

## **SUPPORTING STATEMENT**

### **OMB No. 1545-1070**

TD 8223, Temporary, Branch Tax; TD 8432, Final and Temporary, Branch Profits Tax; and TD 8657, Final and Temporary, Regulations on Effectively Connected Income and the Branch Profits Tax

#### **12864. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

Section 884 of the Internal Revenue Code imposes a tax on the earnings of a foreign corporation doing business in the United States to the extent the earnings are removed from U.S. business operations. In addition, interest paid by a foreign corporation's U.S. business, and certain interest deducted by the business, are subject to tax. A treaty will reduce or eliminate these taxes only if the foreign corporation meets certain ownership or other requirements.

#### **12865. USE OF DATA**

The information will be used to administer and enforce the Internal Revenue Code.

#### **12866. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

We have no plans to offer electronic filing. IRS publication, 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.

#### **12867. EFFORTS TO IDENTIFY DUPLICATION**

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

#### **12868. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES**

Not applicable.

#### **12869. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES**

Not applicable.

#### **12870. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)**

Not applicable.

12871. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

A notice of proposed rulemaking (INTL-934-86, 53 FR 34120) and temporary regulations, TD 8223, (53 FR 34045) were published in the **Federal Register** on September 2, 1988. A public hearing was held on January 17, 1989. Final and temporary regulations (TD 8432) were published in the **Federal Register** on September 11, 1992 (57 FR 41644). A notice of proposed rulemaking (INTL-3-92, 57 FR 41707) amending the existing regulations was published in the **Federal Register** on September 11, 1992. The final and temporary regulations, TD 8657, (61 FR 9336) were published in the **Federal Register** on March 8, 1996.

We received no comments during the comment period in response to the **Federal Register** notice dated April 12, 2013 (78 FR 21709).

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 1.884-l(e)(3) of the final regulations allows a foreign corporation to elect to reduce the amount of its U.S. liabilities by a certain amount for purposes of computing its U.S. net equity. If the election is made, the foreign corporation must also make a corresponding change to its U.S. liabilities for purposes of computing its interest expense for the taxable year under §1.882-5 and for purposes of determining its branch-level interest tax under §1.884-4. The election is made by making a statement on its return for the year indicating that the election has been made and the amount of the reduction in liabilities. We estimate that 1,000 foreign corporations subject to the branch profits tax will make the election and that it will take each corporation .5 hours to prepare the election. The total reporting burden is estimated at 500 hours.

Section 1.884-l(i)(1) provides that a foreign corporation may elect to apply the final regulations under that section in lieu of the temporary regulations under §1.884-lT to any

open years. A foreign corporation that makes this election must also make a corresponding election to apply §1.884-4 in lieu of the temporary regulations under § 1.884-4T. Thus the same taxpayers are affected by this election and the election under §1.884-4(e). We estimate that 100 corporations will make this election and the corresponding election under §1.884-4(e) and that it will take each corporation .5 hours to prepare these elections. The total reporting burden is estimated at 50 hours.

The temporary regulations under §1.884-2T are not being finalized at this time. Because, however, these paperwork burdens were previously approved under the same OMB Number 1545-1070 as the remainder of the regulations being finalized, we are resubmitting them with this supporting statement. Note that they have not changed from the previous submission.

Section 1.884-2T(a)(2)(i) requires that a foreign corporation that completely terminates all of its trades or businesses in the United States and elects not to be treated as having reduced its U.S. net equity during the year must attach to its income tax return a waiver of the period of limitations, as described in §1.884-2(a)(2)(ii). We estimate that 100 foreign corporations will make this election and that it will take each corporation .25 hours to prepare the waiver. The total reporting burden is 25 hours.

Section 1.884-2T(b) permits a foreign corporation that would be completely terminating all of its trades or businesses in the United States but for the requirement of §1.884-2T(a)(2)(i)(B) that the proceeds of the business may not be reinvested by it or a related person in the United States within three years, to elect to treat marketable securities as U.S. assets and thus be treated as continuing to operate a U.S. trade or business. This election is made by identifying the securities on the corporation's books and filing a statement with the corporation's tax return. We estimate that 50 foreign corporations will make this election and that it will take each corporation .25 hours to prepare the election. The total reporting burden is 13 hours.

Section 1.884-2(c)(2)(iii) provides that a transferor foreign corporation may calculate its U.S. net equity without regard to certain transfers provided the transferee files a Form 2045 (Transferee Agreement) and a waiver of the statute of limitations. We estimate that approximately 100 transferees will file these documents and that it will take .25 hours to prepare the documents. The total reporting burden is 25 hours.

Section 1.884-2T(d)(3)(i) provides that a foreign corporation may calculate its U.S. net equity without regard to certain transfers to a controlled domestic corporation provided the transferee corporation elects under §1.884-2T(d)(4) to increase its earnings and profits and the transferor files an agreement as provided in §1.884-2T(d)(5)(i) to be taxed on the disposition of the transferee's stock. We estimate that approximately 50 transferees will make this election and 50 transferors will file the agreement, and that it will take each respondent .25 hours to prepare the document. The total reporting burden is 25 hours.

Section 1.884-2T(d)(5)(ii) permits a transferor to apply to the Commissioner for a ruling that certain non-recognition transactions shall not be treated as a disposition of stock by the transferor. We estimate that approximately 75 transferors will apply for a ruling and that it will take each transferor 3 hours to prepare a ruling request. The total reporting burden is 225 hours.

Section 1.884-4(b)(1)(ii) (formerly section 1.884-4(b)(1)(v), which was redesignated by TD 8657) provides that a foreign corporation that is not a bank may treat interest paid with respect to a specifically identified liability (as provided in paragraph (b)(3) of that section) as giving rise to branch interest, provided certain notification requirements are met. Section 1.884-4(b)(3)(i) provides the method of identifying a liability and the recordkeeping associated with the specific identification of the liability. We estimate that approximately 400 corporations will identify 4 liabilities each giving rise to branch interest and maintain records relating thereto and that it will take each foreign corporation .25 hour per liability. The total recordkeeping burden is 400 hours.

Section 1.884-4(b)(3)(ii) provides that a foreign corporation that has specifically identified a liability must notify the recipient of the interest attributable to the liability that such interest is from sources within the United States. We estimate that approximately 400 corporations will be required to notify 4 recipients of interest attributable to specifically identified liabilities and that it will take each foreign corporation .1 hours per liability. The total reporting burden is 160 hours.

Section 1.884-4(b)(6)(iii) (formerly §1.884-4T(b)(6)(ii)) permits a foreign corporation to reduce the amount of its liabilities giving rise to branch interest by noting on its books and records in the United States which liabilities will not give rise to branch interest. We estimate that approximately 25 foreign corporations will make this notation and that it will take about .25 hours to make the notation. The total reporting burden is 6 hours.

Section 1.884-4(c)(1) permits a foreign corporation to elect to reduce its excess interest by the amount of certain interest that was paid by its U.S. trade or business in a different taxable year than the year the interest accrued provided the foreign corporation filed a statement with its return electing the benefits of this section. The election can also be made at the time of an examination. We estimate that approximately 1,500 foreign corporations subject to the tax on excess interest will file this statement and that it will take each foreign corporation .25 hours to prepare the statement. The total reporting burden is 375 hours.

Section 1.884-4(e) (See explanation under §1.884-1(i)). Section 1.884-5T(b)(3) provided that a foreign corporation satisfied the stock ownership requirement of §1.884-5T(b)(1) (and was thus entitled to benefits under an income tax treaty) if it obtained from owners of at least half (since increased to "more than half" by statute) its shares either (1) a statement of an individual's direct or indirect ownership of the stock (as described in §1.884-5T(b)(4)(i)) and a certificate of residency (described in § 1.884-5T (b)(4)(ii)) or (2) an intermediary verification statement (as described in §1.884-5(b)(6)) from an

intermediary that it owned stock on behalf of the individual and has obtained the information described in (1). In addition, if stock was held by an individual through one or more intermediaries, §1.884-5T(b)(5) required that each intermediary provide an intermediary ownership statement. These requirements have been retained although the organization of the relevant paragraphs and the actual information requested has been modified slightly. The contents of ownership statements from various types of qualifying shareholders are now found in §1.884-5(b)(4), certificates of residency are described in §1.884-5(b)(5), intermediary ownership statements are described in §1.884-5(b)(6) and intermediary verification statements are described in §1.884-5(b)(7).

We estimate that 600 foreign corporations that would be subject to either the branch profits tax or branch-level interest tax will send out requests for this information to an average of 50 shareholders, and that the time to prepare each request will be .1 hours. The burden is 3,000 hours.

We estimate that 25 individual shareholders and 10 intermediary shareholders of each of the 600 foreign corporations will provide this documentation, and that it will require .25 hours to complete the documentation. The burden is 5,250 hours.

In addition, we estimate that 5 of the 10 intermediaries that hold stock in each of the 600 foreign corporations will complete an intermediary verification statement described in (2) above, and that each statement will take .25 hours to complete. The burden is 750 hours.

The total reporting burden for these requirements is 9,000 hours.

Under §1.884-5(b)(8), a pension fund that meets certain requirements is required to make a special statement in addition to its intermediary ownership statement regarding certain information with respect to its beneficiaries. We estimate that approximately 150 pension funds will file this special statement and that it will take each fund 1.5 hours to prepare the statement. The total reporting burden is 225 hours.

Section 1.884-5(b)(3)(v) provides a foreign corporation with an opportunity to meet the documentation requirements of §1.884-5(b)(3) after the due date of its return (including extensions). This is important to the foreign corporation since, absent timely obtained documentation, the foreign corporation is not eligible for treaty benefits. The foreign corporation must show reasonable cause for obtaining late documentation by submitting a petition to the district director or the Assistant Commissioner (International) (whichever has jurisdiction over the foreign corporation). We estimate that approximately 50 foreign corporations will file a petition under this provision and that it will take each foreign corporation 1 hour to prepare the statement. The total reporting burden is 50 hours.

Section 1.884-5(b)(9)(i) requires that a foreign corporation must retain documentation to meet the ownership requirement until the expiration of the statute of limitations for the taxable year and that the documentation must be made available to the District Director

on request. We estimate that approximately 600 foreign corporations will keep these records and that it will take each foreign corporation .1 hours to do this. The total recordkeeping burden is 60 hours.

Section 1.884-5(b)(9)(ii) requires that a person issuing an intermediary verification statement must retain the statement for six years and make the statement available to the District Director on request. We estimate that approximately 3,000 persons will keep these records and that it will take each person .1 hours to do this. The total recordkeeping burden is 300 hours.

Section 1.884-5(d)(5) requires that certain publicly-traded foreign corporations must maintain a list of shareholders of record and make such list available to the District Director on request. We estimate that approximately 300 foreign corporations will be required to maintain a list of shareholders and that it will take each foreign corporation .1 hours to do this. The total recordkeeping burden is 30 hours.

Section 1.884-5(f) permits a foreign corporation to apply to the Commissioner for a ruling that it will be treated as a qualified resident of its country of residence. Based on our ruling experience to date we now estimate that approximately 150 foreign corporations will apply for this ruling, which is valid for three years, and that it will take each foreign corporation 8 hours to prepare the ruling request. The total reporting burden is 1,200 hours.

Section 1.884-5(h) provides that a foreign corporation may elect to apply the final regulations under that section to any open years. We estimate that 100 corporations will make this election and that it will take each corporation .25 hours to prepare this election. The total reporting burden is estimated at 25 hours.

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 13, 2013 (78 FR 21709), 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 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 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.