

Supporting Statement
(REG-146537-06 (NPRM))

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

This document contains proposed Income Tax Regulations that provide guidance relating to U.S. Federal taxation of income of foreign governments from investments in the United States under section 892 of the Internal Revenue Code of 1986 (Code). The regulations will affect foreign governments that derive income from sources within the United States.

TD 8211 (53 FR 24060), contains temporary regulations to provide guidance concerning the taxation of income of foreign governments and international organizations from investments in the United States. REG 146537-06 supplements the TD to provides an exception that allows a controlled entity of a foreign sovereign that inadvertently engages in commercial activity to avoid being treated as a IRC §892(a)(2)(B) controlled commercial entity and accordingly remain eligible for the tax exemption provided under IRC §892. To qualify for the exception, certain conditions must be satisfied by the controlled entity (or the foreign sovereign that controls such entity) including maintaining adequate records regarding each discovered commercial activity and the remedial action taken to cure each such activity.

2. USE OF DATA

This information is required to determine if taxpayers qualify for exemption from tax under section 892.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

There are no plans to provide electronic filing because electronic filing is not appropriate for the collection of information in this submission.

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

On June 27, 1988, temporary regulations under section 892 (TD 8211, 53 FR 24060) (1988 temporary regulations approved under OMB approval number 1545-1053) with a cross-reference notice of proposed rulemaking (53 FR 24100) were published in the *Federal Register* to provide guidance concerning the U.S. Federal taxation of income of foreign governments and international organizations from investments in the United States. The Treasury Department and the IRS have received numerous written comments on the 1988 temporary regulations. The proposed regulations are issued in response to those comments. The proposed regulations supplement the cross-reference notice of proposed rulemaking to provide additional guidance for determining when a foreign government's investment income is exempt from U.S. taxation.

A notice of proposed rulemaking (REG -146537-06) was published in the *Federal Register* on November 3, 2011, at 76 FR 68119, and provided a 90-day period in which to review and provide public comments relating to any aspect of the proposed regulation. A public hearing will be held with respect to this NPRM if any person who has submitted written comments requests a public hearing.

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 U.S.C. 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The collection of information in the temporary regulations (TD 8211), is in §1.1441-8. This information is required to avoid withholding of tax at source with regard to specific types of income received by foreign governments and international organizations. Burden for this collection effort is collected using Form W-8 EXP and reported under OMB approval number 1545-1621.

The collection of information in proposed regulation (REG-146537-06), is in §1.892-5(a)(2). This information is required to determine if taxpayers qualify for exemption from tax under section 892.

Estimated total annual reporting burden: 975 hours.
Estimated average annual burden hours per respondent: 5 hours.
Estimated number of respondents: 195.
Estimated annual frequency of responses: 1.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

These regulations will provide rules regarding the taxation of income of foreign governments and international organizations. On June 27, 1988, temporary regulations under section 892 (TD 8211 at 53 FR 24060), were published in the *Federal Register* to provide guidance concerning the taxation of income of foreign governments and international organizations from investments in the United States.

These proposed regulations provide additional guidance for determining when a foreign government's investment income is exempt from U.S. taxation. After the 1988 temporary regulations were published, section 892(a)(2)(A) was amended by the Technical and Miscellaneous Revenue Act of 1988, Pub. L. No. 100-647, 102 Stat. 3342 (TAMRA) to provide that income derived from the disposition of any interest in a controlled commercial entity does not qualify for the exemption under section 892. These proposed regulations revise §1.892-5(a) to reflect the amendment of section 892 by TAMRA.

This ICR was originally submitted as a "reinstatement with change" under #1545-1053 because this NPRM supplements regulations under TD 8211. The 1545-1053 collection was allowed to expire in 2001 because the prescribing form created to collection the information under TD 8211 (§1.1441-8), has since been discontinued and replaced by Form W-8EXP, "Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding," which is currently approved under OMB #1545-1621.

It was determined by reinstating the 1545-1053 collection that the burden associated with the proposed revision to §1.892-5(a) would be identified as a potential violation; because of this incorrect designation, we are submitting this as a new information collection to capture burden associated with §1.892-5(a).

The estimated burden associated with the information collection requirements under §1.892-5(a)(2) will result in an estimated burden of 195 responses and an estimated annual burden of 975 hours attributed to a change due to agency discretion.

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 regulation sunsets as of the

expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of 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.