

submitted pursuant to the requirements of this paragraph (f).

(2) *Revocation after distribution.* If there have been any distributions of U.S. real property interests by the corporation during the period to which an election made under section 897(i) applies, the Commissioner shall consent to the revocation of such election only if one of the following conditions is met.

(i) The full amount of gain realized by the corporation upon the distribution was subject to U.S. income tax.

(ii) There is a payment of an amount equal to the taxes that would have been imposed upon the corporation by reason of the application of section 897 if the election had not been in effect on the date of the distribution. Such payment must be made by the later of the date of the request for revocation or the date on which payment of such tax would otherwise have been due, and must include any interest that would have accrued had tax actually been due with respect to the distribution. If under the terms of any treaty to which the United States is a party such distribution would not have been subject to U.S. income tax notwithstanding the provisions of section 897, then this condition may be satisfied by providing a statement with the request for revocation setting forth the treaty and article which would have exempted the distribution from U.S. tax had the election under section 897(i) not been in effect on the date thereof.

(iii) At the time of the receipt of the distributed property, the distributee would be subject to taxation under chapter 1 of the Code on a subsequent disposition of the distributed property, and the basis of the distributed property in the hands of the distributee is no greater than the adjusted basis of such property before the distribution, increased by the amount of gain (if any) recognized by the distributing corporation. For purposes of this paragraph (f)(2)(i)(C), a distributee shall be considered to be subject to taxation upon a subsequent disposition of distributed property only if such distributee waives the benefits of any U.S. treaty that would otherwise render such disposition not taxable by the United States. Such waiver must be at-

tached to the corporation's request for revocation.

(g) *Transitional rules*—(1) *In general.* An election under section 897(i) that was made at any time after June 18, 1980, must be amended to comply with the requirements of paragraphs (b), (c), and (d) of this section. Such amendment must be delivered in writing to the Director of the Foreign Operations District by April 1, 1985. If the amendment is delivered by United States mail, the provisions of section 7502 and the regulations thereunder shall apply in determining the date of delivery. An election that is properly amended pursuant to the requirements of this section shall be effective as of the date of the original election.

(2) *Corporations previously entitled to make election.* A foreign corporation that would have been entitled under the rules of this section to make a section 897(i) election at any time between June 19, 1980, and January 30, 1985, may retroactively make such an election pursuant to the requirements of this section. Such election must be delivered to the Director, Foreign Operations District, by March 1, 1985.

(3) *Interests in corporation disposed of prior to publication.* Where interests in a corporation were disposed of before January 3, 1984, the requirement of paragraph (d)(2) of this section may be met, notwithstanding the requirement of paragraph (d)(3), by paying a tax that is based upon a reasonable estimate of the gain upon the prior dispositions. Such estimate must be based on all facts and circumstances known to, and ascertainable through the exercise of reasonable diligence by, the corporation seeking to make the election.

(Sec. 897 (94 Stat. 2683; 26 U.S.C. 897), sec. 6011 (68A Stat. 732; 26 U.S.C. 6011) and sec. 7805 (68A Stat. 917; 26 U.S.C. 7805) of the Internal Revenue Code of 1954)

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[T.D. 8198, 53 FR 16217, May 5, 1988]

**§ 1.897-5T Corporate distributions (temporary).**

(a) *Purpose and scope.* This section provides rules concerning the recognition of gain or loss and adjustments to basis required with respect to certain corporate distributions that are subject to section 897. Paragraph (b) of this section provides rules concerning such distributions by domestic corporations, including distributions under section 301, distributions in redemption of stock, and distributions in liquidation. Paragraph (c) sets forth rules concerning distributions by foreign corporations, including distributions under sections 301 and 355, distributions in redemption of stock, and distributions in liquidation. Finally, various rules generally applicable to distributions subject to this section, as well as to transfers subject to § 1.897-6T, are set forth in paragraph (d). The rules contained in this section are also subject to the tax avoidance rules of § 1.897-6T(c).

(b) *Distributions by domestic corporations—(1) Limitation of basis upon dividend distribution of U.S. real property interest.* Under section 897(f), if any domestic corporation (distributing corporation) distributes a U.S. real property interest to a shareholder that is a foreign person (distributee) in a distribution to which section 301 applies, then the basis of the distributed U.S. real property interest in the hands of the foreign distributee shall be determined in accordance with the provisions of section 301(d), and shall not exceed—

(i) The adjusted basis of the property before the distribution in the hands of the distributing corporation, increased by

(ii) The sum of—

(A) Any gain recognized by the distributing corporation on the distribution, and

(B) Any U.S. tax paid by or on behalf of the distributee with respect to the distribution.

(2) *Distributions by U.S. real property holding corporations which are taxable*

*exchanges of stock under generally applicable rules.* If a domestic corporation, stock in which is treated as a U.S. real property interest, distributes property with respect to such stock to a foreign shareholder, the distributee shall be treated as having disposed of a U.S. real property interest, and shall recognize gain or loss on the stock of such domestic corporation to the extent that, with respect to the distributees—

(i) Part of all of the distribution is treated pursuant to section 301(c)(3)(A) as a sale or exchange of stock;

(ii) Part or all of the distribution is treated pursuant to section 302(a) as made in part or full payment in exchange for stock; or

(iii) Part or all of the distribution is treated pursuant to section 331(a) as made in full payment in exchange for stock.

Stock in a domestic corporation shall not be considered a U.S. real property interest pursuant to the provisions of § 1.897-2(f)(2) if the corporation does not hold any U.S. real property interests and has disposed of all of its U.S. real property interests owned within the previous five years in transactions in which the full amount of gain was recognized under the rules of § 1.897-2(f)(2). If gain is recognized at the corporate level on either a distribution of a U.S. real property interest or a sale of a U.S. real property interest in a liquidation, such distribution or sale shall be considered a disposition for purposes of § 1.897-2(f)(2). With regard to the consequences of a distribution from a U.S. real property holding corporation under section 355(a), see § 1.897-6T(a) (1) and (4).

(3) *Section 332 liquidations of U.S. real property holding corporations—(i) General rules.* Exchanges that are subject to section 897(e) are normally covered by § 1.897-6T(a) (1), (2) and (3). This paragraph (b)(3) provides rules concerning the application of section 897(e) and the general principles of § 1.897-6T(a) (1), (2) and (3) to section 332 liquidations of U.S. real property holding corporations.

(ii) *Distribution to a foreign corporation under section 332 after June 18, 1980, and before the repeal of the General Utilities doctrine.* Except for distributions under