

SUPPORTING STATEMENT
REG-136311-01 (TD 9087 (final))

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Before 1986, section 883 eliminated U.S. tax on earnings from the operation of ships or aircraft derived by foreign persons, including U.S.-controlled foreign corporations, based on whether the country of documentation of the ship or registry of the aircraft provided an exemption to U.S. persons. This section was amended by the Tax Reform Act of 1986.

Section 883 now provides that a foreign corporation may qualify for the reciprocal exemption from U.S. tax on its income from the international operation of ships or aircraft only if it is organized in a foreign country that grants corporations organized in the United States an equivalent exemption with respect to income derived from the international operation of ships or aircraft. In addition, more than 50 percent of the value of the stock of the foreign corporation must be owned by individuals who are residents of a foreign country that grants corporations organized in the United States an equivalent exemption. The 50 percent ownership requirement generally does not apply if the corporation is either a qualifying controlled foreign corporation (CFC) or if its stock is primarily and regularly traded on an established securities market in a qualified foreign country or the United States.

Since 1986, the United States and more than 30 foreign countries have entered into reciprocal exemption agreements incorporating the statutory amendments of section 883. In addition, more than 60 countries now provide an equivalent exemption through domestic law or an income tax convention. The current regulations under §1.883-1, however, have not been amended to reflect the statutory changes enacted in 1986. This document proposes updated rules reflecting the statutory changes and describing the documentation and reporting requirements that a foreign corporation must satisfy to obtain a reciprocal exemption under section 883.

2. USE OF DATA

The collection of information in this proposed regulation is

in §§1.883-1, 1.883-2, 1.883-3, 1.883-4, and 1.883-5. The information required in these sections will enable a foreign corporation to determine if it satisfies the ownership requirements of section 883(c) and is eligible to exclude its income from the international operation of a ship or ships or aircraft from gross income on its U.S. Federal income tax return. The information required in these sections will also enable the IRS to monitor compliance with the provisions of the proposed regulations with respect to the stock ownership requirements of §1.883-1(c)(2), and to make a preliminary determination of whether the foreign corporation is eligible to claim such an exemption and is accurately reporting income as required under section 6012 of the Code.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS Publications, Regulations, Notices and Letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

Not applicable.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Not applicable.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

Not applicable.

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

The notice of proposed rulemaking was published in the

Federal Register on February 8, 2000 (65 FR 6065). A public hearing was held on June 8, 2000, and numerous comments were received at the hearing and otherwise. In consideration of the substantial number of comments received, and due to the significant impact the regulations have on large segments of the shipping and air transport industries, the IRS and Treasury believed it was appropriate to repropose the regulations in order to address those comments and to provide a further opportunity for comment both on the changes and more generally. Thus, the revised notice of proposed rulemaking withdrew the February 8, 2000, regulations.

The revised notice of proposed rulemaking (REG-136311-01) was published in the **Federal Register** (67 FR 50510) on August 2, 2002, and provided an opportunity for additional comments. Written comments responding to the notice were received and all interested parties attended a public hearing that occurred on November 25, 2002. After consideration of all the comments, the proposed regulations were adopted as revised by TD 9087 and published in the **Federal Register** (68 FR 51399) on August 26, 2003.

The collections of information contained in the final regulations were submitted to the Office of Management and Budget in a notice of proposed rulemaking (REG-136311-01) and approved on August 6, 2002, under control number 1545-1677.

The final regulations adopt the proposed regulations with minor revisions based on the comments received. There is no change in the paperwork burden.

We received no comments during the comment period in response to the **Federal Register** notice (73 FR 22011), dated April 23, 2008.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10 ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Section 1.883-1(c)(3) requires a foreign corporation to satisfy the substantiation and reporting requirements by including the information set out in that paragraph in its Form 1120F, "U.S. Income Tax Return of a Foreign Corporation," in such form and manner as the Form 1120F and its accompanying instructions prescribe. The information to be submitted with the return includes certain information set out in §§1.883-2(f), 1.883-3(d) and 1.883-4(e), as applicable, relating to information demonstrating that the foreign corporation satisfies one of the three stock ownership tests. Section 1.883-5(c) provides a transition rule that will require such information to be included in a statement attached to the return until the Form 1120F and its instructions are amended to conform to final regulations under this section.

The information required in §1.883-2(f) to be reported can be obtained from the corporation's books and records and from certain shareholders of closely-held classes of stock, if applicable, as required in §1.883-2(e). The information required in §1.883-3(d) to be reported can be obtained from the corporation's books and records, except that §1.883-3(c) requires a controlled foreign corporation to obtain additional address and ownership documentation in the case of partners and beneficiaries of any U.S. shareholder that is a U.S. partnership, estate or trust. The information required in §1.883-4(e) to be reported is partly available to the corporation from its books and records. In certain cases §1.883-4(d) requires the corporation to obtain ownership statements from some direct and indirect shareholders to determine if it qualifies for the exemption.

The documentation must be retained by the corporation until the expiration of the statute of limitations for the taxable year of the foreign corporation to which the documentation relates. Estimated total annual reporting/recordkeeping burden on corporations: 1,400 hours. The estimated annual burden per respondent varies from 30 minutes to eight hours, depending on the circumstances of the foreign corporation,

with an estimated average of one hour. Estimated number of respondents: 1,400. Estimated total annual reporting burden on shareholders: 22,500 hours. The estimated annual burden per respondent varies from 15 minutes to eight hours, depending on the circumstances of the shareholder or intermediary, with an estimated average of 90 minutes. Estimated number of respondents: 15,000.

In total the burden estimates are:
Estimated Responses - 16,400.
Estimated Burden Hours - 23,900.

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our **Federal Register** notice dated April 23, 2008, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

There are no changes to the paperwork burden previously approved by OMB.

This document is being submitted for renewal purposes only.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading

taxpayers to believe that the regulations sunset as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

Not applicable.

Note: The following paragraph applies to all of the collections of information in this submission:

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 OMB control number. Books or records relating to a 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.