

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. For rules regarding foreign corporations organized in countries that provide exemptions only through an income tax convention, see paragraph (h)(3) of this section. An equivalent exemption may exist where the foreign country—

(i) Generally imposes no tax on income, including income from the international operation of ships or aircraft;

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

(iii) Exchanges diplomatic notes with the United States, or enters into an agreement with the United States, that provides for a reciprocal exemption for purposes of section 883.

(2) *Determining equivalent exemptions for each category of income.* Whether a foreign country grants an equivalent exemption must be determined separately with respect to income from the international operation of ships and income from the international operation of aircraft for each category of income listed in paragraphs (h)(2)(i) through (v), (vii), and (viii) of this section. If an exemption is unavailable in the foreign country for a particular category of income, the foreign country is not considered to grant an equivalent exemption with respect to that category of income. Income in that category is not considered to be the subject of an equivalent exemption and, thus, is not eligible for exemption from income tax in the United States, even though the foreign country may grant an equivalent exemption for other categories of income. 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. The following categories of income derived from the international operation of ships or aircraft may be exempt from United States income tax if an equivalent exemption is available—

(i) Income from the carriage of passengers and cargo;

(ii) Time or voyage (full) charter income of a ship or wet lease income of an aircraft;

(iii) Bareboat charter income of a ship or dry charter income of an aircraft;

(iv) Incidental bareboat charter income or incidental dry lease income;

(v) Incidental container-related income;

(vi) Income incidental to the international operation of ships or aircraft other than incidental income described in paragraphs (h)(2)(iv) and (v) of this section;

(vii) Capital gains derived by a qualified foreign corporation engaged in the international operation of ships or aircraft from the sale, exchange or other disposition of a ship, aircraft, container or related equipment or other moveable property used by that qualified foreign corporation in the international operation of ships or aircraft; and

(viii) Income from participation in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement, international operating agency, or other joint venture described in paragraph (e)(2) of this section.

(3) *Special rules with respect to income tax conventions—*(i) *General rule.* Except as provided in paragraph (h)(3)(ii) of this section, if a corporation is organized in a foreign country that provides an exemption only through an income tax convention with the United States, the foreign corporation is not organized in a foreign country that grants an equivalent exemption. Rather, the foreign corporation must satisfy the terms of that convention to receive a benefit under the convention, and the foreign corporation may not claim an exemption under section 883. If the corporation is organized in a foreign country that offers an exemption under an income tax convention and also by some other means, such as by diplomatic note or domestic statutory law, the foreign corporation may choose annually whether to claim an exemption under section 883 based upon the equivalent exemption provided by such other means or under the income tax convention. However, if a corporation chooses to claim an exemption under an income tax convention under the preceding sentence, it may simultaneously claim an exemption under section 883 with respect to any category of income listed in paragraphs (h)(2)(i) through (v), (vii), and (viii) of this section and to any type of income described in paragraph (h)(2)(vi) of this section, but only to the extent that such income also is exempt under the income tax convention. Any such choice will apply with respect to all qualified income of the corporation from the international operation of ships or aircraft and cannot be made separately with respect to different categories of such income. If a foreign corporation bases its claim for an exemption on section 883, the foreign corporation must satisfy all of the requirements of

this section to qualify for an exemption from U.S. income tax. See § 1.883–4(b)(3) for rules regarding satisfying the ownership test of paragraph (c)(2) of this section using shareholders resident in a foreign country that offers an exemption under an income tax convention.

(ii) *Participation in certain joint ventures.* Notwithstanding paragraph (h)(3)(i) of this section, if a corporation is organized in a foreign country that provides an exemption only through an income tax convention with the United States, the foreign corporation will be treated as organized in a foreign country that grants an equivalent exemption under section 883 with respect to a category of income derived through participation, directly or indirectly, in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture described in paragraph (e)(2) of this section, but only where treaty benefits would be available under the treaty but for the treatment of the pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture as not fiscally transparent with respect to that category of income under the income tax laws of the foreign country in which the foreign corporate interest holder is organized for purposes of § 1.894–1(d)(3)(iii)(A).

(iii) *Independent interpretation of income tax conventions.* Nothing in this section and §§ 1.883–2 through 1.883–5 affects the rights or obligations under any income tax convention. The definitions provided in this section and §§ 1.883–2 through 1.883–5 shall neither give meaning to similar terms used in income tax conventions nor provide guidance regarding the scope of any exemption provided by such conventions, unless an income tax convention that entered into force after August 26, 2003 or its legislative history explicitly refers to section 883 and guidance thereunder for its meaning.

(4) *Exemptions not qualifying as equivalent exemptions—*(i) *General rule.* Certain types of exemptions provided to corporations organized in the United States by foreign countries do not satisfy the equivalent exemption requirements of this section. Paragraphs (h)(4)(ii) through (vii) of this section provide descriptions of some of the types of exemptions that do not qualify as equivalent exemptions for purposes of this section.

(ii) *Reduced tax rate or time limited exemption.* The exemption granted by the foreign country's law or income tax convention must be a complete exemption. The exemption may not constitute merely a reduction to a