

§ 1.897-7T

1980, then such stock shall be treated as a U.S. real property interest solely for purposes of this paragraph (c)(3).

(4) *Rearrangement of ownership to gain treaty benefit.* A foreign person who directly or indirectly owns a U.S. real property interest may not directly or indirectly rearrange the incidents of ownership of the U.S. real property interest through the use of nonrecognition provisions in order to gain the benefit of a treaty exemption from taxation. Such nonrecognition will not apply to the foreign transferor. The transferor will recognize gain but not loss on the transfer under section 897(a).

(d) *Effective date.* Except as specifically provided otherwise in the text of the regulations, paragraphs (a) through (c) shall be effective for transfers, exchanges and other dispositions occurring after June 18, 1980. Paragraph (a)(5)(ii) of this section shall be effective for exchanges and elections occurring after June 6, 1988.

[T.D. 8198, 53 FR 16224, May 5, 1988; 53 FR 18022, May 19, 1988]

§ 1.897-7T Treatment of certain partnership interests as entirely U.S. real property interests under sections 897(g) and 1445(e) (temporary).

(a) *Rule.* Pursuant to section 897(g), an interest in a partnership in which, directly or indirectly, fifty percent or more of the value of the gross assets consist of U.S. real property interests, and ninety percent or more of the value of the gross assets consist of U.S. real property interests plus any cash or cash equivalents shall, for purposes of section 1445, be treated as entirely a U.S. real property interest. For purposes of section 897(g), such interest shall be treated as a U.S. real property interest only to the extent that the gain on the disposition is attributable to U.S. real property interests (and not cash, cash equivalents or other property). Consequently, a disposition of any portion of such partnership interest shall be subject to partial taxation under section 897(a) and full withholding under section 1445(a). For purposes of this paragraph, cash equivalent means any asset readily convertible into cash (whether or not denomi-

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nated in U.S. dollars) including, but not limited to, bank accounts, certificates of deposit, money market accounts, commercial paper, U.S. and foreign treasury obligations and bonds, corporate obligations and bonds, precious metals or commodities, and publicly traded instruments.

(b) *Effective date.* Section 1.897-7T shall be effective for transfers, exchanges, distributions and other dispositions occurring after June 6, 1988.

[T.D. 8198, 53 FR 16228, May 5, 1988]

§ 1.897-8T Status as a U.S. real property holding corporation as a condition for electing section 897(i) pursuant to § 1.897-3 (temporary).

(a) *Purpose and scope.* This section provides a temporary regulation that if and when adopted as a final regulation, will be added to paragraph (b) of § 1.897-3. Paragraph (b) of this section would then appear as paragraph (b)(4) of § 1.897-3.

(b) *General conditions.* The foreign corporation upon making an election under section 897(i) (including any retroactive election) must qualify as a U.S. real property holding corporation as defined in paragraph (b)(1) of § 1.897-2.

(c) *Effective Date.* Section 1.897-8T shall be effective as of June 6, 1988, with respect to foreign corporations making an election under section 897(i) after May 5, 1988.

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

§ 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 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 into which it is convertible. 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 nonresident 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]

Internal Revenue Service, Treasury

§ 1.901-1

INCOME FROM SOURCES WITHOUT THE
UNITED STATES

FOREIGN TAX CREDIT

§ 1.901-1 Allowance of credit for taxes.

(a) *In general.* Citizens of the United States, domestic corporations, and certain aliens resident in the United States, domestic corporations, and certain aliens resident in the United States or Puerto Rico may choose to claim a credit, as provided in section 901, against the tax imposed by chapter 1 of the Code for taxes paid or accrued to foreign countries and possessions of the United States, subject to the conditions prescribed in the following subparagraphs:

(1) *Citizen of the United States.* A citizen of the United States, whether resident or nonresident, may claim a credit for (i) the amount of any income, war profits, and excess profits taxes paid or accrued (or deemed paid or accrued under section 905(b)) during the taxable year to any foreign country or to any possession of the United States; and (ii) his share of any such taxes of a partnership of which he is a member, or of an estate or trust of which he is a beneficiary.

(2) *Domestic corporation.* A domestic corporation may claim a credit for (i) the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country, or to any possession of the United States; and (ii) the taxes deemed to have been paid or accrued under section 902, 905(b), or 960.

(3) *Alien resident of the United States or Puerto Rico.* An alien resident of the United States, or an alien individual who is a bona fide resident of Puerto Rico during the entire taxable year, may claim a credit for—

(i) The amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any possession of the United States;

(ii) The amount of any such taxes paid or accrued (or deemed paid or accrued under section 905(b)) during the taxable year to any foreign country, if the foreign country of which such alien resident is a citizen or subject, in imposing such taxes, allows a similar

credit to citizens of the United States residing in such country; and

(iii) His share of any such taxes of a partnership of which he is a member, or of an estate or trust of which he is a beneficiary, paid or accrued (or deemed paid or accrued under section 905(b)) during the taxable year,

(a) To any foreign country, if the foreign country of which such alien resident is a citizen or subject, in imposing such taxes, allows a similar credit to citizens of the United States residing in such country, or

(b) To any possession of the United States, as the case may be.

(4) *Limitation.* Section 907(a) limits the credit against the tax imposed by chapter 1 of the Code for certain foreign taxes paid or accrued with respect to foreign oil or gas extraction income. See § 1.907(a)-1.

(b) *Foreign countries which satisfy the similar credit requirement—*(1) *Taxes of foreign country of which alien resident is citizen or subject.* A foreign country of which an alien resident is a citizen or subject allows a similar credit, within the meaning of section 901(b)(3), to a United States citizen residing in such country either—

(i) If such country allows him a credit against its income taxes for the amount of income taxes paid or accrued to the United States; or

(ii) If, in imposing such taxes, such country exempts from taxation the income received by him from sources within the United States (as determined under part I (section 861 and following), subchapter N, chapter 1 of the Code).

(2) *Taxes of foreign country other than one of which alien resident is citizen or subject.* An alien resident of the United States may claim a credit for income taxes paid or accrued by him to a foreign country other than the one of which he is a citizen or subject if the country of which he is a citizen or subject either—

(i) Allows a credit to a United States citizen residing therein for income taxes paid or accrued by him to such other foreign country; or

(ii) In imposing its income taxes, exempts from taxation the income of a United States citizen residing therein