Remove” column and add in its place the language in the “Add” column as set forth below:

<b>Paragraph</b>	<b>Remove</b>	<b>Add</b>
(b)(1)(i)(B)(2)	foreign acquiring corporation	transferee foreign corporation
(b)(1)(ii)(A), first sentence	foreign acquiring corporation	transferee foreign corporation
(b)(2)(i)(A)	foreign acquiring corporations	transferee foreign corporation
(b)(2)(i)(B)	foreign acquiring corporation	transferee foreign corporation
(b)(2)(i)(C)	foreign acquiring corporation	transferee foreign corporation
(b)(3)(i)	foreign acquiring corporation	transferee foreign corporation
(d)(2), Example, heading	foreign acquiring corporation	transferee foreign corporation

**§ 1.367(b)-4T [Amended]**

Par.5. Section 1.367(b)-4T(d)(1) is amended by removing the language “§1.367(b)-(3)” and adding in its place the language “§1.367(b)-3”.

Par. 6. Section 1.956-2T is amended by revising the first sentence of paragraph (a)(4)(iii) Example 3.(A), the second sentence of paragraph (a)(4)(iii) Example 3.(B), and the third sentence of paragraph (a)(4)(iii) Example 4.(B) to read as follows:

**§ 1.956-2T Definition of United States property (temporary).**

\* \* \* \* \*

(a) \* \* \*

(4) \* \* \*

(iii) \* \* \*

Example 3. (A) Facts. Before the inversion transaction, FA also wholly owns USP, a domestic corporation, which, in turn, wholly owns, LFS, a foreign corporation that is a controlled foreign corporation. \* \* \*

(B) \* \* \* Because LFS was a controlled foreign corporation and a member of the EAG with respect to the inversion transaction on the completion date, and DT was not a United States shareholder with respect to LFS on or before the completion date, LFS is excluded from the definition of expatriated foreign subsidiary pursuant to §1.7874-12T(a)(9)(ii). \* \* \*

Example 4. \* \* \*

(B) \* \* \* Because LFSS was not a member of the EAG with respect to the inversion transaction on the completion date, LFSS is not excluded from the definition of expatriated foreign subsidiary pursuant to §1.7874-12T(a)(9)(ii). \* \* \*

\* \* \* \* \*

Par. 7. Section 1.7701(l)-4T is amended by revising the ninth sentence of paragraph (a), the fourth sentence of paragraph (g) Example 3.(ii)(B), and the third sentence of paragraph (g) Example 11.(ii) to read as follows:

**§ 1.7701(l)-4T Rules regarding inversion transactions (temporary).**

(a) \* \* \* See § 1.367(b)-4T(e) and (f) for rules concerning certain other exchanges after an inversion transaction. \* \* \*

\* \* \* \* \*

(g) \* \* \*

Example 3. \* \* \*

(ii) \* \* \*

(B) \* \* \* Although FA (a non-CFC foreign related person) indirectly owns \$4x of FT stock both immediately before and after the specified transaction and any related transaction, all of that stock is directly owned by DT (a domestic corporation), and as a result, under paragraph (f)(4) of this section, none of that stock is treated as directly or indirectly owned by FP for purposes of calculating the pre-transaction ownership percentage and the post-transaction ownership percentage with respect to FT. \* \* \*

\* \* \* \* \*

Example 11. \* \* \*

(ii) \* \* \* However, after the April 30, 2016 transfer, because FS ceases to be a foreign related person, it ceases to be a specified related person. \* \* \*

\* \* \* \* \*

Par. 8. Section 1.7874-1T is amended by revising paragraph (i) to read as follows:

**§ 1.7874-1T Disregard of affiliate-owned stock (temporary).**

\* \* \* \* \*

(i) Expiration date. This section expires on or before April 4, 2019.

Par. 9. Section 1.7874-2T is amended by revising paragraphs (c)(4)(iii) and (m) to read as follows:

**§ 1.7874-2T Surrogate foreign corporation (temporary).**

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(iii) Additional related transactions. If, pursuant to the same plan (or a series of related transactions), a foreign corporation directly or indirectly acquires (under the principles of paragraph (c)(4)(ii) of this section) substantially all of the properties directly or indirectly held by a subsequent acquiring corporation in a transaction occurring after the subsequent acquisition, then the principles of paragraph (c)(4)(i) of this section apply to such transaction (and any subsequent transaction or transactions occurring pursuant to the plan (or the series of related transactions)).

\* \* \* \* \*

(m) Expiration date. This section expires on or before April 4, 2019.

Par. 10. Section 1.7874-3T is amended by revising paragraph (g) to read as follows:

**§ 1.7874-3T Substantial business activities (temporary).**

\* \* \* \* \*

(g) Expiration date. The applicability of paragraphs (b)(4) and (d)(10) of this section expires on or before April 4, 2019.

Par. 11. Section 1.7874-6T is amended by revising paragraphs (f)(3) and (i) to read as follows:

**§ 1.7874-6T Stock transferred by members of the EAG (temporary).**

\* \* \* \* \*

(f) \* \* \*

(3) A transferring corporation means a corporation that is a former domestic entity shareholder or former domestic entity partner.

\* \* \* \* \*

(i) Expiration date. This section expires on or before April 4, 2019.

Par. 12. Section 1.7874-7T is amended by revising the first sentence of paragraph (g) Example 2.(ii) and paragraph (i) to read as follows:

**§ 1.7874-7T Disregard of certain stock attributable to passive assets (temporary).**

\* \* \* \* \*

(g) \* \* \*

Example 2. \* \* \*

(ii) Analysis. Without regard to the application of §§1.7874-4T(b) and 1.7874-10T(b) and paragraph (b) of this section, the ownership percentage described in section 7874(a)(2)(B)(ii)

would be less than 5 (by vote and value), or 4 (4/100, or 4 shares of FA stock held by Individual B by reason of owning the DT stock, determined under §1.7874-2(f)(2), over 100 shares of FA stock outstanding after the DT acquisition).

\* \* \* \* \*

(i) Expiration date. The applicability of this section expires on or before April 4, 2019.

Par. 13. Section 1.7874-8T is amended by revising the third sentence of paragraph (h) Example 1.(ii), the fifth sentence of paragraph (h) Example 2.(ii), the ninth sentence of paragraph (h) Example 3.(ii), and paragraph (j) to read as follows:

**§ 1.7874-8T Disregard of certain stock attributable to multiple domestic entity acquisitions (temporary)**.

\* \* \* \* \*

(h) \* \* \*

Example 1. \* \* \*

(ii) \* \* \* As a result, and because there were no redemptions of FA stock, the excluded amount is \$150x (calculated as 100, the total number of prior acquisition shares, multiplied by \$1.50x, the fair market value of a single share of FA stock on the completion date with respect to the DT2 acquisition). \* \* \*

\* \* \* \* \*

Example 2. \* \* \*

(ii) \* \* \* As a result, the excluded amount is \$112.50x, calculated as 75 (100, the total number of prior acquisition shares, less 25, the allocable redeemed shares) multiplied by \$1.50x (the fair market value of a single share of FA stock on the completion date with respect to the DT2 acquisition). \* \* \*

\* \* \* \* \*

Example 3. \* \* \*

(ii) \* \* \* Accordingly, the excluded amount is \$112.50x, calculated as 150 (200, the total number of prior acquisition shares, less 50, the allocable redeemed shares) multiplied by \$0.75x (the fair market value of a single class of FA stock on the completion date with respect to the DT2 acquisition). \* \* \*

\* \* \* \* \*

(j) Expiration date. The applicability of this section expires on or before April 4, 2019.

Par. 14. Section 1.7874-9T is amended by revising paragraph (e)(1), the first sentence of paragraph (f) Example.(ii)(A), the seventh sentence of paragraph (f) Example.(iv) and paragraph (h) to read as follows:

**§ 1.7874-9T Disregard of certain stock in third-country transactions (temporary).**

\* \* \* \* \*

(e) \* \* \*

(1) Acquisition of multiple foreign corporations that are tax residents of the same foreign country. When multiple foreign acquisitions occur pursuant to the same plan (or a series of related transactions) and two or more of the acquired foreign corporations were subject to tax as a resident of the same foreign country before the foreign acquisitions and all related transactions, then those foreign acquisitions are treated as a single foreign acquisition and those acquired

foreign corporations are treated as a single acquired foreign corporation for purposes of this section.

\* \* \* \* \*

(f) \* \* \*

Example. \* \* \*

(ii) \* \* \*

(A) The FT acquisition is a foreign acquisition because, pursuant to the FT acquisition, FA (a foreign acquiring corporation) acquires 100 percent of the stock of FT and is thus treated as indirectly acquiring 100 percent of the properties held by FT (an acquired foreign corporation). \* \* \*

\* \* \* \* \*

(iv) \* \* \* FA's indirect acquisition of FT's properties is a covered foreign acquisition because 35 shares of FA stock (the shares received by Individual B) are held by reason of holding stock in FT; thus, the foreign ownership percentage is 100 percent (35/35). \* \* \*

\* \* \* \* \*

(h) Expiration date. The applicability of this section expires on or before April 4, 2019.

Par. 15. Section 1.7874-10T is amended by revising paragraphs (d)(2) and (j) to read as follows:

**§ 1.7874-10T Disregard of certain distributions (temporary).**

\* \* \* \* \*

(d) \* \* \*

(2) On the completion date, former domestic entity shareholders or former domestic entity partners, as applicable, in the aggregate, own (applying the attribution rules of section 318(a) with the modifications described in section 304(c)(3)(B)) less than five percent (by vote and value) of the stock of (or a partnership interest in) each member of the expanded affiliated group.

\* \* \* \* \*

(j) Expiration date. This section expires on or before April 4, 2019.

Par. 16. Section 1.7874-11T is amended by revising paragraphs (b)(1) and (2), and (g) to read as follows:

**§ 1.7874-11T Rules regarding inversion gain (temporary).**

\* \* \* \* \*

(b) \* \* \* (1) General rule. Except as provided in paragraphs (b)(2) and (3) of this section, inversion gain includes income (including an amount treated as a dividend under section 78) or gain recognized by an expatriated entity for any taxable year that includes any portion of the applicable period by reason of a direct or indirect transfer of stock or other properties or license of any property either as part of the domestic entity acquisition, or after such acquisition if the transfer or license is to a specified related person.

(2) Exception for property described in section 1221(a)(1). Inversion gain does not include income or gain recognized by reason of the transfer or license, after the domestic entity

acquisition, of property that is described in section 1221(a)(1) in the hands of the transferor or licensor.

\* \* \* \* \*

(g) Expiration date. This section expires on or before April 4, 2019.

Par. 17. Section 1.7874-12T is amended by revising paragraph (c) to read as follows:

**§ 1.7874-12T Definitions (temporary).**

\* \* \* \* \*

(c) Expiration date. This section expires on or before April 4, 2019.

Martin V. Franks  
Chief  
Publications and Regulations Branch  
Legal Processing Division  
Associate Chief Counsel  
(Procedure and Administration)

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