Form **8937**
(December 2017)
Department of the Treasury
Internal Revenue Service

# Report of Organizational Actions Affecting Basis of Securities

► See separate instructions.

OMB No. 1545-0123

## Part I Reporting Issuer

| | |
|---|---|
| 1 Issuer's name<br>Avaya Inc. | 2 Issuer's employer identification number (EIN)<br>22-3713430 |

| | | |
|---|---|---|
| 3 Name of contact for additional information<br>Mike McCarthy | 4 Telephone No. of contact<br>919-425-8330 | 5 Email address of contact<br>mikemccarthy@avaya.com |

| | |
|---|---|
| 6 Number and street (or P.O. box if mail is not delivered to street address) of contact<br>2605 Meridian Parkway, Suite 200 | 7 City, town, or post office, state, and ZIP code of contact<br>Durham, NC 27713 |

| | |
|---|---|
| 8 Date of action<br>9/25/2020 | 9 Classification and description<br>See attached |

| 10 CUSIP number | 11 Serial number(s) | 12 Ticker symbol | 13 Account number(s) |
|---|---|---|---|
| See attached | N/A | N/A | N/A |

## Part II Organizational Action

Attach additional statements if needed. See back of form for additional questions.

14 Describe the organizational action and, if applicable, the date of the action or the date against which shareholders' ownership is measured for the action ► See attached

15 Describe the quantitative effect of the organizational action on the basis of the security in the hands of a U.S. taxpayer as an adjustment per share or as a percentage of old basis ► See attached

16 Describe the calculation of the change in basis and the data that supports the calculation, such as the market values of securities and the valuation dates ► See attached

**Part II** **Organizational Action** *(continued)*

17 List the applicable Internal Revenue Code section(s) and subsection(s) upon which the tax treatment is based ▶ See attached

18 Can any resulting loss be recognized? ▶ See attached

19 Provide any other information necessary to implement the adjustment, such as the reportable tax year ▶ See attached

**Sign Here**

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Signature ▶ Date ▶ 11/6/20

Print your name ▶ KEVIN SPEED Title ▶ VP, CONTROLLER & CAO

| **Paid Preparer Use Only** | Print/Type preparer's name | Preparer's signature | Date | Check ☐ if self-employed | PTIN |
|---|---|---|---|---|---|
| | Firm's name ▶ | | | Firm's EIN ▶ | |
| | Firm's address ▶ | | | Phone no. | |

Send Form 8937 (including accompanying statements) to: Department of the Treasury, Internal Revenue Service, Ogden, UT 84201-0054

# Avaya Inc.

**Attachment to Form 8937, Report of Organizational Action Affecting Basis of Securities**

The information in this document does not constitute tax advice and is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code of 1986, as amended (the "**Code**"). Holders of the Existing Term Loans and the 2020 Extended Term Loans (each as defined below) should consult their tax advisors regarding the particular tax consequences of the Amendment (as defined below) to them, including the applicability and effect of all U.S. federal, state and local and non-U.S. tax laws.

## Form 8937, Part I, Line 9 and 10

CUSIP for the Existing Term Loans (as defined below): 05349UBC5

CUSIP for the 2020 Extended Term Loans (as defined below): 05349UBB7

## Form 8937, Part II, Line 14

*Describe the organizational action and, if applicable, the date of the action or the date against which shareholders' ownership is measured for the action.*

On September 25, 2020, Avaya Inc. (the "**Company**") executed Amendment No. 2 (the "**Amendment**"), in respect of the Term Loan Credit Agreement, dated as of December 15, 2017 (as amended by Amendment No. 1, dated June 18, 2018), among Avaya Inc., as Borrower, Avaya Holdings Corp., the Lenders, and Goldman Sachs Bank USA, as the Administrative Agent and the Collateral Agent. Pursuant to the Amendment, an aggregate principal amount of $800,000,000 of term loans issued pursuant to the Term Loan Credit Agreement ("**Existing Term Loans**") were modified to extend the maturity date (the "**2020 Extended Term Loans**"). In connection with the Amendment, the Company paid an extension fee ("**Extension Fee**") to holders of the Existing Term Loans.

The Company has determined that the Amendment constitutes a significant modification of the Existing Term Loans within the meaning of Treas. Reg. §1.1001-3(e), resulting in a deemed issuance of the 2020 Extended Term Loans in exchange for $800 million of the aggregate principal balance of the Existing Term Loans for U.S. federal income tax purposes.

## Form 8937, Part II, Line 15

*Describe the quantitative effect of the organizational action on the basis of the security in the hands of a U.S. taxpayer as an adjustment per share or as a percentage of old basis.*

The U.S. federal income tax consequences of the exchange of the Existing Term Loans for the 2020 Extended Term Loans together with the Extension Fee pursuant to the Amendment will depend, in part, on whether the 2020 Extended Term Loans and the Existing Term Loans both constitute "securities" for U.S. federal income tax purposes. Neither the Code or the Treasury Regulations promulgated thereunder defines the term "security." Whether a debt instrument constitutes a "security" is determined based on all relevant facts and circumstances, but most authorities have held that the length of the term of a debt instrument at initial issuance is an important factor in determining whether such instrument is a security for U.S. federal income tax purposes. These authorities have generally indicated that a term of less than five years is evidence that the instrument is not a security, whereas a term of ten years or more is evidence that it is a security. There are numerous other factors that could be taken into account in determining whether a debt instrument is a security, including the security for payment, the creditworthiness of the obligor, the subordination or lack thereof with respect to other creditors, the right to vote or otherwise participate in the management of the obligor, convertibility of the instrument into an interest of the obligor, whether payments of interest are fixed, variable, or contingent, and whether such payments are made on a current basis or accrued. Due to the inherently factual nature of the determination, holders are urged to consult their tax advisors regarding the status of the 2020 Extended Term Loans and the Existing Term Loans as "securities" for U.S. federal income tax purposes.

If the Existing Term Loans and the 2020 Extended Term Loans both constitute "securities", the deemed exchange should qualify as a "recapitalization" (within the meaning of Section 368(a)(1)(E) of the Code) for U.S. federal income tax purposes. If the deemed exchange qualifies as a recapitalization for U.S. federal income tax purposes, a holder's aggregate tax basis in the 2020 Extended Term Loans received as a result of the Amendment (other than any portion of the 2020 Extended Term Loans received that is attributable to accrued but unpaid interest) generally should equal such holder's aggregate adjusted tax basis in its Existing Term Loans immediately before the Amendment (excluding in respect of accrued but unpaid interest), increased by any gain recognized in respect of the Extension Fee and decreased by the amount of the Extension Fee.

If the Amendment does not qualify as a recapitalization for U.S. federal income tax purposes, the Amendment would be a fully taxable transaction for U.S. federal income tax purposes. In that case, a holder's aggregate tax basis in the 2020 Extended Term Loans received in connection with the Amendment (other than any portion of the 2020 Extended Term Loans received that is attributable to accrued but unpaid interest) generally would equal the issue price of the 2020 Extended Term Loans.

A holder generally should have an initial tax basis in any portion of the 2020 Extended Term Loans received that is attributable to accrued but unpaid interest equal to such accrued but unpaid interest.

Holders of the Existing Term Loans should consult their tax advisors regarding the possible classification of the Existing Term Loans and 2020 Extended Term Loans as "securities" and the tax consequences of the Amendment to them.

**Form 8937, Part II, Line 16**

*Describe the calculation of the change in basis and the data that supports the calculation, such as the market values of securities and the valuation dates.*

If the Amendment qualifies as a recapitalization for U.S. federal income tax purposes, a holder's aggregate tax basis in the 2020 Extended Term Loans received (other than any portion of the 2020 Extended Term Loans received that is attributable to accrued but unpaid interest) generally should equal such holder's aggregate adjusted tax basis in its Existing Term Loans immediately before the Amendment (excluding in respect of accrued but unpaid interest), increased by any gain recognized in respect of the Extension Fee and decreased by the amount of the Extension Fee.

If the Amendment does not qualify as a recapitalization for U.S. federal income tax purposes, the Amendment would be a fully taxable transaction for U.S. federal income tax purposes. In that case, a holder's aggregate tax basis in the 2020 Extended Term Loans received in connection with the Amendment (other than any portion of the 2020 Extended Term Loans received that is attributable to accrued but unpaid interest) generally would equal the issue price of the 2020 Extended Term Loans.

A holder generally should have an initial tax basis in any portion of the 2020 Extended Term Loans received that is attributable to accrued but unpaid interest equal to such accrued but unpaid interest.

Based on information reasonably available on the date of the Amendment, the Company has determined (i) that the 2020 Extended Term Loans were "traded on an established market" for purposes of determining the issue price under the rules in Treas. Reg. §1.1273-2(f), and (ii) that the issue price of the 2020 Extended Term Loans was as follows (expressed as a percentage of face amount):

| **Debt Tranche** | **Issue Price (%)** |
|---|---|
| 2020 Extended Term Loans | 97.75% |

Holders of the Existing Term Loans should consult their tax advisors to determine the tax consequences of the Amendment to them.

**<u>Form 8937, Part II, Line 17</u>**

*List the applicable Internal Revenue Code section(s) and subsection(s) upon which the tax treatment is based.*

Sections 354, 356, 358, 368, 1001, 1012 and 1273 of the Code.

**<u>Form 8937, Part II, Line 18</u>**

*Can any resulting loss be recognized?*

If the Amendment qualifies as a recapitalization for U.S. federal income tax purposes, no loss would be recognized for U.S. federal income tax purposes. If the Amendment does not qualify as a recapitalization for U.S. federal income tax purposes, the Amendment may result in the recognition of a loss to a holder in an amount generally equal to the excess (if any) of the remaining holder's adjusted tax basis in its Existing Term Loans (excluding accrued but unpaid interest) over the sum of the issue price of the holder's 2020 Extended Term Loans received and the Extension Fee received.

**Form 8937, Part II, Line 19**

*Provide any other information necessary to implement the adjustment, such as the reportable tax year.*

The reportable tax year is 2020 with respect to calendar year taxpayers. For taxpayers reporting taxable income on a basis other than the calendar year, the reportable tax year is the taxpayer's year that includes September 25, 2020.

# Avaya Inc.

## Statement Required by Treas. Reg. §1.1273-2(f)(9) as to Determination of Issue Price for U.S. Federal Income Tax Purposes

On September 25, 2020, Avaya Inc. (the "**Company**") executed Amendment No. 2 (the "**Amendment**"), in respect of the Term Loan Credit Agreement, dated as of December 15, 2017 (as amended by Amendment No. 1, dated June 18, 2018), among Avaya Inc., as Borrower, Avaya Holdings Corp., the Lenders, and Goldman Sachs Bank USA, as the Administrative Agent and the Collateral Agent. Pursuant to the Amendment, an aggregate principal amount of $800,000,000 of term loans issued pursuant to the Term Loan Credit Agreement ("**Existing Term Loans**") were modified to extend the maturity date (the "**2020 Extended Term Loans**"). In connection with the Amendment, the Company paid an extension fee ("**Extension Fee**") to holders of the Existing Term Loans.

The Company has determined that the Amendment constitutes a significant modification of the Existing Term Loans within the meaning of Treas. Reg. §1.1001-3(e), resulting in a deemed issuance of the 2020 Extended Term Loans in exchange for $800 million of the aggregate principal balance of the Existing Term Loans for U.S. federal income tax purposes.

Treas. Reg. §1.1273-2(f)(9) requires the Company to provide this statement to holders of the 2020 Extended Term Loans as to the determination of the issue price for U.S. federal income tax purposes.

Based on information reasonably available on the date of the Amendment, the Company has determined (i) that the 2020 Extended Term Loans were "traded on an established market" for purposes of determining the issue price under the rules in Treas. Reg. §1.1273-2(f), and (ii) that the issue price of the 2020 Extended Term Loans was as follows (expressed as a percentage of face amount):

| **Debt Tranche** | **Issue Price (%)** |
|---|---|
| 2020 Extended Term Loans | 97.75% |

Pursuant to Treas. Reg. §1.1273-2(f)(9), the Company's determinations in this statement are binding on a holder of the 2020 Extended Term Loans unless such holder explicitly discloses that its determinations are different from Borrower's determinations on a timely filed U.S. federal income tax return for the taxable year that includes its acquisition date of the 2020 Extended Term Loans.

**This notice is only intended to fulfill the Company's notification obligation under Treas. Reg. §1.1273-2(f)(9) and does not constitute tax advice. Holders are encouraged to consult their tax advisors regarding their particular consequences relating to the issuance of the 2020 Extended Term Loans.**