

Supporting Statement
Internal Revenue Service
Income of Foreign Governments and of International Organizations
OMB Control Number 1545-2239

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

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

IRC section 892(a)(1)(A) exempts a foreign government from U.S. income taxation under subtitle A on certain qualified income received from investments in the United States in stocks, bonds, or other domestic securities, or financial instruments held in the execution of governmental financial or monetary policy. Pursuant to IRC section 892(a)(2)(A), this exemption does not apply to income that is (1) derived from the conduct of any commercial activity (whether within or outside the United States), (2) received by a controlled commercial entity ("CCE") or received (directly or indirectly) from a CCE, or (3) derived from the disposition of any interest in a CCE.

Treasury Decision (TD) 8211 contained temporary regulations to provide guidance concerning the taxation of income of foreign governments and international organizations from investments in the United States under section 892.

TD 10042 changes to the temporary regulations (TD 8211) to provide an exception that allows a controlled entity of a foreign government that inadvertently engages in commercial activity to avoid being treated as a CCE under IRC section 892(a)(2)(B) and accordingly remain eligible for the tax exemption provided under IRC section 892. To qualify for the exception, certain conditions must be satisfied by the controlled entity including maintaining adequate records regarding each discovered commercial activity and the remedial action taken to cure each such activity. Treasury Regulations section 1.892-5(a)(2)(ii)(B) requires entities to keep records of written policies and operational procedures to avoid commercial activity failures. Treasury Regulations section 1.892-5(a)(2)(iv) requires entities to keep records of commercial failure activities and remedial actions to correct failures. The recordkeeping requirement in § 1.892-5(a)(2)(ii)(B) and § 1.892-5(a)(2)(iv) are required for IRS to validate if taxpayers have met the regulatory requirements and are entitled to the inadvertent commercial activity exception under section 892.

2. USE OF DATA

The collections of information will be used by the IRS for tax compliance purposes. The data will be used to permit verification by the Commissioner of the IRS to determine if taxpayers qualify for exemption from tax under section 892.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

The IRS has no plans to offer electronic filing for the recordkeeping requirements under § 1.892-5(a)(2)(ii)(B) and § 1.892-5(a)(2)(iv). Respondents may utilize improved information technology to keep the required records.

4. EFFORTS TO IDENTIFY DUPLICATION

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

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

This information collection will not have a significant economic impact on small businesses or other small entities. Generally, the regulations affect foreign governments, including their controlled entities, which operate primarily outside of the United States. It is unlikely for the regulations to affect small businesses or other small entities.

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

A less frequent collection will not allow the IRS to verify whether taxpayers qualify for exemption from tax under section 892 and will hinder the IRS from meeting its mission.

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 C.F.R. §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

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 to review and provide public comments relating to any aspect of the proposed regulations including the recordkeeping requirements under § 1.892-5(a)(2)(ii)(B) and § 1.892-5(a)(2)(iv). The IRS reopened the public commenting period for an additional 60 days on the proposed rulemaking on December 22, 2022 (87 FR 80108). No public comments were received by the IRS regarding the recordkeeping requirements.

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 U.S.C. 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

There is no Personally Identifiable Information (PII) collected. Information collection is recordkeeping requirement and only provided to the IRS during an inquiry or audit.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The recordkeeping requirements are in Treasury Regulations sections 1.892-5(a)(2)(ii)(B) and 1.892-5(a)(2)(iv). The recordkeeping requirements are necessary for the IRS to validate if foreign government investors and their controlled entities have met the regulatory requirements and are entitled to the inadvertent commercial activity exception under section 892. The estimated burden is as follows:

Authority	Description	# of Respondents	# Responses per Respondent	Annual Responses	Hours per Response	Total Burden
IRC § 892	Recordkeeping	195	1	195	5	975
Totals		195		195		975

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There are no annualized costs to the respondents beyond keeping records as part of customary and usual business or private practices.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

There are no estimated annualized costs to the federal government as these are recordkeeping requirements.

15. REASONS FOR CHANGE IN BURDEN

This is a new recordkeeping requirement.

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

The IRS believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulations expire as of the expiration date. Taxpayers are not likely to be aware that the IRS 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.