

Commentators asked that the list of qualified shareholders in § 1.883-4(b)(1)(i) be expanded to include international organizations as defined in section 7701(a)(18), and pension funds established for employees of such organizations. The final regulations do not adopt this suggestion. Under section 883(c)(1) and § 1.883-4(a), a foreign corporation satisfies the stock ownership test if more than 50 percent of the value of its outstanding shares is owned by qualified shareholders who are residents of qualified foreign countries. The remaining shares of the foreign corporation can be owned by nonqualified shareholders, including international organizations.

Section 1.883-4(b)(1)(ii) of the proposed regulations provides that a shareholder is a qualified shareholder only if the shareholder does not own its interest in the foreign corporation through bearer shares, either directly or by applying the attribution rules of § 1.883-4(c). Commentators renewed their objection to this rule. The final regulations retain this provision due to the difficulty of reliably demonstrating the true ownership of bearer shares.

#### B. Substantiation of Stock Ownership

Section 1.883-4(b)(1)(iii) of the proposed regulations provides that a shareholder is a qualified shareholder only if the shareholder provides to the foreign corporation the documentation required in § 1.883-4(d), and the foreign corporation meets the reporting requirements of § 1.883-4(e) with respect to such shareholder.

Commentators argued that the required reporting requirements are burdensome, and suggested that taxpayers have the option of submitting a sworn statement with their return stating that qualified individuals own the corporation and that supporting documentation has been deposited with a qualified tax practitioner in the United States. The final regulations do not adopt this suggestion. The IRS and Treasury continue to believe that this information is necessary for proper administration of section 883 and that the provision of this information with the foreign corporation's tax return is not unduly burdensome.

#### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of U.S. small

entities. This certification is based upon the fact that these regulations apply to foreign corporations and impose only a limited collection of information burden on shareholders of such corporations, which in some cases may include U.S. small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Drafting Information

The principal author of these final regulations is David L. Lundy of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

#### List of Subjects

##### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

##### 26 CFR Part 602

Reporting and recordkeeping requirements.

#### Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

#### PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*  
Section 1.883-1 is also issued under 26 U.S.C. 883.  
Section 1.883-2 is also issued under 26 U.S.C. 883.  
Section 1.883-3 is also issued under 26 U.S.C. 883.  
Section 1.883-4 is also issued under 26 U.S.C. 883.  
Section 1.883-5 is also issued under 26 U.S.C. 883. \* \* \*

■ **Par. 2.** Section 1.883-0 is added to read as follows:

##### § 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.
    - (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) Services.
          - (i) Ground services, maintenance, and catering.
          - (ii) Other services.
        - (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) Special rules with respect to income tax conventions.
            - (i) General rule.
            - (ii) Participation in certain joint ventures.
            - (iii) Independent interpretation of income tax conventions.
          - (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.