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(i) Effect of disregarding conduit entity.
   (A) In general.
   (B) Character of payments made by the financed entity.
   (C) Effect of income tax treaties.
   (D) Effect on withholding tax.
   (E) Special rule for a financing entity that is unrelated to both intermediate entity and financed entity.
   (iii) Limitation on taxpayers’s use of this section.
   (A) In general.
   (i) Standard for treatment as a conduit entity.
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   (A) In general.
   (B) Special rule for related persons.
   (b) Determination of whether participation of intermediate entity is pursuant to a tax avoidance plan.
   (1) In general.
   (2) Factors taken into account in determining the presence or absence of a tax avoidance purpose.
   (i) Significant reduction in tax.
   (ii) Ability to make the advance.
   (iii) Time period between financing transactions.
   (iv) Financing transactions in the ordinary course of business.
   (3) Presumption if significant financing activities performed by a related intermediate entity.
   (i) General rule.
   (ii) Significant financing activities.
   (A) Active rents or royalties.
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   (c) Determination of whether an unrelated intermediate entity would not have participated in financing arrangement on substantially same terms.
   (1) In general.
   (2) Effect of guarantee.
   (i) In general.
   (ii) Definition of guarantee.
   (d) Determination of amount of tax liability.
   (1) Amount of payment subject to recategorization.
   (i) In general.
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   (A) In general.
   (B) Debt instruments and certain stock.
   (C) Partnership and trust interests.
   (D) Leases and licenses.
   (2) Rate of tax.
   (e) Examples.
   (f) Effective date.

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§ 1.881–4 Recordkeeping Requirements Concerning Conduit Financing Arrangements

(a) Scope.
   (b) Recordkeeping requirements.
   (1) In general.
   (2) Application of sections 6038 and 6038A.
   (c) Records to be maintained.
   (1) In general.

[T.D. 8611, 60 FR 41005, Aug. 11, 1995]

§ 1.881–1 Manner of taxing foreign corporations.

(a) Classes of foreign corporations. For purposes of the income tax, foreign corporations are divided into two classes, namely, foreign corporations which at no time during the taxable year are engaged in trade or business in the United States and foreign corporations which, at any time during the taxable year, are engaged in trade or business in the United States.

(b) Manner of taxing—(1) Foreign corporations not engaged in U.S. business. A foreign corporation which at no time during the taxable year is engaged in trade or business in the United States is taxable, as provided in §1.881–1, on all income received from sources within the United States which is fixed or determinable annual or periodical income and on other items of income enumerated under section 881(a). Such a foreign corporation is also taxable on certain income from sources within the United States which, pursuant to §1.882–1, is treated as effectively connected for the taxable year with the conduct of a trade or business in the United States.

(2) Foreign corporations engaged in U.S. business. A foreign corporation which at any time during the taxable year is engaged in trade or business in the United States is taxable, as provided in §1.882–1, on all income from whatever source derived, whether or not fixed or determinable annual or periodical income, which is effectively connected for the taxable year with the conduct of a trade or business in the United States. Such a foreign corporation is also taxable, as provided in §1.882–1, on income received from sources within the United States which is not effectively connected for the taxable year with the conduct of a trade or business in the United States and consists of (i) fixed or determinable annual or periodical income, or (ii) other items of income enumerated in section 881(a). A foreign corporation which at
any time during the taxable year is engaged in trade or business in the United States is also taxable on certain income from sources within the United States which, pursuant to §1.882-2, is treated as effectively connected for the taxable year with the conduct of a trade or business in the United States. (c) Meaning of terms. For the meaning of the term “engaged in trade or business within the United States”, as used in section 881 and this section, see section 864(b) and the regulations thereunder. For determining when income, gain, or loss of a foreign corporation for a taxable year is effectively connected for that year with the conduct of a trade or business in the United States, see section 864(c), the regulations thereunder, and §1.882-2. The term foreign corporation has the meaning assigned to it by section 7701(a)(3) and (5) and the regulations thereunder. However, for special rules relating to possessions of the United States, see §1.881-5.

(d) Rules applicable to foreign insurance companies—(1) Corporations qualifying under subchapter L. A foreign corporation carrying on an insurance business in the United States at any time during the taxable year, which, without taking into account its income not effectively connected for the taxable year with the conduct of a trade or business in the United States, would qualify for the taxable year under part I, II, or III of subchapter L, shall be taxable for such year under that part on its entire taxable income (whether derived from sources within or without the United States). The term foreign corporation has the meaning assigned to it by section 7701(a)(3) and (5) and the regulations thereunder. However, for special rules relating to possessions of the United States, see §1.881-5.

(ii) Under section 882(a)(1) and §1.882-1 on its income (whether derived from sources within or without the United States) which is effectively connected for the taxable year with the conduct of a trade or business in the United States.

(e) Other provisions applicable to foreign corporations—(1) Accumulated earnings tax. For the imposition of the accumulated earnings tax upon the accumulated taxable income of a foreign corporation formed or availed of for tax avoidance purposes, whether or not such corporation is engaged in trade or business in the United States, see section 532 and the regulations thereunder.

(2) Personal holding company tax. For the imposition of the personal holding company tax upon the undistributed personal holding company income of a foreign corporation which is a personal holding company, whether or not such corporation is engaged in trade or business in the United States, see sections 541 through 547, and the regulations thereunder. Except in the case of a foreign corporation having personal service contract income to which section 543(a)(7) applies, a foreign corporation

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any time during the taxable year is engaged in trade or business in the United States is also taxable on certain income from sources within the United States which, pursuant to §1.882-2, is treated as effectively connected for the taxable year with the conduct of a trade or business in the United States, would not qualify for the taxable year under part I, II, or III of subchapter L if it were a domestic corporation, and a foreign insurance company which does not carry on an insurance business in the United States at any time during the taxable year, shall be taxable—

(i) Under section 881(a) and §1.881-2 or §1.882-1 on its income from sources within the United States which is not effectively connected for the taxable year with the conduct of a trade or business in the United States,

(ii) Under section 882(a)(1) and §1.882-1 on its income (whether derived from sources within or without the United States) which is effectively connected for the taxable year with the conduct of a trade or business in the United States.

(iii) Under section 882(a)(1) and §1.882-1 on its income from sources within the United States which pursuant to section 882 (d) or (e) and §1.882-2, is treated as effectively connected for the taxable year with the conduct of a trade or business in the United States.

(e) Other provisions applicable to foreign corporations—(1) Accumulated earnings tax. For the imposition of the accumulated earnings tax upon the accumulated taxable income of a foreign corporation formed or availed of for tax avoidance purposes, whether or not such corporation is engaged in trade or business in the United States, see section 532 and the regulations thereunder.

(2) Personal holding company tax. For the imposition of the personal holding company tax upon the undistributed personal holding company income of a foreign corporation which is a personal holding company, whether or not such corporation is engaged in trade or business in the United States, see sections 541 through 547, and the regulations thereunder. Except in the case of a foreign corporation having personal service contract income to which section 543(a)(7) applies, a foreign corporation
§ 1.881–2 Taxation of foreign corporations not engaged in U.S. business.

(a) Imposition of tax. (1) This section applies for purposes of determining the tax of a foreign corporation which at no time during the taxable year is engaged in trade or business in the United States. However, see also §1.882–2 where such corporation has an election in effect for the taxable year in respect to real property income or receives interest on obligations of the United States. Except as otherwise provided in §1.871–12, a foreign corporation to which this section applies is not subject to the tax imposed by section 11 or section 1201(a) but, pursuant to the provisions of section 881(a), is liable to a flat tax of 30 percent upon the aggregate of the amounts determined under paragraphs (b) and (c) of this section which are received during the taxable year from sources within the United States. Except as specifically provided in such paragraphs, such amounts do not include gains from the sale or exchange of property. To determine the source of such amounts, see sections