



TaxNewsFlash

United States

No. 2024-170
May 6, 2024

KPMG report: Phantom inversions under section 7874

The U.S. anti-inversion rules under section 7874 apply to an acquisition of a domestic entity by a foreign acquiring corporation only if after the acquisition at least 60% of the stock (by vote or value) of the foreign corporation is held by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation or by former partners of a domestic partnership by reason of holding a capital or profits interest in the domestic partnership. Thus, it would seem that section 7874 would apply only if most (or at least a good portion) of the purchase consideration consists of share consideration that provides the domestic entity owners with a continuing proprietary interest in the foreign acquiring corporation. However, section 7874 can cause a foreign acquiring corporation to be viewed as a surrogate foreign corporation (or as a domestic corporation under section 7874(b)) even when the purchase consideration consists entirely of cash or other non-stock consideration.

Read an [April 2024 report](#)¹ prepared by KPMG LLP tax professionals that explains how the rules concerning disqualified stock and non-ordinary-course distributions can inappropriately create an inversion under section 7874 and how amending the safe harbor de minimis exception would address the issue.

¹ This article originally appeared in *Tax Notes Federal* (April 22, 2024) and is provided with permission.

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