

interest expense that is paid or accrued for the taxable year with respect to the foreign corporation's worldwide liabilities denominated in that currency, by the foreign corporation's average worldwide liabilities (whether interest bearing or not) denominated in that currency. The interest expense and liabilities are to be stated in that currency.

(3) *Hedging transactions.* [Reserved]

(4) *Election not available if excessive hyperinflationary assets.* The election to use the separate currency pools method of this paragraph (e) is not available if the value of the foreign corporation's U.S. assets denominated in a hyperinflationary currency, as defined in §1.985-1, exceeds ten percent of the value of the foreign corporation's total U.S. assets. If a foreign corporation made a valid election to use the separate currency pools method in a prior year but no longer qualifies to use such method pursuant to this paragraph (e)(4), the taxpayer must use the method provided by paragraphs (b) through (d) of this section.

(5) *Examples.* The separate currency pools method of this paragraph (e) is illustrated by the following examples:

Example 1. Separate currency pools method—(i) *Facts.* (A) Bank Z, a resident of country X, has a branch in the United States through which it conducts its banking business. For its 1997 taxable year, Z has U.S. assets, as defined in paragraph (b) of this section, that are denominated in U.S. dollars and in U, the country X currency. Accordingly, Z's U.S. assets are as follows:

	Average value
U.S. Dollar Assets	\$20,000
U Assets	U 5,000

(B) Z's worldwide liabilities are also denominated in U.S. Dollars and in U. The average interest rates on Z's worldwide liabilities, including those in the United States, are 6% on its U.S. dollar liabilities, and 12% on its liabilities denominated in U. Assume that Z has properly elected to use its actual ratio of 95% to determine its U.S.-connected liabilities in Step 2, and has also properly elected to use the separate currency pools method provided in paragraph (e) of this section.

(ii) *Determination of interest expense.* Z determines the interest expense attributable to its U.S.-connected liabilities according to the steps described below.

(A) First, Z separates its U.S. assets into two currency pools, one denominated in U.S. dollars (\$20,000) and the other denominated in U (U5,000).

(B) Second, Z multiplies each pool of assets by the applicable ratio of worldwide liabilities to assets, which in this case is 95%. Thus, Z has U.S.-connected liabilities of \$19,000 (\$20,000×95%), and U4750 (U5000×95%).

(C) Third, Z calculates its interest expense by multiplying each pool of its U.S.-connected liabilities by the relevant interest rates. Accordingly, Z's allocable interest expense for the year is \$1140 (\$19,000×6%), the sum of the expense associated with its U.S. dollar liabilities, plus U570 (U4750×12%), the interest expense associated with its liabilities denominated in U. Z must translate its interest expense denominated in U in accordance with the rules provided in section 988, and then must determine whether it is subject to any other provision of the Code that would disallow or defer any portion of its interest expense so determined.

Example 2. [Reserved]

(f)(1) *Effective/applicability date* (1) This section is applicable for taxable years ending on or after August 15, 2009. A taxpayer, however, may choose to apply §1.882-5T, rather than applying the final regulations, for any taxable year beginning on or after August 16, 2008 but before August 15, 2009.

(2) *Special rules for financial products.* [Reserved]

[T.D. 8658, 61 FR 9329, Mar. 8, 1996; 61 FR 15891, Apr. 10, 1996, as amended by T.D. 9281, 71 FR 47448, Aug. 17, 2006; 71 FR 56868, Sept. 28, 2006; T.D. 9465, 74 FR 49320, Sept. 28, 2009; 74 FR 57252, Nov. 5, 2009]

§ 1.883-0 Outline of major topics.

This section lists the major paragraphs contained in §§1.883-1 through 1.883-5.

§1.883-1 Exclusion of income from the international operation of ships or aircraft.

- (a) General rule.
- (b) Qualified income.
- (c) Qualified foreign corporation.
 - (1) General rule.
 - (2) Stock ownership test.
 - (3) Substantiation and reporting requirements.
- (i) General rule.
- (ii) Further documentation.
- (4) Commissioner's discretion to cure defects in documentation.
- (d) Qualified foreign country.
- (e) Operation of ships or aircraft.
 - (1) General rule.

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- (2) Pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture.
- (3) Activities not considered operation of ships or aircraft.
- (4) Examples.
- (5) Definitions.
 - (i) Bareboat charter.
 - (ii) Code-sharing arrangement.
 - (iii) Dry lease.
 - (iv) Entity.
 - (v) Fiscally transparent entity under the income tax laws of the United States.
 - (vi) Full charter.
 - (vii) Nonvessel operating common carrier.
 - (viii) Space or slot charter.
 - (ix) Time charter.
 - (x) Voyage charter.
 - (xi) Wet lease.
- (f) International operation of ships or aircraft.
 - (1) General rule.
 - (2) Determining whether income is derived from international operation of ships or aircraft.
 - (i) International carriage of passengers.
 - (A) General rule.
 - (B) Round trip travel on ships.
 - (ii) International carriage of cargo.
 - (iii) Bareboat charter of ships or dry lease of aircraft used in international operation of ships or aircraft.
 - (iv) Charter of ships or aircraft for hire.
 - (g) Activities incidental to the international operation of ships or aircraft.
 - (1) General rule.
 - (2) Activities not considered incidental to the international operation of ships or aircraft.
 - (3) [Reserved] For further guidance, see the entry for §1.883-1T(g)(3).
 - (4) Activities involved in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture.
 - (h) Equivalent exemption.
 - (1) General rule.
 - (2) Determining equivalent exemptions for each category of income.
 - (3) [Reserved] For further guidance, see the entries for §1.883-1T(h)(3).
 - (4) Exemptions not qualifying as equivalent exemptions.
 - (i) General rule.
 - (ii) Reduced tax rate or time limited exemption.
 - (iii) Inbound or outbound freight tax.
 - (iv) Exemptions for limited types of cargo.
 - (v) Territorial tax systems.
 - (vi) Countries that tax on a residence basis.
 - (vii) Exemptions within categories of income.
 - (i) Treatment of possessions.
 - (j) Expenses related to qualified income.

26 CFR Ch. I (4-1-10 Edition)*§ 1.883-2 Treatment of publicly-traded corporations.*

- (a) General rule.
- (b) Established securities market.
 - (1) General rule.
 - (2) Exchanges with multiple tiers.
 - (3) Computation of dollar value of stock traded.
 - (4) Over-the-counter market.
 - (5) Discretion to determine that an exchange does not qualify as an established securities market.
- (c) Primarily traded.
- (d) Regularly traded.
 - (1) General rule.
 - (2) Classes of stock traded on a domestic established securities market treated as meeting trading requirements.
 - (3) Closely-held classes of stock not treated as meeting trading requirements.
 - (i) General rule.
 - (ii) Exception.
 - (iii) Five-percent shareholders.
 - (A) Related persons.
 - (B) Investment companies.
 - (4) Anti-abuse rule.
 - (5) Example.
 - (e) Substantiation that a foreign corporation is publicly traded.
 - (1) General rule.
 - (2) [Reserved] For further guidance, see the entry for §1.883-2T(e)(2).
 - (f) Reporting requirements.

§ 1.883-3 Treatment of controlled foreign corporations.

[Reserved] For further guidance, see the entry for §1.883-3T.

§ 1.883-4 Qualified shareholder stock ownership test.

- (a) General rule.
- (b) Qualified shareholder.
 - (1) General rule.
 - (2) Residence of individual shareholders.
 - (i) General rule.
 - (ii) Tax home.
 - (3) Certain income tax convention restrictions applied to shareholders.
 - (4) Not-for-profit organizations.
 - (5) Pension funds.
 - (i) Pension fund defined.
 - (ii) Government pension funds.
 - (iii) Nongovernment pension funds.
 - (iv) Beneficiary of a pension fund.
 - (c) Rules for determining constructive ownership.
 - (1) General rules for attribution.
 - (2) Partnerships.
 - (i) General rule.
 - (ii) Partners resident in the same country.
 - (iii) Examples.
 - (3) Trusts and estates.
 - (i) Beneficiaries.
 - (ii) Grantor trusts.
 - (4) Corporations that issue stock.

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- (5) Taxable nonstock corporations.
- (6) Mutual insurance companies and similar entities.
- (7) Computation of beneficial interests in nongovernment pension funds.
- (d) Substantiation of stock ownership.
 - (1) General rule.
 - (2) Application of general rule.
 - (i) Ownership statements.
 - (ii) Three-year period of validity.
 - (3) Special rules.
 - (i) Substantiating residence of certain shareholders.
 - (ii) Special rule for registered shareholders owning less than one percent of widely-held corporations.
 - (iii) Special rule for beneficiaries of pension funds.
 - (A) Government pension fund.
 - (B) Nongovernment pension fund.
 - (iv) Special rule for stock owned by publicly-traded corporations.
 - (v) Special rule for not-for-profit organizations.
 - (vi) Special rule for a foreign airline covered by an air services agreement.
 - (vii) Special rule for taxable nonstock corporations.
 - (viii) Special rule for closely-held corporations traded in the United States.
 - (4) Ownership statements from shareholders.
 - (i) Ownership statements from individuals.
 - (ii) Ownership statements from foreign governments.
 - (iii) Ownership statements from publicly-traded corporate shareholders.
 - (iv) Ownership statements from not-for-profit organizations.
 - (v) Ownership statements from intermediaries.
 - (A) General rule.
 - (B) Ownership statements from widely-held intermediaries with registered shareholders owning less than one percent of such widely-held intermediary.
 - (C) Ownership statements from pension funds.
 - (1) Ownership statements from government pension funds.
 - (2) Ownership statements from nongovernment pension funds.
 - (3) Time for making determinations.
 - (D) Ownership statements from taxable nonstock corporations.
 - (5) Availability and retention of documents for inspection.
 - (e) Reporting requirements.

§ 1.883-5 Effective dates.

- (a) General rule.
- (b) Election for retroactive application.
- (c) Transitional information reporting rule.
- (d) [Reserved] For further guidance, see the entry for § 1.883-5T(d).

- (e) [Reserved] For further guidance, see the entry for § 1.883-5T(e).

[T.D. 9087, 68 FR 51399, Aug. 26, 2003, as amended by T.D. 9332, 72 FR 34604, June 25, 2007]

§ 1.883-0T Outline of major topics (temporary).

This section lists the major paragraphs contained in §§ 1.883-1T through 1.883-5T.

§ 1.883-1T Exclusion of income from the international operation of ships or aircraft (temporary).

- (a) through (c)(3)(i) [Reserved] For further guidance, see entries for § 1.883-1(a) through (c)(3)(i).
- (ii) Further documentation.
 - (A) General rule.
 - (B) Names and addresses of certain shareholders.
- (c)(4) through (g)(2) [Reserved] For further guidance, see entries for § 1.883-1(c)(4) through (g)(2).
- (3) Other services. [Reserved]
- (g)(4) through (h)(2) [Reserved] For further guidance, see entries for § 1.883-1(g)(4) through (h)(2).
- (3) Special rules with respect to income tax conventions.
 - (i) Countries with only an income tax convention.
 - (ii) Countries with both an income tax convention and an equivalent exemption.
 - (A) General rule.
 - (B) Special rule for simultaneous benefits under section 883 and an income tax convention.
 - (iii) Participation in certain joint ventures.
 - (iv) Independent interpretation of income tax conventions.
- (h)(4) through (j) [Reserved] For further guidance, see entries for § 1.883-1(h)(4) through (j).

§ 1.883-2T Treatment of publicly-traded corporations (temporary).

- (a) through (e)(1) [Reserved] For further guidance, see entries for § 1.883-2(a) through (e)(1).
- (2) Availability and retention of documents for inspection.
- (f) [Reserved] For further guidance, see entry for § 1.883-2(f).

§ 1.883-3T Treatment of controlled foreign corporations (temporary).

- (a) General rule.
- (b) Qualified U.S. person ownership test.
 - (1) General rule.
 - (2) Qualified U.S. person.
 - (3) Treatment of bearer shares.
 - (4) Attribution of ownership through certain domestic entities.