§ 1.883–0

Elective Method for U.S. Tax Liability

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§ 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. 
(d) Stock ownership test. 
(e) Substantiation and reporting requirements. 
(f) Further documentation. 
(g) Qualified foreign country. 
(h) Operation of ships or aircraft. 
(i) General rule. 
(j) Commissioner’s discretion to cure defects in documentation. 
(k) Names and permanent addresses of certain shareholders. 
(l) Equivalent exemption. 
(m) Special rules with respect to income tax conventions. 
(n) Special rules with respect to income tax conditions.

(2) Determining whether income is derived from international operation of ships or aircraft.

(i) International carriage of passengers.

(A) General rule.

(ii) International carriage of cargo.

(A) General rule.

(iii) Bareboat charter of ships or dry lease of aircraft used in international operation of ships or aircraft.

(A) General rule.

(iv) Charter of ships or aircraft for hire.

(A) General rule.

(v) Activities incidental to the international operation of ships or aircraft.

(A) General rule.

(2) Special rules for financial products.

(3) Other Services. 

(1) Bareboat charter.

(2) Code-sharing arrangement.

(3) Dry lease.

(4) Entity.

(5) Fiscally transparent entity under the income tax laws of the United States.

(2) Determining equivalent exemptions for each category of income.

(1) Countries with only an income tax convention.

(A) General rule.

(ii) Countries with both an income tax convention and an equivalent exemption.

(A) General rule.

(2) Pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture.

(A) General rule.

(2) Operation of ships or aircraft.

(A) General rule.

(B) Special rule for claiming simultaneous benefits under section 883 and an income tax convention.
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(a) General rule.
(b) Reduced tax rate or time limited exemption.
(c) Inbound or outbound freight tax.
(d) Exemptions for limited types of cargo.
(e) Territorial tax systems.
(f) Countries that tax on a residence basis.
(g) Exemptions within categories of income.

(i) Treatment of possessions.
(j) Expenses related to qualified income.

§ 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.

(d) Anti-abuse rule.

(5) Example.

(e) Substantiation that a foreign corporation is publicly traded.

(1) General rule.
(2) Availability and retention of documents for inspection.
(f) Reporting requirements.

§ 1.883–3 Treatment of controlled foreign corporations.

(a) General rule.
(b) Qualified U.S. person ownership test.

(1) General rule.
(2) Qualified U.S. person.
(3) Treatment of bearer shares.
(4) Ownership attribution through certain domestic entities.

(5) Examples.
(c) Substantiation of CFC stock ownership.

(1) In general.
(2) Ownership statements from qualified U.S. persons.
(3) Ownership statements from intermediaries.

(4) Three-year period of validity.
(5) Availability and retention of documents for inspection.
(d) Reporting requirements.

§ 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.

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(2) Availability and retention of documents for inspection.

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(1) In general.
(2) Availability and retention of documents for inspection.
§ 1.883–1 Exclusion of income from the international operation of ships or aircraft.

(a) General rule. Qualified income derived by a qualified foreign corporation from its international operation of ships or aircraft is excluded from gross income and exempt from United States Federal income tax. Paragraph (b) of this section defines the term qualified income. Paragraph (c) of this section defines the term qualified foreign corporation. Paragraph (f) of this section defines the term international operation of ships or aircraft.

(b) Qualified income. Qualified income is income derived from the international operation of ships or aircraft that—

(1) Is properly includible in any of the income categories described in paragraph (h)(2) of this section; and

(2) Is the subject of an equivalent exemption, as defined in paragraph (h) of this section, granted by the qualified foreign country, as defined in paragraph (d) of this section, in which the foreign corporation seeking qualified foreign corporation status is organized.

(c) Qualified foreign corporation—(1) General rule. A qualified foreign corporation is a corporation that is organized in a qualified foreign country and considered engaged in the international operation of ships or aircraft. The term corporation is defined in section 7701(a)(3) and the regulations thereunder. Paragraph (d) of this section defines the term qualified foreign country. Paragraph (e) of this section defines the term operation of ships or aircraft, and paragraph (f) of this section defines the term international operation of ships or aircraft. To be a qualified foreign corporation, the corporation must satisfy the stock ownership test of paragraph (c)(2) of this section and satisfy the substantiation and reporting requirements described in paragraph (c)(3) of this section. A corporation may be a qualified foreign corporation with respect to one category of qualified income but not with respect to another such category. See paragraph (h)(2) of this section for a discussion of the categories of qualified income.

(2) Stock ownership test. To be a qualified foreign corporation, a foreign corporation must satisfy the publicly-traded test of §1.883–2(a), the CFC stock ownership test of §1.883–3(a), or the qualified shareholder stock ownership test of §1.883–4(a).

(3) Substantiation and reporting requirements—(i) General rule. To be a qualified foreign corporation, a foreign corporation must include the following information in its Form 1120-F, “U.S. Income Tax Return of a Foreign Corporation,” in the manner prescribed by such form and its accompanying instructions—

(A) The corporation’s name and address (including mailing code);

(B) The corporation’s U.S. taxpayer identification number;

(C) The foreign country in which the corporation is organized;

(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