

SUPPORTING STATEMENT

Internal Revenue Service
Rule to be Included in Final Regulations Under
Section 897(e) of the Code
OMB# 1545-1660

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 most 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 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.

TD 9082 (68 FR 46081), published August 5, 2003, contains final and temporary regulations to require the use of taxpayer identifying numbers on submissions under

sections 897 and 1445. The regulations are necessary to properly identify foreign taxpayers for which submissions are made for the reduction or elimination of tax under sections 897 and 1445. This document was approved under 1545-1797.

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 be used to obtain exemptions from tax under certain nonrecognition transactions and to satisfy reporting requirements regarding these nonrecognition transactions.

This information will be used by the Internal Revenue Service to verify whether a taxpayer is entitled to exemption from tax under a nonrecognition transaction.

3. 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.

4. EFFORTS TO IDENTIFY DUPLICATION

The information obtained through this collection is unique and is not already available for use or adaptation from another source.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. These regulations impose no new collection of information on small entities; therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

This information will be used by the Internal Revenue Service to verify whether a taxpayer is entitled to exemption from tax under a nonrecognition transaction. Less frequent collection of taxes and tax information could adversely affect the governments effectiveness and would reduce the oversight of the public in ensuring compliance with Internal Revenue Service Code.

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

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

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).

On July 26, 2002, a notice of proposed rule-making (REG-106876-00, 2002-2 C.B. 392 [67 FR 48823]), relating to the use of taxpayer identifying numbers on submissions under sections 897 and 1445 of the Internal Revenue Code (Code), was published in the Federal Register. No public hearing was requested or held. Written comments responding to the notice of proposed rule-making were received. After consideration of the comments, the proposed regulations are adopted as amended by this Treasury decision. The revisions are discussed in TD 9082 (68 FR 46081), published August 5, 2003.

In response to the **Federal** register notice dated August 19, 2019 (84 FR 42990), we received no comments during the comment period regarding this approval number.

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

No payment or gift has been provided to any respondents.

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

No PII (Personally Identifiable Information) is being collected.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The collections of information required by this notice are in Temp. Reg. §1.897-6T(a)(1) and 1.897-5T(d)(1)(iii), Treas. Reg. §1.1445-2(d)(2)(i)(A). This information will be used to obtain exemptions from tax under certain nonrecognition transactions and to satisfy reporting requirements regarding these nonrecognition transactions. The likely respondents are individuals, corporations, and business or other for-profit institutions.

The estimated total annual reporting burden is 200 hours. The estimated annual burden per respondent is 2 hours. The estimated number of respondents is 100.

The burden estimate is as follows:

OMB Collection n	Authority	Annual Responses	Hours per Response	Total Burden
IRS 1545- 1660	1.897-6T(a)(1), 1.897-5T(d)(1)(iii), 1.1445-2(d)(2)(i)(A).	100	2	200
	IRS TOTAL	100		200

The following regulations impose no additional burden. Please continue to assign OMB number 1545-1660 to these regulations.

1.897-6T(a)(1)

1.897-5T(d)(1)(iii)

1.1445-2(d)(2)(i)(A)

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our Federal Register notice dated August 19, 2019, 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 responses from taxpayers on this subject. As a result, there appears to be no annual start-up costs associated with this collection.

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

There is no annualized cost to the federal government.

15. REASONS FOR CHANGE IN BURDEN

There are no changes to the burden.

We are submitting this request for renewal purposes only.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis and publication.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

IRS believes 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

There are no exceptions to the certification statement.

Note: The following paragraph applies to all 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.