

*Example 2.* (a) The facts are the same as in example 1, except that H is the sole proprietor of a retail merchandising company, which has a \$10,000 profit during 1977. W exercises no management and control over the business. In addition, H is a partner in a wholesale distributing company, and his distributive share of the partnership profit is \$5,000. Both of these amounts of income are treated as community income under the community property laws of country Z, and under these laws both H and W are treated as realizing \$7,500 of the income. Under the rule of paragraph (a) (3) and (4) of this section all \$15,000 of the income is treated as the income of H for U.S. income tax purposes.

(b) If W exercises substantially all of the management and control over the retail merchandising company, then for U.S. income tax purposes the \$10,000 profit is treated as the income of W.

*Example 3.* The facts are the same as in example 1, except that H also received \$1,000 in dividends on stock held separately in his name. Under the community property laws of country Z the stock is considered to be community property, the dividends to be community income, and one-half of the income to be the income of each spouse. Under the rule of paragraph (a)(6) of this section, \$500 of the dividend income is treated, for U.S. income tax purposes, as the income of each spouse.

(b) *Definitions and other special rules—*

(1) *Spouses with different taxable years.* A special rule applies if the nonresident alien and the United States citizen or resident spouse of the alien do not have the same taxable years, as defined in section 441(b) and the regulations thereunder. The special rule is as follows. With respect to the U.S. citizen or resident spouse, section 879 and this section shall apply to each taxable year of the U.S. citizen or resident spouse for which no election under section 6013 (g) or (h) is in effect. With respect to the nonresident alien spouse, section 879 and this section apply to each period falling within the consecutive taxable years of the nonresident alien spouse which coincides with a taxable year of the U.S. citizen or resident spouse to which section 879 and this section apply.

(2) *Determination of marital status.* For purposes of this section, marital status shall be determined under section 143(a).

[T.D. 7670, 45 FR 6928, Jan. 31, 1980]

## FOREIGN CORPORATIONS

### § 1.881-0 Table of contents.

This section lists the major headings for §§ 1.881-1 through 1.881-4.

#### § 1.881-1 Manner of Taxing Foreign Corporations

- (a) Classes of foreign corporations.
- (b) Manner of taxing.
  - (1) Foreign corporations not engaged in U.S. business.
  - (2) Foreign corporations engaged in U.S. business.
- (c) Meaning of terms.
- (d) Rules applicable to foreign insurance companies.
  - (1) Corporations qualifying under subchapter L.
  - (2) Corporations not qualifying under subchapter L.
- (e) Other provisions applicable to foreign corporations.
  - (1) Accumulated earnings tax.
  - (2) Personal holding company tax.
  - (3) Foreign personal holding companies.
  - (4) Controlled foreign corporations.
    - (i) Subpart F income and increase of earnings invested in U.S. property.
    - (ii) Certain accumulations of earnings and profits.
  - (5) Changes in tax rate.
  - (6) Consolidated returns.
  - (7) Adjustment of tax of certain foreign corporations.
- (f) Effective date.

#### § 1.881-2 Taxation of Foreign Corporations Not Engaged in U.S. Business

- (a) Imposition of tax.
- (b) Fixed or determinable annual or periodical income.
- (c) Other income and gains.
  - (1) Items subject to tax.
  - (2) Determination of amount of gain.
  - (d) Credits against tax.
  - (e) Effective date.

#### § 1.881-3 Conduit Financing Arrangements

- (a) General rules and definitions.
  - (1) Purpose and scope.
  - (2) Definitions.
    - (i) Financing arrangement.
      - (A) In general.
      - (B) Special rule for related parties.
    - (ii) Financing transaction.
      - (A) In general.
      - (B) Limitation on inclusion of stock or similar interests.
    - (iii) Conduit entity.
    - (iv) Conduit financing arrangement.
    - (v) Related.
  - (3) Disregard of participation of conduit entity.
    - (i) Authority of district director.

## § 1.881-1

- (ii) Effect of disregarding conduit entity.
  - (A) In general.
  - (B) Character of payments made by the financed entity.
  - (C) Effect of income tax treaties.
  - (D) Effect on withholding tax.
  - (E) Special rule for a financing entity that is unrelated to both intermediate entity and financed entity.
- (iii) Limitation on taxpayers's use of this section.
- (4) Standard for treatment as a conduit entity.
  - (i) In general.
  - (ii) Multiple intermediate entities.
    - (A) In general.
    - (B) Special rule for related persons.
  - (b) Determination of whether participation of intermediate entity is pursuant to a tax avoidance plan.
    - (1) In general.
    - (2) Factors taken into account in determining the presence or absence of a tax avoidance purpose.
      - (i) Significant reduction in tax.
      - (ii) Ability to make the advance.
      - (iii) Time period between financing transactions.
      - (iv) Financing transactions in the ordinary course of business.
    - (3) Presumption if significant financing activities performed by a related intermediate entity.
      - (i) General rule.
      - (ii) Significant financing activities.
        - (A) Active rents or royalties.
        - (B) Active risk management.
      - (c) Determination of whether an unrelated intermediate entity would not have participated in financing arrangement on substantially same terms.
        - (1) In general.
        - (2) Effect of guarantee.
          - (i) In general.
          - (ii) Definition of guarantee.
        - (d) Determination of amount of tax liability.
          - (1) Amount of payment subject to re-characterization.
            - (i) In general.
            - (ii) Determination of principal amount.
              - (A) In general.
              - (B) Debt instruments and certain stock.
              - (C) Partnership and trust interests.
              - (D) Leases and licenses.
            - (2) Rate of tax.
            - (e) Examples.
            - (f) Effective date.

### *§ 1.881-4 Recordkeeping Requirements Concerning Conduit Financing Arrangements*

- (a) Scope.
- (b) Recordkeeping requirements.
  - (1) In general.
  - (2) Application of sections 6038 and 6038A.
  - (c) Records to be maintained.
    - (1) In general.

## 26 CFR Ch. I (4-1-11 Edition)

- (2) Additional documents.
- (3) Effect of record maintenance requirement.
- (d) Effective date.

[T.D. 8611, 60 FR 41005, Aug. 11, 1995]

### **§ 1.881-1 Manner of taxing foreign corporations.**

(a) *Classes of foreign corporations.* For purposes of the income tax, foreign corporations are divided into two classes, namely, foreign corporations which at no time during the taxable year are engaged in trade or business in the United States and foreign corporations which, at any time during the taxable year, are engaged in trade or business in the United States.

(b) *Manner of taxing—(1) Foreign corporations not engaged in U.S. business.* A foreign corporation which at no time during the taxable year is engaged in trade or business in the United States is taxable, as provided in § 1.881-2, on all income received from sources within the United States which is fixed or determinable annual or periodical income and on other items of income enumerated under section 881(a). Such a foreign corporation is also taxable on certain income from sources within the United States which, pursuant to § 1.882-2, is treated as effectively connected for the taxable year with the conduct of a trade or business in the United States.

(2) *Foreign corporations engaged in U.S. business.* A foreign corporation which at any time during the taxable year is engaged in trade or business in the United States is taxable, as provided in § 1.882-1, on all income from whatever source derived, whether or not fixed or determinable annual or periodical income, which is effectively connected for the taxable year with the conduct of a trade or business in the United States. Such a foreign corporation is also taxable, as provided in § 1.882-1, on income received from sources within the United States which is not effectively connected for the taxable year with the conduct of a trade or business in the United States and consists of (i) fixed or determinable annual or periodical income, or (ii) other items of income enumerated in section 881(a). A foreign corporation which at