

## Notice of Proposed Rulemaking

### Branch Tax

INTL-934-86

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed Income Tax Regulations relating to the branch tax. In \* \* \* [T.D. 8223, page 182, this Bulletin] the Internal Revenue Service is issuing temporary regulations relating to these matters. The text of these temporary regulations also serves as the comment document for this proposed rulemaking.

DATES: These regulations are proposed to be effective for taxable years beginning after December 31, 1986. Written comments and requests for a public hearing must be delivered or mailed by November 1, 1988.

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue Service, (Attention: CC:LR:T, INTL-934-86), Washington, DC 20224.

### SUPPLEMENTARY INFORMATION:

#### PAPERWORK REDUCTION ACT

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Internal Revenue Service, with copies to the Internal Revenue Service, Washington, DC 20224, Attention: IRS Reports Clearance Officer TR:FP.

The collection of information in this regulation is in §§1.884-1T(d)(11), 1.884-2T(a)(2), 1.884-2T(b), 1.884-2T(c)(2), 1.884-2T(d)(1), 1.884-2T(d)(4), 1.884-2T(d)(5), 1.884-4T(b)(7), 1.884-4T(c)(1), 1.884-5T(b)(3) through (7), 1.884-5T(d)(6), and 1.884-5T(f). This information is required by the Internal

Revenue Service computation. This information will be used in audits of taxpayers. The likely respondents are business or other for-profit institutions.

Estimated total annual reporting and/or recordkeeping burden: 20,500 hours.

The estimated annual burden per respondent/recordkeeper varies from .5 to 10.5 hours depending on individual circumstances, with an estimated average of 6.5 hours.

Estimated number of respondents and/or recordkeepers: 3000.

Estimated annual frequency of responses: Annually.

### BACKGROUND

The temporary regulations published in \* \* \* [T.D. 8223, page 182, this Bulletin] add new §§1.884-0T through 1.884-2T, 1.884-4T, and 1.884-5T. The final regulations that are proposed to be based on the temporary regulations would amend 26 CFR Parts 1 and 602. For the text of the temporary regulations, see T.D. 8223 \* \* \* [page 182, this Bulletin].

### SPECIAL ANALYSES

These proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comments, the notice and public procedure requirements of 5 U.S.C. §553 do not apply because the regulations proposed herein are interpretative. Therefore, an initial Regulatory Flexibility Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

### COMMENTS AND REQUEST FOR A PUBLIC HEARING

Before adopting as final regulations these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is to be held, notice of the time and place will be published in the FEDERAL REGISTER.

### LIST OF SUBJECTS IN CFR §§1.861-1 through 1.997-1

Income taxes, Corporate deductions, Aliens, Exports, DISC, Foreign investment in U.S., Foreign tax credit, FSC, Source of income, U.S. investments abroad.

### LIST OF SUBJECTS IN 26 CFR Part 602

Reporting and Recordkeeping Requirements.

### Proposed amendments to the regulations

The temporary regulations, T.D. 8223 [page 182, this Bulletin], are hereby also proposed as final regulations under section 884 of the Internal Revenue Code of 1986.

Lawrence B. Gibbs,  
*Commissioner of  
Internal Revenue.*

(Filed by the Office of the Federal Register on August 29, 1988, 1:29 p.m., and published in the issue of the Federal Register for September 2, 1988, 53 F.R. 34120)

## Notice of Proposed Rulemaking

### Allocation and Apportionment of Interest Expense and Certain Other Expenses

INTL-952-86

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides proposed Income Tax Regulations relating to the allocation and apportionment of interest expense and certain other expenses for purposes of the foreign tax credit rules and certain other international tax provisions. In \* \* \* [T.D. 8228, page 136, this Bulletin], the Internal Revenue Service is issuing temporary regulations relating to these matters. The text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking. This document also withdraws the notice of proposed rulemaking relating to the same subject that appeared in the FEDERAL REGISTER on September 11, 1987 (52 FR 34580) [INTL-935-86, 1987-2 C.B. 990].

DATES: These regulations are proposed to be effective for taxable years begin-

ning after December 31, 1986. In general, these regulations would be applicable to the allocation and apportionment of interest expense and certain other expenses for taxable years beginning after December 31, 1986. Comments and requests for a public hearing must be delivered or mailed before December 13, 1988.

**ADDRESS:** Send comments and requests for a public hearing to: Commissioner of Internal Revenue, (Attention: CC:LR:T, INTL-952-86), Washington, D.C. 20224.

#### SUPPLEMENTARY INFORMATION:

##### PAPERWORK REDUCTION ACT

The collection of information contained in this notice of proposed rule-making has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. §3504(h)). Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Internal Revenue Service, with copies to the Internal Revenue Service at the address previously specified.

The affirmative elections in this regulation are in §1.861-9T(g)(1)(ii), which requires taxpayers affirmatively to elect either the gross income or the asset method of apportionment in the case of a controlled foreign corporation, and in §1.861-12T(c)(4)(ii), which permits taxpayers to elect under certain circumstances to reallocate interest expense that is allocated to a noncontrolled section 902 corporation. This information will be used in audits of taxpayers. The likely respondents are businesses and other for-profit institutions.

Estimated total annual reporting burden:	2,500 hours.
Estimated annual burden per respondent:	10 minutes.
Estimated number of respondents:	15,000.
Estimated annual frequency of responses:	On occasion.

##### BACKGROUND

The temporary regulations published in \* \* \* [T.D. 8228, page 136, this Bulletin] add new temporary regulations §§1.861-8T through 1.861-14T. For the text of the temporary regulations, see FR

Doc. 88-20838, T.D. 8228 [page 136, this Bulletin] published in \* \* \*.

#### SPECIAL ANALYSES

It has been determined that, these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the notice and public procedure requirements of 5 U.S.C. §553 do not apply because it has been determined that these proposed regulations will not have a significant impact on a substantial number of small entities. Therefore, an initial Regulatory Flexibility Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

#### COMMENTS AND REQUESTS FOR A PUBLIC HEARING

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the FEDERAL REGISTER.

#### LIST OF SUBJECTS IN 26 CFR §§1.861-1 through 1.997-1

Income taxes, Aliens, Exports, DISCs, Foreign investment in U.S., Foreign tax credit, FSC, Source of income, U.S. investments abroad.

#### LIST OF SUBJECTS IN 26 CFR Part 602

Reporting and recordkeeping requirements.

#### *Proposed amendments to the regulations*

The temporary regulations, T.D. 8228, published in \* \* \* [page 136, this Bulletin] are hereby also proposed as final regulations under sections 861 and 864 of the Internal Revenue Code of 1986.

The proposed amendments to 26 CFR Part 1 relating to this same subject and published on September 11, 1987 (52 FR 34580) are hereby withdrawn.

#### INCOME TAX REGULATIONS (26 CFR Part 1)

Paragraph 1. The authority for Part 1 is amended by adding the following regulations:

Authority: 26 U.S.C. 7805. \* \* \* Section 1.861-10 is also issued under 26 U.S.C. 863(a), 26 U.S.C. 864(e), 26 U.S.C. 865(i) and 26 U.S.C. 7701(f).

Par. 2. Section 1.861-10 is added at the appropriate place to read as follows:

§1.861-10 Special allocations of interest expense.

(a) through (b)(3)(iii) [Reserved]

(iv) *Analysis of operating costs.* For taxable years beginning after December 31, 1988, if operating costs other than interest with respect to the property exceed 15 percent of the total income derived from the property in the taxable year (for example, rents or royalties), then a significant portion of revenue shall be considered to be derived from sales, labor, services, or the use of other property. For this purpose, the term "operating costs" shall include only expenses that are deductible solely under section 162.

(b)(3)(v) through (4)(vi) [Reserved]

(vii) The term "qualified nonrecourse indebtedness" shall not include any transaction that involves excess collateralization within the meaning of paragraph (b)(12) of this section.

(b)(5) through (11) [Reserved]

(12) *Excess collateralization.* For taxable years beginning after December 31, 1989, a loan will be deemed to involve excess collateralization if the principal amount of the loan is less than 60 percent of the value of identified property at the time of its purchase (or construction cost in the case of self-constructed assets). If the principal amount of the loan is greater than 80 percent of such value, then the loan will be deemed not to involve excess collateralization. If the principal amount of the loan is within the range of 60 to 80 percent of such value, the determination of whether the loan involves excess collateralization shall be based on facts and circumstances, taking into account factors such as the ratios of loan-to-value in comparable nonrecourse borrowings within the relevant industry or geographic market.

(c) through (e) [Reserved]

Lawrence B. Gibbs,  
*Commissioner of  
Internal Revenue.*