

charter of cargo aircraft does not provide an equivalent exemption. However, an equivalent exemption may be available for income derived from the international operation of ships even though income derived from the international operation of aircraft may not be exempt, and vice versa. With respect to paragraph (h)(2)(vi) of this section, a foreign country may be considered to grant an equivalent exemption for one or more types of income described in paragraph (g)(1) of this section.

(i) *Treatment of possessions.* For purposes of this section, a possession of the United States will be treated as a foreign country. A possession of the United States will be considered to grant an equivalent exemption and will be treated as a qualified foreign country if it applies a mirror system of taxation. If a possession does not apply a mirror system of taxation, the possession may nevertheless be a qualified foreign country if, for example, it provides for an equivalent exemption through its internal law. A possession applies the mirror system of taxation if the U.S. Internal Revenue Code of 1986, as amended, applies in the possession with the name of the possession used instead of “United States” where appropriate.

(j) *Expenses related to qualified income.* If a qualified foreign corporation derives qualified income from the international operation of ships or aircraft as well as income that is not qualified income, and the nonqualified income is effectively connected with the conduct of a trade or business within the United States, the foreign corporation may not deduct from such nonqualified income any amount otherwise allowable as a deduction from qualified income, if that qualified income is excluded under this section. See section 265(a)(1).

[T.D. 9087, 68 FR 51400, Aug. 26, 2003; 69 FR 7995, Feb. 20, 2004, as amended by T.D. 9332, 72 FR 34605, June 25, 2007; 72 FR 45159, Aug. 13, 2007]

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

(a) through (c)(3)(i)(C) [Reserved] For further guidance, see § 1.883-1(a) through (c)(3)(i)(C).

(D) The applicable authority for an equivalent exemption, for example, the citation of a statute in the country where the corporation is organized, a diplomatic note between the United States and such country, or an income tax convention between the United States and such country in the case of a corporation described in paragraphs (h)(3)(i) through (iii) of this section;

(c)(3)(i)(E) through (F) [Reserved] For further guidance, see § 1.883-1(c)(3)(i)(E) through (F).

(G) A statement that none of the foreign corporation’s shares or shares of any intermediary entity, if any, that are held by qualified shareholders and relied on to satisfy any of the stock ownership tests described in § 1.883-1(c)(2) are issued in bearer form;

(H) Any other information required under § 1.883-2(f), § 1.883-2T(f), § 1.883-3T(d), § 1.883-4(e), or § 1.883-4T(e), as applicable; and

(I) Any other relevant information specified in Form 1120-F, “U.S. Income Tax Return of a Foreign Corporation,” and its accompanying instructions.

(ii) *Further documentation—(A) General rule.* Except as provided in this paragraph (c)(3)(ii)(B), if the Commissioner requests in writing that the foreign corporation document or substantiate representations made under paragraph (c)(3)(i) of this section, or under § 1.883-2(f), § 1.883-2T(f), § 1.883-3T(d), § 1.883-4(e), or § 1.883-4T(e), as applicable, the foreign corporation must provide the documentation or substantiation within 60 days following the written request. If the foreign corporation does not provide the documentation and substantiation requested within the 60-day period, but demonstrates that the failure was due to reasonable cause and not willful neglect, the Commissioner may grant the foreign corporation a 30-day extension. Whether a failure to obtain the documentation or substantiation in a timely manner was due to reasonable cause and not willful neglect shall be determined by the Commissioner after considering all the facts and circumstances.

(B) *Names and addresses of certain shareholders.* If the Commissioner requests the names and permanent addresses of individual qualified shareholders of a foreign corporation, as represented on each such individual's ownership statement, to substantiate the requirements of the exception to the closely-held test in the publicly-traded test in § 1.883-2(e), the qualified shareholder stock ownership test in § 1.883-4(a), or the qualified U.S. person ownership test in § 1.883-3T(b), the foreign corporation must provide the documentation and substantiation within 30 days following the written request. If the foreign corporation does not provide the documentation and substantiation within the 30-day period, but demonstrates that the failure was due to reasonable cause and not willful neglect, the Commissioner may grant the foreign corporation a 30-day extension. Whether a failure to obtain the documentation or substantiation in a timely manner was due to reasonable cause and not willful neglect shall be determined by the Commissioner after considering all the facts and circumstances.

(c)(4) through (g)(1)(viii) [Reserved] For further guidance see § 1.883-1(c)(4) through (g)(1)(viii).

(ix) Arranging by means of a space or slot charter for the carriage of cargo listed on a bill of lading or airway bill or similar document issued by the foreign corporation on the ship or aircraft of another corporation engaged in the international operation of ships or aircraft;

(x) The provision of containers and related equipment by the foreign corporation in connection with the international carriage of cargo for use by its customers, including short-term use within the United States immediately preceding or following the international carriage of cargo (and for this purpose, a period of five days or less shall be presumed to be short-term); and

(xi) The provision of goods and services by engineers, ground and equipment maintenance staff, cargo handlers, catering staff, and customer services personnel, and the provision of facilities such as passenger lounges,

counter space, ground handling equipment, and hanger facilities.

(2) [Reserved] For further guidance, see § 1.883-1(g)(2).

(3) *Other services.* [Reserved]

(g)(4) through (h)(1)(i) [Reserved] For further guidance, see § 1.883-1(g)(4) through (h)(1)(i).

(ii) Specifically provides a domestic law tax exemption for income derived from the international operation of ships or aircraft, either by statute, decree, income tax convention, or otherwise; or

(h)(1)(iii) and (h)(2) [Reserved] For further guidance, see § 1.883-1(h)(1)(iii) and (h)(2).

(3) *Special rules with respect to income tax conventions*—(i) *Countries with only an income tax convention.* If a foreign country only provides an exemption from tax for profits from the operation of ships or aircraft in international transport or international traffic under the shipping and air transport or gains article of an income tax convention with the United States, a foreign corporation organized in that country may treat that exemption as an equivalent exemption for purposes of section 883, but only if—

(A) The foreign corporation meets all the conditions for claiming benefits with respect to such profits under the income tax convention; and

(B) The profits that are exempt pursuant to the income tax convention also fall within a category of income described in paragraphs (h)(2)(i) through (viii) of this section.

(ii) *Countries with both an income tax convention and an equivalent exemption*—(A) *General rule.* If a foreign country provides an exemption from tax for profits from the operation of ships or aircraft in international transport or international traffic under the shipping and air transport or gains article of an income tax convention, and that foreign country also provides an equivalent exemption under section 883 by some other means for one or more categories of income under paragraph (h)(2) of this section, the foreign corporation may choose annually whether to claim an exemption under section 883 or the income tax convention. Except as provided in this paragraph (h)(3)(ii)(B), any such choice will apply

with respect to all categories of qualified income of the foreign corporation and cannot be made separately with respect to different categories of income. If a foreign corporation bases its claim for an exemption on section 883, it must satisfy all of the requirements of this section to qualify for an exemption from U.S. income tax. If the foreign corporation bases its claim for an exemption on an income tax convention, it must satisfy all of the requirements for claiming benefits under the income tax convention. See §1.883-4(b)(3) for rules about satisfying the stock ownership test of §1.883-1(c)(2) using shareholders resident in a foreign country that offers an exemption under an income tax convention.

(B) *Special rule for simultaneous benefits under section 883 and an income tax convention.* If a foreign corporation is organized in a foreign country that offers an exemption from tax under an income tax convention and also by some other means, such as by diplomatic note or domestic statutory law, with respect to the same category of income, and the foreign corporation chooses to claim an exemption under an income tax convention under paragraph (h)(3)(ii)(A) of this section, it may simultaneously claim an exemption under section 883 with respect to a category of income exempt from tax by such other means if it satisfies the requirements of paragraphs (h)(3)(i)(A) and (B) of this section for each category of income, satisfies one of the stock ownership tests of paragraph (c)(2) of this section, and complies with the substantiation and reporting requirements in paragraph (c)(3) of this section.

(iii) *Participation in certain joint ventures.* A foreign corporation resident in a foreign country that provides an exemption only through an income tax convention will not be precluded from treating that exemption as an equivalent exemption if it derives income through a participation, directly or indirectly, in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement, or other joint venture described in §1.883-1(e)(2), and the foreign corporation would be ineligible to claim benefits under the convention for that category

of income solely because the joint venture was not fiscally transparent, within the meaning of §1.894-1(d)(3)(iii)(A), with respect to that category of income under the income tax laws of the foreign corporation's country of residence.

(iv) *Independent interpretation of income tax conventions.* Nothing in §§1.883-1 through 1.883-5, or in this section and §§1.883-2T through 1.883-5T, affects the rights or obligations under any income tax convention. The definitions provided in §§1.883-1 through 1.883-5, or in this section and §§1.883-2T through 1.883-5T, shall not give meaning to similar terms used in any income tax convention, or provide guidance regarding the scope of any exemption provided by such convention, unless the income tax convention entered into force after August 26, 2003, and it, or its legislative history, explicitly refers to section 883 and guidance promulgated under that section for its meaning.

[T.D. 9332, 72 FR 34605, June 25, 2007]

#### § 1.883-2 Treatment of publicly-traded corporations.

(a) *General rule.* A foreign corporation satisfies the stock ownership test of §1.883-1(c)(2) if it is considered a publicly-traded corporation and satisfies the substantiation and reporting requirements of paragraphs (e) and (f) of this section. To be considered a publicly-traded corporation, the stock of the foreign corporation must be primarily traded and regularly traded, as defined in paragraphs (c) and (d) of this section, respectively, on one or more established securities markets, as defined in paragraph (b) of this section, in either the United States or any qualified foreign country.

(b) *Established securities market—(1) General rule.* For purposes of this section, the term *established securities market* means, for any taxable year—

(i) A foreign securities exchange that is officially recognized, sanctioned, or supervised by a governmental authority of the qualified foreign country in which the market is located, and has an annual value of shares traded on the exchange exceeding \$1 billion during