

2010



Department of the Treasury
Internal Revenue Service

Instructions for Schedule S (Form 1120-F)

Exclusion of Income From the International Operation of Ships or Aircraft Under Section 883

Section references are to the Internal Revenue Code unless otherwise noted.

What's New

T.D. 9502 [insert cite] contains final regulations under sections 883(a) and (c). The final regulations include rules that permit foreign corporations to take into account ownership of bearer shares for purposes of satisfying the stock ownership tests of section 883(c) when the bearer shares are maintained in a dematerialized or immobilized book-entry system. These new rules have been included throughout the instructions and are effective for tax years beginning on or after September 17, 2010.

General Instructions

Purpose of Schedule

Schedule S (Form 1120-F) is used by foreign corporations to claim an exclusion of income under section 883 and to provide reporting information required by the section 883 regulations.

Who Must File

Qualified foreign corporations engaged in the international operation of ships or aircraft that are claiming an exclusion of gross income under section 883 must complete Schedule S (Form 1120-F). See *Definitions* below.

When and Where to File

Attach Schedule S (Form 1120-F) to the foreign corporation's Form 1120-F income tax return. See the Instructions for Form 1120-F for the time, place, and manner for filing the corporation's income tax return.

Definitions

Qualified income is income derived from the international operation of ships or aircraft that is (a) properly includible in any of the income categories described on lines 2a through 2h of the schedule, and (b) the subject of an equivalent exemption (defined below) granted by the qualified foreign country (defined below) in which the corporation is organized.

A **qualified foreign country** is a foreign country or U.S. possession that

grants to corporations organized in the United States an equivalent exemption (defined below) for the category of qualified income, derived by the foreign corporation seeking qualified foreign corporation status. A foreign country may be a qualified foreign country with respect to one category of qualified income but not with respect to another such category.

A **qualified foreign corporation** is a corporation as defined in section 7701(a)(3) that is organized in a qualified foreign country and considered engaged in the international operation of ships or aircraft. Furthermore, to be a qualified foreign corporation, the corporation must satisfy one of the stock ownership tests described in the instructions for Parts II, III, and IV on pages 2, 3, and 4.

Note. A corporation may be a qualified foreign corporation with respect to one category of qualified income but not with respect to another such category.

A foreign corporation is considered engaged in the **operation of ships or aircraft** only during the time it is an owner or lessee of one or more **entire** ships or aircraft and uses such ships or aircraft in one or more of the following activities:

- Carriage of passengers or cargo for hire,
- In the case of a ship, the leasing out of the ship under a time or voyage charter (full charter), space or slot charter, or bareboat charter (as those terms are defined in Regulations section 1.883-1(e)(5)), provided the ship is used to carry passengers or cargo for hire, and
- In the case of aircraft, the leasing out of the aircraft under a wet lease (full charter), space, slot, or block-seat charter, or dry lease (as those terms are defined in Regulations section 1.883-1(e)(5)), provided the aircraft is used to carry passengers or cargo for hire. See Regulations sections 1.883-1(e)(1) and (2) for additional information.

Activities that **do not** constitute operation of ships or aircraft include, but are not limited to:

- The activities of a non-vessel operating common carrier,
- Ship or aircraft management,
- Obtaining crews for ships or aircraft operated by another party,
- Acting as a ship's agent,
- Ship or aircraft brokering,
- Freight forwarding,

- The activities of travel agents and tour operators,
- Rental by a container leasing company of containers and related equipment, and
- The activities of a concessionaire.

The term **international operation of ships or aircraft** means the operation of ships or aircraft (as defined above) with respect to the carriage of passengers or cargo on voyages or flights that begin or end in the United States, as determined in Regulations section 1.883-1(f)(2). The term does not include the carriage of passengers or cargo on a voyage or flight that begins and ends in the United States, even if the voyage or flight contains a segment extending beyond the territorial limits of the United States, unless the passenger disembarks or the cargo is unloaded outside the United States. Operation of ships or aircraft beyond the territorial limits of the United States does not constitute in itself international operation of ships or aircraft.

Equivalent Exemption. A foreign country grants an equivalent exemption when it exempts from taxation income from the international operation of ships or aircraft derived by corporations organized in the United States. Whether a foreign country provides an equivalent exemption must be determined separately with respect to each category of income listed on lines 2a through 2h of the schedule. See Regulations section 1.883-1(h)(2) for rules for determining equivalent exemptions for each category of income.

An equivalent exemption may be available for income derived from the international operation of ships even though income derived from the international operation of aircraft may not be exempt, and vice versa. For rules regarding foreign corporations organized in countries that provide exemptions only through an income tax convention, see Regulations section 1.883-1(h)(3).

An equivalent exemption may exist where the foreign country:

- Generally imposes no tax on income, including income from the international operation of ships or aircraft,
- 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

- Exchanges diplomatic notes with the United States, or enters into an agreement with the United States, that provides for a reciprocal exemption for purposes of section 883.

Certain types of exemptions provided to corporations organized in the United States by foreign countries **do not** satisfy the equivalent exemption requirements of Regulations section 1.883-1(h). Examples of types of exemptions that do not qualify as equivalent exemptions include:

- Reduced tax rate or time limited exemption,
- Inbound or outbound freight tax,
- Exemptions for limited types of cargo,
- Territorial tax systems,
- Countries that tax U.S. corporations that are not managed and controlled in that country on a residence basis, and
- Exemptions within categories of income. See Regulations section 1.883-1(h)(4) for additional information.

Specific Instructions

Part I – Qualified Foreign Corporation

Line 1a. Enter the name of the qualified foreign country (defined on page 1) in which the foreign corporation was organized.

Line 1b. Type of Equivalent

Exemption. Check one (and only one) of the boxes on line 1b to indicate the type of equivalent exemption granted by the foreign country listed in line 1a. For a non-inclusive list of countries that grant equivalent exemptions, see Rev. Rul. 2008-17.

Line 1c. Applicable Authority. Enter the applicable authority of the equivalent exemption. For example, enter a citation of the 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.

Line 2. Gross Income from Categories of Qualified Income

Line 2b. Enter the gross income the foreign corporation derived from time or voyage (full) charter income of a ship or wet lease income of an aircraft. See Regulations section 1.883-1(e)(5) for definition of terms.

Line 2c. Enter the gross income the foreign corporation derived from the bareboat charter of a ship or dry lease income of an aircraft. See Regulations section 1.883-1(e)(5) for definition of terms.

Lines 2d, 2e, and 2f. Enter on these lines the gross amount the corporation derived from the activities (specified on these lines) that are incidental to the international operation of ships or aircraft (as defined in Regulations section

1.883-1(g)(1)). For types of activities that are not considered incidental to the international operation of ships or aircraft, see Regulations section 1.883-1(g)(2).

Line 5. If the box on line 4 is checked, check the box on line 5 if none of the bearer shares were relied on to satisfy any of the stock ownership tests described in Regulations section 1.883-1(c)(2). However, for tax years beginning on or after September 17, 2010, check the box on line 5 if none of the bearer shares (other than such shares maintained in a dematerialized or immobilized book-entry system) were relied on to satisfy any of the stock ownership tests described in Regulations section 1.883-1(c)(2).

Part II — Stock Ownership Test for Publicly-Traded Corporations

A foreign corporation satisfies the stock ownership test of Regulations section 1.883-1(c)(2) if it is considered a publicly-traded corporation and satisfies the substantiation and reporting requirements of Regulations sections 1.883-2(e) and (f). To be considered a publicly traded corporation, the stock of the foreign corporation must be primarily and regularly traded (as defined below) on one or more established securities markets (as defined in Regulations section 1.883-2(b)) in either the United States or any qualified foreign country.

Primarily traded. Stock of a corporation is primarily traded in a country on one or more established securities markets (as defined in Regulations section 1.883-2(b)) if, with respect to each class of stock described in item 1 under **Regularly traded** below, the number of shares in each such class that are traded during the tax year on all established securities markets in that country exceeds the number of shares in each such class that are traded during that year on established securities markets in any other single country.

Regularly traded. The stock of a corporation is regularly traded on one or more established securities markets if:

1. One or more classes of stock of the corporation that, in the aggregate, represent more than 50% of the total combined voting power of all classes of stock of such corporation entitled to vote and the total value of the stock of such corporation are listed on such market or markets during the tax year, and

2. With respect to each class relied on to meet the more than 50% requirement above **(a)** trades in each such class are effected, other than in de minimis quantities, on such market or markets on at least 60 days during the tax year (or 1/6 of the number of days in a short tax year); and **(b)** the aggregate number of shares in each such class that are traded on such market or markets during the tax year are at least 10% of the

average number of shares outstanding in that class during the tax year (or, in the case of a short tax year, a percentage that equals at least 10% of the average number of shares outstanding in that class during the tax year multiplied by the number of days in the short tax year, divided by 365).

A class of stock that is traded during the tax year on an established securities market located in the United States shall be considered to meet the trading requirement described in item 2 above if the stock is regularly quoted by dealers making a market in the stock.

A dealer makes a market in a stock only if the dealer regularly and actively offers to, and in fact does, purchase the stock from, and sell the stock to, customers who are not related persons (as defined in section 954(d)(3)) with respect to the dealer in the ordinary course of a trade or business.

In general, a class of stock of a foreign corporation that otherwise meets the requirements of the “regularly traded” rules described above shall not be treated as meeting such requirements for a tax year if, for more than half the number of days during the tax year, one or more 5% shareholders (defined on page 3) own in the aggregate, 50% or more of the vote and value of the outstanding shares of the class of stock.

Note. If the general rule described in the previous paragraph applies, the corporation must check the “Yes” box on line 9, and must complete lines 10a and 10b, to substantiate that the exception to this general rule (described next) applies. If the general rule described in the previous paragraph does not apply, the corporation checks the “No” box on line 9, and is not required to complete lines 10a and 10b.

Exception: The rules discussed in the previous paragraph shall not apply to a class of stock if the foreign corporation can establish that qualified shareholders (defined on page 3), applying the attribution rules of Regulations section 1.883-4(c), own sufficient shares in the closely-held block of stock to preclude nonqualified shareholders in the closely-held block of stock from owning 50% or more of the total value of the class of stock of which the closely-held block is a part for more than half the number of days during the tax year. Any shares that are owned, after application of the attribution rules in Regulations section 1.883-4(c), by a qualified shareholder shall not also be treated as owned by a nonqualified shareholder in the chain of ownership for purposes of the preceding sentence. A foreign corporation must obtain the documentation described in Regulations section 1.883-4(d) from the qualified shareholders relied upon to satisfy this exception. However, for tax years beginning on or after September 17, 2010, no person otherwise treated as a qualified shareholder under Regulations

section 1.883-4(b) may be treated for purposes of Regulations section 1.883-2(d)(3) as a qualified shareholder if such person's interest in the foreign corporation, or in any intermediary corporation, is held through bearer shares that are not maintained in a dematerialized or immobilized book-entry system during the relevant period. See Regulations section 1.883-2(d)(3)(ii).

For purposes of the above rules, a **5% shareholder** is a person who owns at least 5% of the total vote and value of the outstanding shares of a class of stock. For these purposes, persons related within the meaning of section 267(b) shall be treated as one person. In determining whether two or more corporations are members of the same controlled group under section 267(b)(3), a person is considered to own stock owned directly by such person, stock owned through the application of section 1563(e)(1), and stock owned through the application of section 267(c). In determining whether a corporation is related to a partnership under section 267(b)(10), a person is considered to own the partnership interest owned directly by such person and the partnership interest owned through the application of section 267(e)(3).

Note. An investment company (as defined in Regulations section 1.883-2(d)(3)(iii)(B)) shall not be treated as a 5% shareholder.

Line 8. Enter on line 8 a description of each class of stock the foreign corporation relied upon to satisfy the requirements of the "regularly traded" test described on page 2. The description must include:

- An indication as to whether the class of stock was issued in registered or bearer form and, for tax years beginning on or after September 17, 2010, whether such bearer shares were maintained in a dematerialized or immobilized book-entry system.
- The number of issued and outstanding shares in that class of stock as of the close of the tax 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 tax year.

Line 9. See **Regularly traded** on page 2 for instructions for completing this line 9.

Line 10. If the answer to line 9 is "Yes" with respect to more than one class of the corporation's stock, the foreign corporation must complete lines 10a and 10b with respect to each such class. To do so, complete these lines as follows: Complete line 10 of the actual schedule for the class of stock with respect to which 5% shareholders own the largest percentage of the vote and value of the outstanding shares of the class of stock. For all other classes of stock, attach a schedule that uses the same format as lines 10a and 10b.

Line 10b(ii). Enter the applicable two-letter codes from the list of country codes at <http://www.irs.gov/efile/article/0,,id=175595,00.html>.

Part III — Stock Ownership Test for Controlled Foreign Corporations

A foreign corporation satisfies the stock ownership test of Regulations section 1.883-1(c)(2) if it satisfies the qualified U.S. person ownership test (see below) and it satisfies the substantiation requirements of Regulations section 1.883-3(c).

Qualified U.S. person ownership test. This test is met only if:

1. The foreign corporation is a CFC (as defined in section 957(a)) for more than half the days in the corporation's tax year, and
2. More than 50% of the total value of its outstanding stock is owned (within the meaning of section 958(a) and Regulations section 1.883-3(b)(4)) by one or more qualified U.S. persons (defined below) for more than half the days of the CFC's tax year, provided such days of ownership are concurrent with the time period during which the foreign corporation was a CFC (as defined in item 1 above).

A **qualified U.S. person** is a U.S. citizen, resident alien, domestic corporation, or domestic trust described in section 501(a), but only if the person provides the CFC with an ownership statement as described in Regulations section 1.883-3(c)(2), and the CFC meets the reporting requirements of Regulations section 1.883-3(d) with respect to that person.

Line 11. Enter the percentage of the value of the shares of the CFC that is owned by all qualified U.S. persons identified in the qualified ownership statements. In determining the percentage to enter on line 11, the numerator is the total value of the CFC's outstanding stock that is owned (within the meaning of section 958(a) and Regulations section 1.883-3(b)(4)) by all qualified U.S. persons, not including the value of any bearer shares. However, for tax years beginning on or after September 17, 2010, the rule stated in the preceding sentence is amended to read, in part, "not including the value of any bearer shares, unless such shares are maintained in a dematerialized or immobilized book-entry system." The denominator is the total value of the CFC's outstanding stock, including the value of any bearer shares.

Line 12. Specify the days of the foreign corporation's tax year during which more than 50% of the total value of its outstanding stock was owned (within the meaning of section 958(a) and

Regulations section 1.883-3(b)(4)) by qualified U.S. persons.

Line 13. Specify the days of the foreign corporation's tax year during which it was a CFC (as defined in section 957(a)).

Part IV — Qualified Shareholder Stock Ownership Test

A foreign corporation satisfies the stock ownership test of Regulations section 1.883-1(c)(2) if more than 50% of the value of its outstanding shares is owned, or treated as owned, by applying the attribution rules of Regulations section 1.883-4(c), for at least half of the number of days in the foreign corporation's tax year by one or more qualified shareholders, as defined below. A shareholder may be a qualified shareholder with respect to one category of income while not being a qualified shareholder with respect to another. A foreign corporation will not be considered to satisfy the qualified shareholder stock ownership test unless the foreign corporation meets the substantiation and reporting requirements described in Regulations section 1.883-4(d) and (e).

A shareholder is a **qualified shareholder** only if the shareholder:

1. With respect to the category of income for which the foreign corporation is seeking an exemption, is:

(A) An individual who is a resident of a qualified foreign country. An individual is a resident of a qualified foreign country only if the individual is fully liable to tax as a resident in such country (e.g., an individual who is liable to tax on a remittance basis in a foreign country will not be treated as a resident of that country unless all residents of that country are taxed on a remittance basis only) and, in addition (1) the individual has a tax home, within the meaning of Regulations section 1.883-4(b)(2)(ii), in that qualified foreign country for 183 days or more of the tax year or (2) the individual is treated as a resident of a qualified foreign country based on special rules pursuant to Regulations section 1.883-4(d)(3).

(B) The government of a qualified foreign country (or a political subdivision or local authority of such country).

(C) A foreign corporation that is organized in a qualified foreign country and meets the publicly traded test of Regulations section 1.883-2(a).

(D) A not-for-profit organization described in Regulations section 1.883-4(b)(4) that is not a pension fund as defined in Regulations section 1.883-4(b)(5) and that is organized in a qualified foreign country.

(E) An individual beneficiary of a pension fund (as defined in Regulations section 1.883-4(b)(5)(iv)) that is administered in or by a qualified

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foreign country, who is treated as a resident under Regulations section 1.883-4(d)(3)(iii) of a qualified foreign country, or

(F) A shareholder of a foreign corporation that is an airline covered by a bilateral Air Services Agreement in force between the United States and the qualified foreign country in which the airline is organized, provided the United States has not waived the ownership requirement in the Air

Services Agreement, or that the ownership requirement has not otherwise been made ineffective.

2. Does not own its interest in the foreign corporation through bearer shares, either directly or by applying the attribution rules of Regulations section 1.883-4(c). However, for tax years beginning on or after September 17, 2010, the shareholder may own its interest in the foreign corporation through

bearer shares if such shares are maintained in a dematerialized or immobilized book-entry system.

3. Provides to the foreign corporation the documentation required in Regulations section 1.883-4(d).

Line 16b. Enter the applicable two-letter codes from the list of country codes at <http://www.irs.gov/efile/article/0,,id=175595,00.html>.