§ 1.897–9T Treatment of certain interest in publicly traded corporations, definition of foreign person, and foreign governments and international organizations (temporary).

(a) Purpose and scope. This section provides a temporary regulation that, if and when adopted as a final regulation will be added as new paragraphs (c)(2)(iii)(B), (k), (n) and (q) of § 1.897–1. Paragraph (b) of this section would then appear as paragraph (c)(2)(iii)(B) of § 1.897–1. Paragraph (c) of this section would then appear as paragraph (k) of § 1.897–1. Paragraph (d) of this section would then appear as paragraph (n) of § 1.897–1. Paragraph (e) of this section would then appear as paragraph (q) of § 1.897–1.

(b) Any other interest in the corporation (other than an interest solely as a creditor) if on the date such interest was acquired by its present holder it had a fair market value greater than the fair market value on that date of 5 percent of the regularly traded class of the corporation’s stock with the lowest fair market value. However, if a non-regularly traded class of interests in the corporation is convertible into a regularly traded class of interests in the corporation, an interest in such class shall be treated as a U.S. real property interest if on the date it was acquired by its present holder it had a fair market value greater than the fair market value that date of 5 percent of the regularly traded class of the corporation’s stock with the lowest fair market value. However, if a non-regularly traded class of interests in the corporation is convertible into a regularly traded class of interests in the corporation, an interest in such non-regularly traded class shall be treated as a U.S. real property interest if on the date it was acquired by its present holder it had a fair market value greater than the fair market value on that date of 5 percent of the regularly traded class of the corporation’s stock with the lowest fair market value. If a person holds interests in a corporation of a class that is not regularly traded, and subsequently acquires additional interests of the same class, then all such interests must be aggregated and valued as of the date of the subsequent acquisition. If the subsequent acquisition causes that person’s interests to exceed the applicable limitation, then all such interests shall be treated as U.S. real property interests, regardless of when acquired. In addition, if a person holds interests in a corporation of separate classes that are not regularly traded, and if such interests were separately acquired for a principal purpose of avoiding the applicable 5 percent limitation of this paragraph, then such interests shall be aggregated for purposes of applying that limitation. This rule shall not apply to interests of separate classes acquired in transactions more than three years apart. For purposes of paragraph (c)(2)(iii) of § 1.897–1, section 318(a) shall apply (except that section 318(a)(2)(C) and (3)(C) shall each be applied by substituting “5 percent” for “50 percent”).

(c) Foreign person. The term “foreign person” means a nonresident alien individual (including an individual subject to the provisions of section 877), a foreign corporation as defined in paragraph (1) of this section, a foreign partnership, a foreign trust or a foreign estate, as such persons are defined respectively by § 1.871–2 and by 7701 and the regulations thereunder. A resident alien individual, including a non-resident alien with respect to whom there is in effect an election under section 6013(g) or (h) to be treated as United States resident, is not a foreign person. With respect to the status of foreign governments and international organizations, see paragraph (e) of this section.

(d) Regularly traded—(1) General rule—(i) Trading requirements. A class of interests that is traded on one or more established securities markets is considered to be regularly traded on such market or markets for any calendar quarter during which—(A) Trades in such class are effected, other than in de minimis quantities, on at least 15 days during the calendar quarter; (B) The aggregate number of the interests in such class traded is at least 7.5 percent or more of the average number of interests in such class outstanding during the calendar quarter; and (C) The requirements of paragraph (d)(3) of this section are met.

(ii) Exceptions—(A) in the case of the class of interests which is held by 2,500 or more record shareholders, the requirements of paragraph (d)(1)(i)(B) of this section shall be applied by substituting “2.5 percent” for “7.5 percent”.

(B) If at any time during the calendar quarter 100 or fewer persons own 50 percent or more of the outstanding shares of a class of interests, such class shall
not be considered to be regularly traded for purposes of sections 897, 1445 and 6039C. Related persons shall be treated as one person for purposes of this paragraph (d)(1)(ii)(B).

(iii) Anti-abuse rule. Trades between related persons shall be disregarded. In addition, a class of interests shall not be treated as regularly traded if there is an arrangement or a pattern of trades designed to meet the requirements of this paragraph (d)(1). For example, trades between two persons that occur several times during the calendar quarter may be treated as an arrangement or a pattern of trades designed to meet the requirements of this paragraph (d)(1).

(2) Interests traded on domestic established securities markets. For purposes of sections 897, 1445 and 6039C, a class of interests that is traded on an established securities market located in the United States is considered to be regularly traded for any calendar quarter during which it is regularly quoted by brokers or dealers making a market in such interests. A broker or dealer makes a market in a class of interests only if the broker or dealer holds himself out to buy or sell interests in such class at the quoted price. Stock of a corporation that is described in section 851(a)(1) and units of a unit investment trust registered under the Investment Company Act of 1940 (15 U.S.C. sections 80a–1 to 80a–2) shall be treated as regularly traded within the meaning of this paragraph.

(3) Reporting requirement for interests traded on foreign securities markets. A class of interests in a domestic corporation that is traded on one or more established securities markets located outside the United States shall not be considered to be regularly traded on such market or markets unless such class is traded in registered form, and—

(i) The corporation registers such class of interests pursuant to section 12 of the Securities Exchange Act of 1934, 15 U.S.C. section 78, or  
(ii) The corporation attaches to its Federal income tax return a statement providing the following:

(A) A caption which states “The following information concerning certain shareholders of this corporation is provided in accordance with the requirements of §1.897–9T.”

(B) The name under which the corporation is incorporated, the state in which such corporation is incorporated, the principal place of business of the corporation, and its employer identification number, if any;

(C) The identity of each person who, at any time during the corporation's taxable year, was the beneficial owner of more than 5 percent of any class of interests of the corporation to which this paragraph (d)(3) applies;

(D) The title, and the total number of shares issued, of any class of interests so owned; and

(E) With respect to each beneficial owner of more than 5 percent of any class of interests of the corporation, the number of shares owned, the percentage of the class represented thereby, and the nature of the beneficial ownership of each class of shares so owned.

Interests in a domestic corporation which has filed a report pursuant to this paragraph (d)(3)(ii) shall be considered to be regularly traded on an established securities market only for the taxable year of the corporation with respect to which such a report is filed.

(4) Coordination with section 1445. For purposes of section 1445, a class of interests in a corporation shall be presumed to be regularly traded during a calendar quarter if such interests were regularly traded within the meaning of this paragraph during the previous calendar quarter.

(e) Foreign governments and international organizations. A foreign government shall be treated as a foreign person with respect to U.S. real property interests, and shall be subject to sections 897, 1445, and 6039C on the disposition of a U.S. real property interest except to the extent specifically otherwise provided in the regulations issued under section 892. An international organization (as defined in section 7701(a)(18)) is not a foreign person with respect to U.S. real property interests, and is not subject to sections 897, 1445, and 6039C on the disposition of a U.S. real property interest. Buildings or parts of buildings and the land ancillary thereto (including the residence of the head of the diplomatic mission)
used by the foreign government for a diplomatic mission shall not be a U.S. real property interest in the hands of the respective foreign government.

(f) Effective date. Section 1.897–9T with the exception of paragraph (e) shall be effective for transfers, exchanges, distributions and other dispositions occurring on or after June 6, 1988. Paragraph (e) of this section shall be effective for transfers, exchanges, distributions and other dispositions occurring on or after July 1, 1986.

[T.D. 8198, 53 FR 16229, May 5, 1988]

INCOME FROM SOURCES WITHOUT THE UNITED STATES

FOREIGN TAX CREDIT

§ 1.901–1 Allowance of credit for taxes.

(a) and (b). [Reserved] For further guidance, see §1.901–1T(a) and (b).

(c) Deduction denied if credit claimed. If a taxpayer chooses with respect to any taxable year to claim a credit for taxes to any extent, such choice will be considered to apply to income, war profits, and excess profits taxes paid or accrued in such taxable year to all foreign countries and possessions of the United States, and no portion of any such taxes shall be allowed as a deduction from gross income in such taxable year or any succeeding taxable year. See section 275(a)(4).

(d) Period during which election can be made or changed. The taxpayer may, for a particular taxable year, claim the benefits of section 901 (or claim a deduction in lieu of a foreign tax credit) at any time before the expiration of the period prescribed by section 6511(d)(3)(A) (or section 6511(c) if the period is extended by agreement).

(e) Joint return. In the case of a husband and wife making a joint return, credit for taxes paid or accrued to any foreign country or to any possession of the United States shall be computed upon the basis of the total taxes so paid by or accrued against the spouses.

(f) Taxes against which credit not allowed—The credit for taxes shall be allowed only against the tax imposed by chapter 1 of the Code, but it shall not be allowed against the following taxes imposed under that chapter:

1. The minimum tax for tax preferences imposed by section 56;
2. The 10 percent tax on premature distributions to owner-employees imposed by section 72(m)(5)(B);
3. The tax on lump sum distributions imposed by section 402(e);
4. The additional tax on income from certain retirement accounts imposed by section 408(f);
5. The tax on accumulated earnings imposed by section 531;
6. The personal holding company tax imposed by section 541;
7. The additional tax relating to war loss recoveries imposed by section 1333; and
8. The additional tax relating to recoveries of foreign expropriation losses imposed by section 1351.

(g) Taxpayers to whom credit not allowed. Among those to whom the credit for taxes is not allowed are the following:

1. Except as provided in section 906, a foreign corporation.
2. Except as provided in section 906, a nonresident alien individual who is not described in section 876 (see sections 874(c) and 901(b)(4)).
3. A nonresident alien individual described in section 876 other than a bona fide resident of Puerto Rico during the entire taxable year (see sections 901(b)(3) and (4)).
4. A U.S. citizen or resident alien individual who is a bona fide resident in a section 931 possession (as defined in §1.931–1(c)(1)), the U.S. Virgin Islands, or Puerto Rico, and who excludes certain income from U.S. gross income to the extent of taxes allocable to the income so excluded (see sections 931(b)(2), 933(1), and 932(c)(4)).

(h) Taxpayers denied credit in a particular taxable year. Taxpayers who are denied the credit for taxes for particular taxable years are the following:

1. An individual who elects to pay the optional tax imposed by section 3, or one who elects under section 144 to take the standard deduction (see section 36);
2. A taxpayer who elects to deduct taxes paid or accrued to any foreign country or possession of the United States (see sections 164 and 275);