

## SUPPORTING STATEMENT

### 1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 897(e) provides the extent to which a foreign person will be taxed on the disposition of a U.S. real property interest in an otherwise tax-free reorganization. A U.S. real property interest includes the stock of a domestic corporation if a majority of its assets consist of U.S. real property interests (referred to as stock in a “U.S. real property holding corporation”). Stock in a domestic corporation is considered to be a U.S. real property interest if the domestic corporation was a U.S. real property holding corporation at any time during the shorter of the period when the taxpayer held the interest or the 5-year period ending on the date of the disposition.

Temp. Reg. §1.897-6T(a)(1) applies section 897(e) to reorganization transactions and provides that if a U.S. real property interest is exchanged for stock of a domestic corporation in a reorganization transaction, the domestic corporation must be a U.S. real property holding corporation immediately after the exchange. Thus, for example, assume that a domestic corporation engages in a recapitalization under section 368(a)(1)(E), where one new share of stock is issued in exchange for three shares of outstanding stock. The domestic corporation is not a U.S. real property holding corporation at the time of the exchange but was one within 5 years of the exchange when the exchanging foreign shareholder held its interest in the corporation. Under Temp. Reg. §1.897-6T(a)(1), the exchange would be taxable because the domestic corporation is not a U.S. real property corporation immediately after the exchange.

Notice 99-43 provides that final regulations under section 897(e) will provide that, contrary to §1.897-6T(a)(1), a foreign taxpayer will not recognize gain under section 897(e) for an exchange described in section 368(a)(1)(E) or (F), provided the taxpayer receives substantially identical shares of the same domestic corporation with the same dividend rights, voting power, liquidation preferences, and convertibility as the shares exchanged without any additional rights or features. The shares received must also possess every other legal, economic, or tax attribute of the shares exchanged necessary to preserve the gain subject to section 897 in the shares exchanged. The final regulations will provide that the stock received in a section 368(a)(1)(E) or (F) reorganization constitutes the same U.S. real property interest in the same corporation as the stock exchanged. Thus, the extent to which an interest in the domestic corporation is a U.S. real property interest before the exchange will carry over to the taxpayer’s interest in the domestic corporation after the exchange.

2. USE OF DATA

The foreign taxpayer exchanging stock in a nonrecognition transaction described in the notice must report the nonrecognition exchange on a U.S. tax return for the year of the transaction. The foreign taxpayer must also provide a notice of nonrecognition to the transferee corporation (who otherwise must withhold tax under section 1445 if it does not receive the notice of nonrecognition), and the transferee must submit the notice of nonrecognition to the IRS within 20 days of the transaction. This information will serve to report the nonrecognition exchanges described in the notice to the IRS. The rule described in this notice is effective for transfers occurring on or after the date of publication of this notice, although a taxpayer may elect to apply the rule of this notice to transfers occurring after June 18, 1980.

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.

Notice 99-43 was published in the **Internal Revenue Bulletin** on September 7, 1999 (1999-36 IRB 344).

In response to the **Federal Register** notice, 73 FR 55210, dated September 24, 2008, we received no comments during the comment period regarding Notice 99-43.

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

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

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

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The collections of information required by this notice are in Temporary regulation section 1.897-6T(a)(1) and 1.897-5T(d)(1)(iii), Treasury Regulation 1.1445-2(d)(2)(i)(A) and Temporary Regulation 1.1445-9T.

In 1996, there were 2,754 foreign taxpayers reporting nonrecognition exchanges of U.S. real property interests, as well as other instances where no U.S. tax was imposed on the disposition of U.S. real property interests (such as where the foreign taxpayer realized a loss on the disposition of a U.S. real property interest or the foreign taxpayer was a foreign government generally not subject to U.S. income tax under section 892 of the Code). In 1997, the number of foreign taxpayers reporting these types of transactions was 8,320. In 1998, the number of foreign taxpayers was 7,410. The nonrecognition exchanges addressed by the notice constitute a small percentage of the nonrecognition exchanges and other transactions reported by the foreign taxpayers for these taxable years. Thus, based on these figures, we estimate the number of nonrecognition

exchanges addressed by the notice to be approximately 100. The estimated average annual burden per applicant to report these types of transactions is 2 hours, and the total annual reporting burden is 200 hours (100 X 2).

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 September 24, 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 COSTS TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

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 notice sunsets 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.