

[4830-01-P]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TDXXXX]

RIN 1545-BG00

Exclusions from Gross Income of Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations under section 883(a) and (c) of the Internal Revenue Code (Code), relating to the exclusion from gross income of income derived by certain foreign corporations engaged in the international operation of ships or aircraft. These temporary regulations revise §1.883-3 of the final regulations, relating to the eligibility of controlled foreign corporation for the exclusion under section 883, following the repeal of section 954(a)(4) and (f) (foreign base company shipping provisions) by section 415 of the American Jobs Creation Act of 2004. These regulations also provide certain additional guidance under section 883, including for foreign corporations that are organized in countries providing an exemption from taxation for certain shipping and air transport income solely through an income tax convention. The text of the temporary regulations also serves as the text of the proposed regulations (Reg-138707-06) set forth in the cross-referenced notice of proposed rulemaking on this

subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: Effective Date: These regulations are effective **[INSERT DATE**

THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER].

Applicability Date: For dates of applicability, see §1.883-5T(e).

FOR FURTHER INFORMATION CONTACT: Patricia A. Bray at (202) 622-3880
(not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1677. Responses to these collections of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking

published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

1. Section 883 and the Final Regulations

Sections 883(a)(1) and (a)(2) of the Code generally provide that income from the international operation of ships or aircraft derived by a foreign corporation will be excluded from gross income and exempt from U.S. taxation if the foreign country in which the corporation is organized grants an equivalent exemption to corporations organized in the United States. Section 883(c)(1) provides that a foreign corporation cannot qualify for the section 883(a) exemption if 50 percent or more of the value of its stock is owned by individuals who are not residents of a country that grants an equivalent exemption to U.S. corporations. However, under section 883(c)(2), section 883(c)(1) does not apply to a foreign corporation that is a controlled foreign corporation as defined in section 957(a) (CFC). In addition, under section 883(c)(3), section 883(c)(1) does not apply to a foreign corporation whose stock is primarily and regularly traded on an established securities market in the United States or in a foreign country that grants an equivalent exemption to U.S. corporations.

On August 26, 2003, the IRS and the Treasury Department issued final regulations under section 883 in TD 9087 (68 FR 51394). The final regulations provide, in general, that a foreign corporation organized in a qualified foreign country and engaged in the international operation of ships or aircraft may exclude qualified income from gross income for purposes of U.S. Federal income taxation, provided that the corporation can satisfy certain ownership and related documentation requirements. A foreign corporation that meets these requirements is a “qualified foreign corporation”. A foreign country that grants U.S. corporations an equivalent exemption from gross income is a “qualified foreign country”. The final regulations also provide definitions of the terms “qualified income” and “equivalent exemption.” In addition, the final regulations specify how a foreign corporation can satisfy the ownership and related documentation requirements and the information which the foreign corporation must include on its U.S. income tax return in order to claim an exemption.

In general, a foreign corporation must own or lease an entire ship or aircraft and the ship or aircraft must carry cargo or passengers for hire in order for the foreign corporation to be engaged in the operation of a ship or aircraft for this purpose. Section 1.883-1(f) provides rules for determining whether income is derived from the international operation of a ship or aircraft. Section 1.883-1(g)(1) provides rules regarding when certain activities of a foreign corporation, otherwise engaged in the international operation of a ship or aircraft, are so closely related to the international

operation of ships or aircraft that they are considered incidental to such international operation. The final regulations provide a nonexclusive list of activities that are considered incidental to the international operation of ships or aircraft. Income from these incidental activities is deemed to be income derived from the international operation of a ship or aircraft. Section 1.883-1(g)(2) also provides a nonexclusive list of activities that are not incidental to the international operation of ships or aircraft. The final regulations reserve on whether services, including ground services, maintenance, and catering, and other services, are considered incidental to the international operation of ships or aircraft.

Section 1.883-1(h) provides that an equivalent exemption may exist if a foreign country generally imposes no tax on income or specifically provides a domestic tax law exemption for income derived from the international operation of ships or aircraft. Alternatively, a foreign country may exchange a diplomatic note with the United States that provides for a reciprocal exemption for purposes of section 883. Section 1.883-1(h)(3)(i) generally provides that a foreign country that grants an exemption from taxation for income from the international operation of ships and aircraft only through an income tax convention with the United States is not considered to grant an equivalent exemption. Thus, a corporation organized in such a country may not claim an exclusion under section 883, and can only claim available treaty benefits to exempt income derived from international transport.

The final regulations require that a foreign corporation must satisfy

either a publicly-traded test in §1.883-2(a), a CFC stock ownership test in §1.883-3(a), or a qualified shareholder stock ownership test in §1.883-4(a) to satisfy the ownership requirements of section 883(c). Under §1.883-3(a), a foreign corporation satisfies the CFC stock ownership test if it meets the “income inclusion test” of §1.883-3(b) and satisfies certain substantiation and reporting requirements under §1.883-3(c) and (d). The income inclusion test requires that more than 50 percent of the CFC’s adjusted net foreign base company income (as defined in §1.954-1(d) and as increased or decreased by section 952(c)) derived from the international operation of ships or aircraft be includible in the gross income of one or more U.S. citizens, individual residents of the United States, or domestic corporations. This rule prevents individuals residing in foreign countries that do not grant an equivalent exemption to U.S. corporations from benefiting from the section 883 exemption by owning a CFC through a domestic partnership, estate or trust.

Section 1.883-4 of the final regulations provides rules for when a foreign corporation satisfies the qualified shareholder stock ownership test. To satisfy this test, more than 50 percent of the value of a foreign corporation’s outstanding shares must be owned, applying the attribution rules of §1.883-4(c), for half the number of days during the corporation’s taxable year by qualified shareholders. The foreign corporation must also meet the substantiation and reporting requirements of §1.883-4(d) and (e). Under the reporting requirements of §1.883-4(e), a foreign corporation must

attach a statement with certain information to its Form 1120-F, "U.S. Income Tax Return of a Foreign Corporation", including the names and addresses of individual shareholders with large shareholdings (at least 5 percent) in the foreign corporation.

2. Elimination of Foreign Base Company Shipping Income

Section 415 of the American Jobs Creation Act of 2004, Public Law No. 108-357, (118 Stat. 1418 (2004)) (AJCA) repealed section 954(a)(4) and (f), eliminating foreign base company shipping income as a type of foreign base company income and, thus, as subpart F income (the repeal of the foreign base company shipping provisions). The repeal is effective for taxable years of foreign corporations beginning after December 31, 2004, and for taxable years of United States shareholders with or within which such taxable years of foreign corporations end. Section 423 of the AJCA also delayed the applicability date of the final regulations under section 883(a) and (c) for one year, until taxable years beginning after September 24, 2004.

Commentators noted that the repeal of the foreign base company shipping provisions created uncertainty about the application of the §1.883-3(b) income inclusion test for CFCs that no longer have foreign base company income.

On August 5, 2005, the IRS and the Treasury Department issued TD 9218 (70 FR 45529), to conform the applicability date of the final regulations in light of section 423 of the AJCA. The preamble to TD 9218 also acknowledged commentators' concerns regarding the application of the

income inclusion test after the repeal of the foreign base company shipping provisions. The preamble also stated that a CFC that satisfied the income inclusion test prior to the effective date of section 415 of the AJCA continues to satisfy that test after the effective date of the legislation, provided the CFC is able to demonstrate that had the foreign base company shipping provisions not been repealed, more than 50 percent of the CFC's current earnings and profits derived from its international operation of ships or aircraft would have been attributable to amounts includible in the gross income of one or more U.S. citizens, individual residents of the United States, or domestic corporations (pursuant to section 951(a)(1)(A) or another provision of the Code) for the taxable years of such persons in which the taxable year of the CFC ends.

The preamble to TD 9218 also stated that the IRS and the Treasury Department would issue regulations to clarify the application of the income inclusion test and invited further comments on the most appropriate way to accomplish a clarification consistent with the principles of the existing section 883 regulations and the repeal of the foreign base company shipping provisions.

3. Issuance of Notice 2006-43

The IRS and the Treasury Department received a number of comments in response to the preamble language in TD 9218 dealing with the income inclusion test. Generally, commentators stated that to require CFCs to calculate hypothetical amounts of subpart F income as though the foreign

base company shipping provisions had not been repealed was too complex an approach to administer properly. Commentators proposed several alternative approaches they viewed as simpler than the approach described in TD 9218.

After considering these comments, the IRS and the Treasury Department issued Notice 2006-43 (2006-21 I.R.B. 921), which announced a new approach. Under the proposed new approach, a CFC would satisfy the stock ownership test of §1.883-1(c)(2) if it met a “qualified U.S. person ownership test” and satisfied revised substantiation and reporting requirements. To satisfy the qualified U.S. person ownership test, a corporation would be required to be a CFC for more than half the days of the taxable year, and more than 50 percent of the total value of its outstanding stock would have to be owned (within the meaning of section 958(a) and as modified by the notice) by one or more qualified U.S. persons for more than half the days of the taxable year.

These temporary regulations are intended primarily to incorporate the rules of Notice 2006-43, as amended herein, and to respond to comments described below that have been received concerning other portions of the existing section 883 regulations.

4. Additional Comments from Taxpayers

The following additional comments were received regarding the final regulations.

A. Ground services, maintenance, catering, and other services as

services incidental to the international operation of ships or aircraft

As noted, the final regulations reserved on whether the performance of a variety of ground services should be treated as activities that are incidental to the international operation of ships or aircraft. The IRS and the Treasury Department have received a number of comments from the air transport industry requesting guidance under section 883 on the treatment of ground services, including cargo handling, maintenance services, catering and customer service. Commentators have pointed to recent changes in the Commentaries to Article 8 (Shipping, Inland Waterways Transport and Air Transport) of the 2005 Model Tax Convention on Income and Capital issued by the Organisation for Economic Co-operation and Development (OECD), that clarify the circumstances under which certain services performed by an enterprise engaged in the operation of ships or aircraft in international traffic may be either ancillary or directly related to such operations, and thereby covered services for purposes of Article 8 of the Model Convention.

B. Income tax convention treatment as granting an equivalent exemption

Commentators have also suggested that countries that provide an exemption to U.S. corporations only through an income tax convention should be treated as granting an equivalent exemption for purposes of section 883. In support of their position, commentators cite the Senate Committee Report to the Tax Reform Act of 1986, Public Law 99-514 (100 Stat. 2085), which states, “[t]he committee intends that a country which, as

a result of a treaty with the United States, exempts U.S. citizens and domestic corporations from tax in the country on income derived from the operation of ships or aircraft, has an equivalent exemption, even though the treaty technically contains certain additional requirements other than residence, such as U.S. registration or documentation of the ship or aircraft.” S. Rep. No. 99-313 (1986).

Initially, a foreign country that provided an exemption from taxation for income from the international operation of ships or aircraft by reason of an income tax convention was treated as granting an equivalent exemption for purposes of section 883. See Rev. Rul. 89-42 (1989-1 C.B. 234); Rev. Rul. 97-31 (1997-2 C.B. 77) (Supplementing Rev. Rul. 89-42). The IRS and the Treasury Department reconsidered this position, however, in Rev. Rul. 2001-48 (2001-2 C.B. 324) (Modifying and superseding Rev. Rul. 97-31), concluding that an exemption under an income tax convention should not constitute an equivalent exemption for purposes of section 883(a) due to the divergent eligibility requirements and scopes of the exemptions provided under the Code and various income tax conventions. This revised position (that an income tax convention cannot provide an equivalent exemption for purposes of section 883(a)) was adopted in §1.883-1(h)(3)(i) of the final regulations.

C. Reporting requirements related to qualified shareholder stock ownership test

In connection with the substantiation and reporting requirements for

the qualified shareholder stock ownership test, the IRS and the Treasury Department have continued to receive comments expressing concern over the requirement in the final regulations that the names and addresses of individual shareholders with large shareholdings (at least 5 percent) in corporations relying on this ownership test be disclosed on Form 1120-F. Recent comments have suggested that in lieu of providing such names and addresses taxpayers should be permitted to submit a sworn statement by a U.S. tax practitioner subject to Circular 230 with their return that states that the taxpayer satisfies the qualified shareholder stock ownership test and that the names and addresses of shareholders with large shareholdings are available for inspection by the IRS at the office of that such practitioner.

Explanation of Provisions

These temporary regulations incorporate the rules of Notice 2006-43 that amend the income inclusion test in response to the repeal of the foreign base company shipping provisions. These temporary regulations also address a number of comments that have been received concerning other portions of the existing section 883 regulations.

1. Modifications to the Income Inclusion Test

These temporary regulations generally adopt the CFC stock ownership test contained in Notice 2006-43, which is based on whether and to what extent the CFC is ultimately owned by U.S. citizens, residents or domestic corporations. Specifically the temporary regulations provide that a foreign corporation will be a qualified foreign corporation if it is a CFC for more than

half the days in the corporation's taxable year, satisfies the qualified U.S. person ownership test in §1.883-3T(b), and meets the substantiation and reporting requirements of §1.883-3T(c) and (d). A CFC that fails this test will not be a qualified foreign corporation unless it meets either the publicly traded test of §1.883-2(a) or the qualified shareholder stock ownership test of §1.883-4(a).

A CFC meets the qualified U.S. person ownership test in §1.883-3T(b) (1) only if more than 50 percent of the total value of all the outstanding stock of the CFC is owned (within the meaning of section 958(a), as modified in §1.883-3T(b)(4)), by one or more qualified U.S. persons. Under §1.883-3T(b) (2), the term "qualified U.S. person" means a U.S. citizen, resident alien, a domestic corporation, or a domestic trust described in section 501(a). For purposes of applying the qualified U.S. person ownership test, the value of the stock of the CFC that is owned (directly or indirectly) through bearer shares is not taken into account in the numerator, but is taken into account in the denominator to determine the portion of the overall stock value that is owned by qualified U.S. persons. Section 1.883-3T(b)(3). This test is generally consistent with the test set forth in Notice 2006-43.

For purposes of applying the qualified U.S. person ownership test, the attribution rules of section 958(a) will apply for determining ownership interests of qualified shareholders held through foreign entities. In addition, the temporary regulations extend the attribution rules of section 958(a) to domestic partnerships, domestic trusts not described in section 501(a), and

domestic estates. In the case of these domestic entities, stock will be treated as owned proportionately by the partners, beneficiaries, grantors, or other interest holders in such entities, respectively, applying the rules of section 958(a) as if the domestic partnership, estate or trust were a foreign partnership, estate or trust, respectively. The regulations also contain conforming changes to the substantiation and reporting provisions in this section to reflect the new qualified U.S. person ownership test for CFCs.

2. Activities Incidental to the International Operation of Ships or Aircraft

The IRS and the Treasury Department recognize that guidance is needed on the extent to which ground services are considered so closely related to the international operation of ships or aircraft that those services are considered incidental to the international operation of ships or aircraft. Section 1.883-1T(g)(1) treats the provision of goods and services by engineers, ground and equipment maintenance staff, cargo handlers, catering staff, customer services personnel and the provision of facilities such as passenger lounges, counter space, ground handling equipment, and hanger facilities as activities incidental to the international operation of a ship or aircraft. The regulations also make clear that such services will be treated as incidental, whether provided to another enterprise as part of a pooling arrangement, alliance or other joint venture.

3. Countries Providing an Exemption Only Through an Income Tax Convention.

In response to comments and further study, the IRS and the Treasury

Department believe that it is appropriate to provide additional guidance regarding when a country that only provides for an exemption by means of an income tax convention with the United States will be considered to grant an equivalent exemption for purposes of section 883(a). Section 1.883-1T(h)(1), which sets forth the various bases on which equivalent exemptions may be claimed, is broadened to include a domestic tax law exemption by income tax convention. Section 1.883-1T(h)(1)(ii). Section 1.883-1T(h)(3) sets out the conditions under which an exemption under an income tax convention may constitute an equivalent exemption.

If a foreign country provides an exemption from tax under a shipping or air transport article or a gains article of an income tax convention, and it does not otherwise provide an equivalent exemption through a diplomatic note, domestic statutory law or by generally imposing no income tax on foreign corporations engaged in the international operation of ships or aircraft, a foreign corporation organized in that foreign country may treat that income tax convention as providing an equivalent exemption for purposes of section 883, but only if the foreign corporation meets all the conditions for claiming benefits with respect to such income under both the convention and section 883.

Accordingly, not all exemptions from tax under income tax conventions will qualify as equivalent exemptions for purposes of section 883. For example, a foreign corporation that is managed and controlled in a country, but not organized in that country, may not claim the income tax convention

as an equivalent exemption under section 883 because §1.883-1(c)(1) requires the foreign corporation to be organized in the foreign country that grants the equivalent exemption. Similarly, if a foreign corporation does not meet one of the stock ownership tests described in §1.883-1(c)(2), even though it would satisfy the limitation on benefits article in the relevant convention, it may not treat an income tax convention as providing an equivalent exemption. In addition, if a foreign corporation is claiming an exemption under an income tax convention with respect to non-incidentally container-related income, it may not treat the exemption for that type of income as an equivalent exemption, since that category of income is not listed in §1.883-1(h)(2). Because equivalent exemptions are determined separately with respect to each category of income listed in §1.883-1(h)(2), however, the foreign corporation may treat an exemption under an income tax convention with respect to another category of income that is listed in §1.883-1(h)(2) (for example, such as incidental bareboat charter income) as an equivalent exemption for purposes of section 883.

As provided in the final regulations, a foreign corporation that qualifies for an exemption from tax under both an income tax convention and an equivalent exemption under section 883 will continue to have the choice of whether to claim an exemption under the income tax convention or under the equivalent exemption. Section 1.883-1T(h)(3)(ii)(A). Such a corporation may also choose to claim an exemption simultaneously under both an income tax convention and section 883 with respect to any category of

income listed in §1.883-1(h)(2), to the extent that such income is also exempt under an income tax convention. Section 1.883-1T(h)(3)(ii)(B).

The rules provided in §1.883-1(h)(3)(ii) of the final regulations for certain joint ventures also continue in modified form. A foreign corporation resident in a country that only provides an exemption through an income tax convention with the United States, and that corporation participates in a joint venture entity that is fiscally transparent for U.S. tax purposes, but not under the law of the treaty jurisdiction, will not be able to take advantage of the new rules on equivalent exemptions under income tax conventions and will continue to need to rely on §1.883-1T(h)(3)(iii).

4. Reporting Requirements Related to Qualified Shareholder Stock

Ownership Test

Upon further study and review, the IRS and the Treasury Department have decided to bring the disclosure required under each of the stock ownership tests provided in §1.883-1(c)(2) into greater accord with the disclosure required for compliance with comparable stock ownership tests with similar tax policy objectives that appear in the branch profits tax regulations and limitation on benefits articles in U.S. income tax conventions. See §1.884-5 and Form 8833, “Treaty-Based Return Position Disclosure under Section 6114 or 7701(b).” Consequently, in these temporary regulations the IRS and Treasury Department have eliminated the requirement that the names and addresses of shareholders in corporations relying on the various stock ownership tests in section 883(c) (that is, under

the closely held exception to the publicly traded test, the CFC stock ownership test and the qualified shareholder stock ownership test) be disclosed on Form 1120-F. See §1.883-2(f), §1.883-3T(d). and §1.883-4T(e).

However, foreign corporations will continue to have to report on Form 1120-F certain summary information regarding the shareholdings that are relied upon to satisfy the applicable stock ownership test (for example, aggregate percentage of interests held by shareholders by country of residence). They also will have to report under new §1.883-1T(c)(3)(i)(G) whether any shareholder whose stock holdings are relied upon to meet an ownership test holds such stock in the foreign corporation either directly or indirectly through bearer shares. In addition, each qualified shareholder and intermediary, if any, must declare, under penalties of perjury, that its ownership interest in the foreign corporation or any corporate intermediary is not held through bearer shares. Conforming amendments to the substantiation and documentation requirements in §1.883-2T(e), §1.883-3T(c)(2) and (3), and §1.883-4T(d)(4) have also been made.

Commentators suggested alternative methods to make available to the IRS the names and addresses of 5-percent shareholders. However, these methods were not adopted, due to the complexity of the alternative regimes proposed and questions as to whether the alternative approaches would address the concerns raised by commentators. Instead, the IRS and the Treasury Department rely on procedures already in place in §1.883-1(c)(3), which requires, among other things, a foreign corporation to obtain

ownership statements to document or substantiate all representations it has made on Form 1120-F, and requires the foreign corporation to provide the substantiating documentation within 60 days of a written request from the Commissioner. However, substantiating shareholder information must be provided within 30 days (rather than 60 days) of a written request by the Commissioner, because the names and addresses of relevant shareholders will no longer be provided on the Form 1120-F by taxpayers.

The IRS and the Treasury Department believe that these revised reporting rules will reduce disclosure concerns raised by taxpayers and simultaneously encourage greater reporting of the information the IRS needs to administer section 883. The IRS and the Treasury Department also believe these changes, in conjunction with the remaining reporting requirements in §1.883-2(f), §1.883-2T(f), §1.883-3T(d), §1.883-4(e), and §1.883-4T(e), will provide sufficient information to ensure the sound and efficient administration of section 883.

5. Effective dates

See §1.883-5T(d) for effective date of these temporary regulations and §1.883-5(T)(e) for applicability dates that apply to these temporary regulations.

Effect on Other Documents

The following publications are modified or obsolete, as indicated below, as of **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**:

Notice 2006-43 (2006-21 I.R.B. 921) [Modified]

Rev. Rul. 2001-48 (2001-42 I.R.B. 324) [Modified]

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. For applicability of the Regulatory Flexibility Act, please refer to the cross-reference notice of proposed rulemaking published elsewhere in this **Federal Register**. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these temporary regulations is Patricia A. Bray of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

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 1.883-0 is amended by:

1. Paragraph relating to §1.883-1(g)(3) is revised.
2. Paragraphs relating to §1.883-1(g)(3)(i) and (ii) are removed.
3. Paragraph relating or §1.883-1(h)(3)(i) is revised.
4. Paragraph relating to §1.883-1(h)(3)(iii) is redesignated as §1.883-1(h)(3)(iv).
5. Paragraph relating to §1.883-1(h)(3)(ii) is redesignated as §1.883-1(h)(3)(iii).
6. Paragraph relating to §1.883-1(h)(3)(ii) is added.
7. Paragraph relating to §1.883-3(b)(2) is revised.
8. Paragraph relating to §1.883-3(c)(2) is revised.
9. Paragraphs relating to §1.883-5(d) and (e) are added.

The revisions, redesignations and additions read as follows:

§1.883-0 Outline of major topics.

* * * * *

§1.883-1 Exclusion of income from the international operation of ships or aircraft.

* * * * *

(g) * * *

(3) [Reserved]. For further guidance, see §1.883-0T, paragraph relating to §1.883-1T(g).

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(h) * * *

(3)(i) through (iv) [Reserved]. For further guidance, see §1.883-0T, paragraph relating to §1.883-1T(h)(3)(i) through (iv).

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§1.883-3 Treatment of controlled foreign corporations.

* * * * *

(b) * * *

(2) through (5) [Reserved]. For further guidance, see §1.883-0T, paragraph relating to §1.883-3T(b)(2) through (5).

(c) * * *

(2) through (4) [Reserved]. For further guidance, see §1.883-0T, paragraph relating to §1.883-3T(c)(2) through (4).

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§1.883-5 Effective dates.

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(d) and (e) [Reserved]. For further guidance, see §1.883-0T, paragraphs relating to §1.883-5T(d) and (e).

Par. 3. Section 1.883-0T is added to read as follows:

§1.883-0T Outline of major topics (Temporary).

* * * * *

§1.883-1T Exclusion of income from the international operation of ships or aircraft.

* * * * *

(g) * * *

(3) Other services.

* * * * *

(h) * * *

(3) * * *

(i) Countries with only an income tax convention.

(ii) Countries with both an income tax convention and an equivalent exemption.

(A) General rule.

(B) Special rule for simultaneous benefits under section 883 and an income tax convention.

(iii) Participation in certain joint ventures.

(iv) Independent interpretation of income tax conventions.

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§1.883-3T Treatment of controlled foreign corporations.

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(b) * * *

(2) Qualified U.S. persons.

(3) Treatment of bearer shares.

- (4) Attribution of ownership through certain domestic entities.
- (5) Examples.

* * *

(c) * * *

- (2) Ownership statements from qualified U.S. persons.
- (3) Ownership statements from intermediaries.
- (4) Three-year period of validity.
- (5) Availability and retention of documents for inspection.

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§1.883-5T Effective dates.

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- (d) Effective date.
- (e) Applicability dates.

Par. 4. Section 1.883-1 is amended by:

1. Paragraph (c)(3)(i)(D) is revised.
2. Paragraph (c)(3)(i)(G) is redesignated as (c)(3)(i)(H).
3. Paragraph (c)(3)(i)(H) is redesignated as (c)(3)(i)(I).
4. Paragraph (c)(3)(i)(G) is added.
5. Paragraph (c)(3)(ii) is revised.
6. Paragraph (g)(1)(ix) and (x) are revised.
7. Paragraph (g)(1)(xi), is added.
8. Paragraph (g)(3)(i) and (ii) are removed and (g)(3) is revised.
9. Paragraphs (h)(1)(ii) and (h)(3) are revised.

The revisions and additions read as follows:

§1.883-1 Exclusion of income from the international operation of ships or aircraft.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(D) [Reserved]. For further guidance, see §1.883-1T(c)(3)(i)(D).

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(G) through (I) [Reserved.] For further guidance, see §1.883-1T(c)(3)(i)

(G) through (I).

(ii) [Reserved]. For further guidance, see §1.883-1T(c)(3)(ii).

* * * * *

(g) * * *

(1) * * *

(ix) through (xi) [Reserved]. For further guidance, see §1.883-1T(g)(1)

(ix) through (xi).

(2) * * *

(3) Other Services. [Reserved]. For further guidance, see §1.883-1T(g)

(3).

* * * * *

(h) * * *

(1) * * *

(ii) [Reserved]. For further guidance, see §1.883-1T(h)(1)(ii).

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(3) [Reserved]. For further guidance, see §1.883-1T(h)(3).

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Par. 5. Section 1.183-1T is added to read as follows:—

§1.883-1T Exclusion of income from the international operation of ships or aircraft (temporary).

(a) through (c)(3)(i)(C) [Reserved]. For further guidance, see §1.883-1(a) through (c)(3)(i)(C).

(D) The applicable authority for an equivalent exemption, for example, the citation of a statute in the country where the corporation is organized, a diplomatic note between the United States and such country, or, an income tax convention between the United States and such country in the case of a corporation described in paragraph (h)(3)(i) or (ii) of this section, (for further guidance, see Rev. Rul. 2001-48 (2001-2 C.B. 324) and successor revenue rulings (see §601.601(d)(2) of this chapter));

(c)(3)(i)(E) through (F) [Reserved]. For further guidance, see §1.883-1(c)(3)(i)(E) through (F).

(G) A statement that none of the foreign corporation's shares or shares of any intermediary entity, if any, that are held by qualified shareholders and relied on to satisfy any of the stock ownership tests described in §1.883-1(c)(2) are issued in bearer form;

(H) Any other information required under §1.883-2(f), §1.883-2T(f),

§1.883-3T(d), §1.883-4(e) or §1.883-4T(e), as applicable; and

(l) Any other relevant information specified in the Form 1120-F (U.S. Income Tax Return of a Foreign Corporation) and its accompanying instructions.

(ii) Further documentation--(A) General rule. Except as provided in subparagraph (B) of this paragraph (c)(3)(ii), if the Commissioner requests in writing that the foreign corporation document or substantiate representations made under paragraph (c)(3)(i) of this section, or under §1.883-2(f), §1.883-2T(f), §1.883-3T(d), §1.883-4(e) or §1.883-4T(e), as applicable, the foreign corporation must provide the documentation or substantiation within 60 days following the written request. If the foreign corporation does not provide the documentation and substantiation requested within the 60-day period, but demonstrates that the failure was due to reasonable cause and not willful neglect, the Commissioner may grant the foreign corporation a 30-day extension to provide the documentation or substantiation. Whether a failure to obtain the documentation or substantiation in a timely manner was due to reasonable cause and not willful neglect shall be determined by the Commissioner after considering all the facts and circumstances.

(B) Names and addresses of certain shareholders. If the Commissioner requests the names and permanent addresses of individual qualified shareholders of a foreign corporation, as represented on each such individual's ownership statement, to substantiate the requirements of the

exception to the closely-held test in the publicly-traded test in §1.883-2(e), the qualified person stock ownership test in §1.883-4(a), or the requirements of the qualified U.S. person ownership test in §1.883-3T(b), the foreign corporation must provide the documentation or substantiation within 30 days following the written request. If the foreign corporation does not provide the documentation and substantiation requested within the 30-day period, but demonstrates that the failure was due to reasonable cause and not willful neglect, the Commissioner may grant the foreign corporation a 30-day extension to provide the documentation or substantiation. Whether a failure to obtain the documentation or substantiation in a timely manner was due to reasonable cause and not willful neglect shall be determined by the Commissioner after considering all the facts and circumstances.

(c)(4) through (g)(1)(viii) [Reserved]. For further guidance see §1.883-1(c)(4) through (g)(1)(viii).

(ix) Arranging by means of a space or slot charter for the carriage of cargo listed on a bill of lading or airway bill or similar document issued by the foreign corporation on the ship or aircraft of another corporation engaged in the international operation of ships or aircraft;

(x) The provision of containers and related equipment by the foreign corporation in connection with the international carriage of cargo for use by its customers, including short-term use within the United States immediately preceding or following the international carriage of cargo (and for this purpose, a period of five days or less shall be presumed to be short-term);

and

(xi) The provision of goods and services by engineers, ground and equipment maintenance staff, cargo handlers, catering staff, customer services personnel and the provision of facilities such as passenger lounges, counter space, ground handling equipment, and hanger facilities.

(2) [Reserved]. For further guidance, see §1.883-1(g)(2).

(3) Other Services. [Reserved].

(g)(4) through (h)(1)(i) [Reserved]. For further guidance, see §1.883-1(g)(4) through (h)(1)(i).

(ii) Specifically provides a domestic law tax exemption for income derived from the international operation of ships or aircraft, either by statute, decree, income tax convention, or otherwise; or

(h)(1)(iii) and (h)(2) [Reserved]. For further guidance see §1.883-1(h)(1)(iii) and

(h)(2).

(3) Special rules with respect to income tax conventions--(i) Countries with only an income tax convention. If a foreign country only provides an exemption from tax for profits from the operation of ships or aircraft in international transport or international traffic under the shipping or air transport article or gains article of an income tax convention with the United States, a foreign corporation may treat that exemption as an equivalent exemption for purposes of section 883, but only if--

(A) The foreign corporation meets all the conditions for claiming benefits with respect to such profits under the income tax convention;

(B) The foreign corporation is organized in the country in which it is a resident for purposes of the income tax convention; and

(C) The profits that are exempt pursuant to the income tax convention also fall within a category of income described in paragraph (h)(2)(i) through (viii) of this section; and

(D) The foreign corporation satisfies one of the stock ownership tests of paragraph (c)(2) of this section and complies with the substantiation and reporting requirements in paragraph (c)(3) of this section.

(ii) Countries with both an income tax convention and an equivalent exemption--(A) General rule. If a foreign country provides an exemption from tax for profits from the operation of ships or aircraft in international transport or international traffic under the shipping or air transport article or gains article of an income tax convention, and that foreign country also provides an equivalent exemption for one or more categories of income under paragraph (h)(1) of this section, the foreign corporation may choose annually whether to claim an exemption under section 883 or under the income tax convention. Except as provided in subparagraph (B) of this paragraph (h)(3)(ii), any such choice will apply with respect to all categories of qualified income of the foreign corporation and cannot be made separately with respect to different categories of income. If a foreign corporation bases its claim for an exemption on section 883, the foreign corporation must satisfy all of the requirements of this section to qualify for an exemption from U.S. income tax. If the foreign corporation bases its

claim for an exemption on an income tax convention, it must satisfy all of the requirements for claiming benefits under the income tax convention. See §1.883-4(b)(3) for rules regarding satisfying a stock ownership test of §1.883-1(c)(2) using shareholders resident in a foreign country that offers an exemption under an income tax convention.

(B) Special rule for simultaneous benefits under section 883 and an income tax convention. If a foreign country provides an exemption from tax with respect to the same category of income under both an income tax convention and §1.883-1(h)(1) of this section, the foreign corporation may choose simultaneously to claim an exemption with respect to that category of income under both the income tax convention and section 883, but only if the foreign corporation satisfies all other conditions for an exemption from tax with respect to such income under both section 883 and the income tax convention.

(iii) Participation in certain joint ventures. A foreign corporation resident in a foreign country that provides an exemption only through an income tax convention will not be precluded from treating that exemption as an equivalent exemption if it derives income through a participation, directly or indirectly, in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture described in §1.883-1(e)(2) and the foreign corporation would be ineligible to claim benefits under the convention with respect to that category of income solely because the joint venture was not fiscally transparent, within the meaning of

§1.894-1(d)(3)(iii)(A), with respect to that category of income, under the income tax laws of the foreign corporation's country of residence.

(iv) Independent interpretation of income tax conventions.—Nothing in this section §§1.883-1 through 1.883-5 or in §§1.883-1T through 1.883-5T affects the rights or obligations under any income tax convention. The definitions provided in §§1.883-1 through 1.883-5 or in §§1.883-1T through 1.883-5T shall neither give meaning to similar terms used in income tax conventions nor provide guidance regarding the scope of any exemption provided by such conventions, unless an income tax convention that entered into force after August 26, 2003, or its legislative history explicitly refers to section 883 and guidance thereunder for its meaning.

* * * * *

Par. 6. Section 1.883-2 is amended by:

1. Paragraph (e)(2) is revised.
2. Paragraphs (f)(4) and (f)(4)(ii) are revised.

The revisions read as follows:

§1.883-2 Treatment of publicly-traded corporations.

* * * * *

(e) * * *

(2) [Reserved]. For further guidance, see §1.883-2T(e)(2).

(f) * * *

(3) [Reserved]. For further guidance, see §1.883-2T(f)(3).

(4) * * *

(ii) [Reserved]. For further guidance, see §1.883-2T(f)(4)(ii).

Par. 7. Section 1.883-2T is added to read as follows:

§1.883-2T Treatment of publicly-traded corporations (temporary).

(a) through (e)(1) [Reserved]. For further guidance see §1.883-2(a) through (e)(1).

(2) Availability and retention of documents for inspection. The documentation described in §1.833-2(e)(1) must be retained by the corporation seeking qualified foreign corporation status until the expiration of the statute of limitations for the taxable year of the foreign corporation to which the documentation relates. Such documentation must be made available for inspection by the Commissioner at such time and such place as the Commissioner may request in writing in accordance with §1.883-1(c)(3)(ii)(A) or (B), as applicable.

(f) through (f)(2) [Reserved]. For further guidance see §1.883-2(f) through (f)(2).

(3) A description of each class of stock relied upon to meet the requirements of §1.883-2(d), including whether the class of stock is issued in registered or bearer form, the number of issued and outstanding shares in that class of stock as of the close of the taxable year, and the value of each class of stock in relation to the total value of all the corporation's shares outstanding as of the close of the taxable year;

(4) and (4)(i) [Reserved]. For further guidance, see §1.883-2(4) and (4)(i).

(ii) With respect to all qualified shareholders who own directly, or by application of the attribution rules in §1.883-4(c), stock in the closely-held block of stock upon whom the corporation intends to rely to satisfy the exception to the closely-held test of §1.883-2(d)(3)(ii)--

(A) The total number of qualified shareholders, as defined in §1.883-4(b)(1);

(B) The total percentage of the value of the shares owned, directly or indirectly, by such qualified shareholders by country of residence, determined under §1.883-4(b)(2) (residence of individual shareholders) or §1.883-4(d)(3) (special rules for residence of certain shareholders); and

(C) The days during the taxable year of the corporation that such qualified shareholders owned, directly or indirectly, their shares in the closely held block of stock; and

(5) [Reserved]. For further guidance see §1.883-2(f)(5).

Par. 8. Section 1.883-3 is revised as follows:

1. Paragraphs (a) through (d)(4) are removed.
2. Paragraphs (a) through (d)(5) are added.

The additions read as follows:

§1.883-3 Treatment of controlled foreign corporations.

(a) through (d)(5) [Reserved]. For further guidance see §1.883-3T(a) through (d)(5).

Par. 9. Section 1.883-3T is added to read as follows:

§1.883-3T Treatment of controlled foreign corporations (temporary).

(a) General rule. A foreign corporation satisfies the stock ownership test of §1.883-1(c)(2) if it is a controlled foreign corporation (CFC as defined in section 957(a)) and satisfies the qualified U.S. person ownership test in paragraph (b) of this section and the substantiation and reporting requirements of paragraphs (c) and (d) of this section, respectively. A CFC that fails the qualified U.S. person ownership test of paragraph (b) of this section will not satisfy the stock ownership test of §1.883-1(c)(2) unless it meets either the publicly-traded test of §1.883-2(a) or the qualified shareholder stock ownership test of §1.883-4(a).

(b) Qualified U.S. person ownership test--(1) General rule. A foreign corporation will satisfy the requirements of the qualified U.S. person ownership test only if it--

(i) Is a CFC for more than half the days in the corporation's taxable year; and

(ii) More than 50 percent of the total value of its outstanding stock is owned (within the meaning of section 958(a), and paragraph (b)(4) of this section) by one or more qualified U.S. persons for more than half the days in the taxable year, provided that such days of ownership are concurrent with the time period during which the foreign corporation satisfies the requirement in paragraph (b)(1)(i) of this section.

(2) Qualified U.S. person. For purposes of this section, the term qualified U.S. person means a U.S. citizen, resident alien, a domestic corporation, or a domestic trust described in section 501(a), but only if the

person provides to the CFC an ownership statement as described in paragraph (c)(2) of this section, and the CFC meets the reporting requirements of paragraph (d) of this section with respect to such person.

(3) Treatment of bearer shares. For purposes of applying the qualified U.S. person ownership test, the value of the stock of a CFC that is owned (directly or indirectly) through bearer shares by qualified U.S. persons is not taken into account in the numerator of the fraction, but is taken into account in the denominator to determine the portion of the value of stock owned by qualified U.S. persons.

(4) Attribution of ownership through certain domestic entities. For purposes of applying the qualified U.S. person ownership test of paragraph (b)(1) of this section, stock owned, directly or indirectly, by or for a domestic partnership, domestic trust not described in section 501(a), or domestic estate, shall be treated as owned proportionately by its partners, beneficiaries, grantors, or other interest holders, respectively applying the rules of section 958(a) as if such domestic entity were a foreign entity. Stock considered to be owned by a person by reason of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

(5) Examples. The qualified U.S. person ownership test of paragraph (b)(1) of this section is illustrated in the following examples:

Example 1. Ship Co is a CFC for more than half the days of its taxable year. Ship Co is organized in a qualified foreign country. All of its shares are owned by a domestic partnership for the entire taxable year. All of the partners in the domestic partnership are citizens and residents of foreign

countries. Ship Co fails the qualified U.S. person ownership test of paragraph (b)(1) of this section because none of the value of Ship Co's stock is owned, applying the attribution rules of paragraph (b)(4) of this section, for at least half the number of days of Ship Co's taxable year, by one or more qualified U.S. persons. Therefore, Ship Co must satisfy the qualified shareholder stock ownership test of '1.883-4(a), in order to satisfy the stock ownership test of '1.883-1(c)(2) and to be considered a qualified foreign corporation.

Example 2. Ship Co is a CFC for more than half the days of its taxable year. Ship Co is organized in a qualified foreign country. Corp A, a foreign corporation whose stock is owned by a nonresident alien, owns 40 percent of the value of the stock of Ship Co for the entire taxable year. X, a domestic partnership, owns the remaining 60 percent of the value of the stock of Ship Co for the entire taxable year. X is owned by 20 partners, all of whom are U.S. citizens and each of whom has owned a 5 percent interest in X for the entire taxable year of Ship Co. Ship Co satisfies the qualified U.S. person ownership test of paragraph (b)(1) of this section because 60 percent of the value of the stock of Ship Co is owned, applying the attribution of ownership rules of paragraph (b)(4) of this section, for at least half the number of days of Ship Co's taxable year by the partners of X, who are all qualified U.S. persons, as defined in paragraph (b)(2) of this section. If Ship Co satisfies the substantiation and reporting requirements of paragraphs (c) and (d) of this section, it will meet the stock ownership test of '1.883-1(c)(2).

Example 3. XYZ Air is a CFC organized in Country A, a qualified foreign country. P1, a domestic partnership, owns 100 percent of the value of the shares of XYZ Air. The government of Country A owns 25 percent of P1. P2, a domestic partnership, owns the remaining 75 percent of P1. P2 is owned 50 percent by Corp S, a domestic corporation, and 50 percent by Corp T, a foreign corporation. Corp T is owned 50 percent by a domestic corporation and 50 percent by a foreign corporation. The foreign corporation is owned 50 percent by a U.S. citizen and 50 percent by a resident of Country A. All shareholders have held their interests for the entire taxable year. XYZ Air satisfies the qualified U.S. person ownership test of paragraph (b)(1) of this section because 65.63 percent of the value of the stock of XYZ Air is owned, applying the attribution of ownership rules of paragraph (b)(4) of this section, for at least half the number of days of XYZ Air's taxable year by qualified U.S. persons, as defined in paragraph (b)(2) of this section. Therefore, XYZ Air satisfies the qualified U.S. person ownership test. If XYZ Air satisfies the substantiation and reporting requirements of paragraphs (c) and (d) of this section, it will meet the stock ownership test of '1.883-1(c)(2).

Example 4. Ship Co is a foreign corporation organized in a qualified foreign country. Ship Co has two classes of stock, Class A representing 60 percent of the vote and value of all the shares outstanding of Ship Co, and Class B representing the remaining 40 percent. A, a U.S. citizen, holds for

the entire taxable year all of the Class A stock, which is issued in bearer form, and B, a nonresident alien, owns all the Class B stock, which is in registered form. Ship Co cannot satisfy the qualified U.S. person ownership test of paragraph (b)(1) of this section because A's bearer shares cannot be taken into account as being owned by a qualified U.S. person in determining if the test has been met, but are taken into account in determining the total value of Ship Co's outstanding shares.

(c) Substantiation of CFC stock ownership--(1) General rule. A foreign corporation that relies on this CFC test to satisfy the stock ownership test of §1.883-1(c)(2) must establish all the facts necessary to demonstrate to the Commissioner that it satisfies the qualified U.S. person ownership test of paragraph (b)(1) of this section. Specifically, the CFC must obtain a written ownership statement, signed under penalties of perjury by an individual authorized to sign that person's U.S. Federal tax or information return, from

—

(i) Each qualified U.S. person upon whose stock ownership it relies to meet this test; and

(ii) Each domestic intermediary described in paragraph (b)(4) of this section, each foreign intermediary (including a foreign corporation, partnership, trust or estate), and mere legal owners or record holders acting as nominees standing in the chain of ownership between each such qualified U.S. person and the CFC, if any.

(2) Ownership statements from qualified U.S. persons. A qualified U.S. person ownership statement must contain the following information:

(i) The qualified U.S. person's name, permanent address and taxpayer identification number;

(ii) If the qualified U.S. person owns shares directly in the CFC, the number of shares of each class of stock of the CFC owned by the qualified person, and the period of time during the taxable year of the CFC during which the person owned the stock, and a representation that its interest in the CFC is not held through bearer shares; and

(iii) If the qualified person owns an indirect interest in the CFC through an intermediary described in paragraph (c)(1)(ii) of this section, the name of that intermediary, the amount and nature of the interest in the intermediary, the period of time during the taxable year of the CFC during which the person held such interest, and in the case of an interest in a foreign corporate intermediary, a representation that such interest is not held through bearer shares; and

(iv) Any other information as specified in guidance published by the Internal Revenue Service (see §601.601(d)(2) of this chapter).

(3) Ownership statements from intermediaries. An intermediary ownership statement required of an intermediary described in paragraph (c)(1)(ii) of this section must contain the following information:

(i) The intermediary's name, permanent address and taxpayer identification number, if any;

(ii) If the intermediary directly owns stock in the CFC, the number of shares of each class of stock of the CFC owned by the intermediary and the period of time during the taxable year of the CFC during which the intermediary owned the stock, and a representation that such interest is not

held through bearer shares;

(iii) If the intermediary indirectly owns the stock of the CFC, the name and address of each intermediary standing in the chain of ownership between it and the CFC, the period of time during the taxable year of the CFC during which it owned the interest, and the percentage of interest it holds indirectly in the CFC, and in the case of a foreign corporate intermediary, a representation that its interest is not held through bearer shares; and

(iv) Any other information as specified in guidance published by the Internal Revenue Service (see §601.601(d)(2) of this chapter).

(4) Three-year period of validity. The rules of §1.883-4(d)(2)(ii) apply for purposes of determining the validity of the ownership statements required under this paragraph (c)(2).

(5) Availability and retention of documents for inspection. The documentation described in this paragraph (c) must be retained by the corporation seeking qualified foreign corporation status (the CFC) until the expiration of the statute of limitations for the taxable year of the CFC to which the documentation relates. Such documentation must be made available for inspection by the Commissioner at such place as the Commissioner may request in writing in accordance with §1.883-1(c)(3)(ii).

(d) Reporting requirements. A foreign corporation that relies on the CFC test of this section to satisfy the stock ownership test of §1.883-1(c)(2) must provide the following information in addition to the information

required in §.883-1(c)(3) to be included in its Form 1120-F, "U.S. Income Tax Return of a Foreign Corporation," for the taxable year. The information must be based upon the documentation received by the foreign corporation pursuant to paragraph (c) of this section and must be current as of the end of the corporation's taxable year--

(1) The percentage of the value of the shares of the CFC that is owned by all qualified U.S. persons identified in an ownership statement described in paragraph (c)(2) of this section, applying the attribution of ownership rules of paragraph (b)(4) of this section; and

(2) The period during which such qualified U.S. persons held such stock;

(3) The period during which the foreign corporation was a CFC;

(4) A statement that the CFC is directly held by qualified U.S. persons and does not have any bearer shares outstanding or, in the alternative, that it is not relying on direct or indirect ownership of such shares to meet the qualified U.S. person ownership test; and

(5) Any other relevant information specified by Form 1120-F, and its accompanying instructions or in guidance published by the IRS. (see §601.601(d)(2) of this chapter).

Par. 10. Section 1.883-4 is amended by:

1. Paragraph (d)(4)(i)(C) and (D) are revised.
2. Paragraphs (e)(2) through (4) are removed.
3. Paragraphs (e)(2) and (3) are added.

The revisions and additions read as follows:

'1.883-4 Qualified shareholder stock ownership test.

* * * * *

(d) * * *

(4) * * *

(i) * * *

(C) and (D). [Reserved]. For further guidance, see §1.883-4T(d)(4)(i)(C) and (D). * * * * *

(e) * * *

(2) and (3) [Reserved]. For further guidance, see §1.883-4T(e)(2) and (3).

Par. 11. Section 1.883-4T is added to read as follows:

'1.883-4T Qualified shareholder stock ownership test (temporary).

(a) through (d)(4)(i)(B) [Reserved]. For further guidance see §1.883-4(a) through (d)(4)(i)(B).

(C) If the individual directly owns stock in the corporation seeking qualified foreign corporation status, the name of the corporation, the number of shares in each class of stock of the corporation that are so owned, with a statement that such shares are not issued in bearer form, and the period of time during the taxable year of the foreign corporation during which the individual owned the stock;

(D) If the individual directly owns an interest in a corporation, partnership, trust, estate or other intermediary that directly or indirectly

owns stock in the corporation seeking qualified foreign corporation status, the name of the intermediary, the number and class of shares or the amount and nature of interest of the individual in such intermediary, and in the case of a corporate intermediary, a statement that such shares are not held in bearer form, and the period of time during the taxable year of the foreign corporation seeking qualified foreign corporation status during which the individual held such interest;

(d)(4)(i)(E) through (e)(1) [Reserved]. For further guidance see §1.883-4(d)(4)(i)(E) through (e)(1).

(2) With respect to all qualified shareholders relied upon to satisfy the 50 percent ownership test of §1.883-4(a), the total number of such qualified shareholders as defined in §1.883-4(b)(1), the total percentage of the value of the outstanding shares owned, applying the attribution rules of §1.883-4(c), by such qualified shareholders by country of residence or organization, whichever is applicable, and the period during the taxable year of the foreign corporation that such stock was held by qualified shareholders; and

(3) Any other relevant information specified by the Form 1120-F, "U.S. Income Tax Return of a Foreign Corporation," and its accompanying instructions or in guidance published by the IRS. (see §601.601(d)(2) of this chapter).

Par. 12. Section 1.883-5 is amended by:

1. Paragraphs (d) and (e) are added.

The additions read as follows:

§1.883-5 Effective dates.

* * * * *

(d) through (e) [Reserved]. For further guidance, see §1.883-5T(d) through (e).

Par. 13. Section 1.883-5T is added to read as follows:

'1.883-5T Effective dates (Temporary).

(a) through (c) [Reserved]. For further guidance, see §1.883-5(a) through (c).

(d) Effective date. These regulations are effective **[INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER].**

(e) Applicability dates. Sections 1.883-1T, 1.883-2T, and 1.883-4T are applicable to taxable years of the foreign corporation beginning after **[INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER].** Section 1.883-3T is applicable to taxable years of the foreign corporation beginning after May 2, 2006. Taxpayers may elect to apply §1.883-3T to any open taxable years of the foreign corporation beginning on or after December 31, 2004.

PART 602--OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 14 The authority citation for part 602 continues to read as follows:

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

Par. 15 In '602.101, paragraph (b) is amended by adding entries in numerical order to the table to read as follows:

'602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.

§1.883-1T.....	1545-1677
§1.883-2T.....	1545-1677
§1.883-3T.....	1545-1677
§1.883-4T.....	1545-1677
§1.883-5T.....	1545-1677

Deputy Commissioner for Services and Enforcement.

Approved:

Assistant Secretary of the Treasury.