

Part II. -- Nonresident Aliens and Foreign Corporations

Subpart A. -- Nonresident Alien Individuals

Section 872. -- Gross Income

(Also Section 883, 894.)

26 CFR 1.872-2. Exclusions from gross income of nonresident alien individuals

(Also 26 CFR 1.883-1.)

Rev. Rul. 2001-48

PURPOSE

The purpose of this revenue ruling is to assist foreign persons who derive income from the international operation of ships or aircraft in determining whether such income is exempt from U.S. taxation under section 872(b) or 883(a) of the Internal Revenue Code of 1986, by providing a current list of countries that grant United States persons equivalent exemptions from tax for various categories of income from the international operation of ships and aircraft. This revenue ruling modifies and supersedes Rev. Rul. 89-42, 1989-1 C.B. 234, as supplemented by Rev. Rul. 97-31, 1997-2 C.B. 77.

Section 872(b) of the Code provides that gross income shall not include income from the international operation of a ship or ships or aircraft, and such income shall be exempt from U.S. Federal income taxation, if the income is derived by an

individual resident of a foreign country, and such foreign country grants an equivalent exemption to individual residents of the United States. Section 883(a) provides a similar exemption for such income derived by corporations organized in a foreign country that grants an equivalent exemption to corporations organized in the United States. For purposes of sections 872(b) and 883(a), a foreign country may grant an equivalent exemption from tax through an exchange of diplomatic notes or other agreement, by not imposing a tax on income from the international operation of ships or aircraft, or by a decree or specific statutory exemption.

Part A of Table I provides a list of the countries that grant exemptions through diplomatic notes exchanged with the United States.

Part B of Table I provides a list of the countries for which the Service has determined, upon examination of their domestic law, that an equivalent exemption is granted by statute or decree, or by not imposing a tax on income from the international operation of ships or aircraft. This determination is made on a country-by-country basis and relies upon information submitted to the Internal Revenue Service by the foreign country regarding the foreign law in effect at the time of the submission. The date of the Service's review is reflected in the first column of Part B of Table I. Since its initial review, the Service has not attempted to determine whether any of the foreign laws of the countries listed in Part B of Table I have been amended or repealed. Therefore, taxpayers should independently verify the

accuracy of the information in Part B of Table I at such time that a determination is relevant.

Part B of Table I does not represent an exclusive list of countries the domestic law of which provides an equivalent exemption. Other countries that have not submitted the information necessary for the Service to make a determination also may grant an equivalent exemption. In those cases, an individual resident of, or a corporation organized in, such a foreign country may be treated as a resident of, or a corporation organized in, a foreign country that grants an equivalent exemption, even though the foreign country is not included in Part B of Table I. Consistent with past practice, the Service will entertain a request from a foreign government to determine whether the domestic law of the country provides an equivalent exemption. Accordingly, taxpayers may seek to have the relevant foreign government request a determination that the particular country qualifies as an equivalent-exemption jurisdiction.

Table II provides a list of countries that grant an exemption under the shipping and aircraft article or capital gains article of an income tax convention to which the United States is a party. Table II is provided to assist a foreign corporation organized in one of the countries listed in Table I in demonstrating that it also meets the ownership requirements of section 883(c). In general, a foreign corporation can demonstrate that it meets the ownership requirements of section 883(c) if the corporation can show that more than 50 percent of the value of the stock of the corporation is owned by individuals

who are residents of countries that grant an equivalent exemption to corporations organized in the United States. For the sole purpose of determining if an individual shareholder's country of residence grants an equivalent exemption for purposes of section 883(c), a foreign country will also be considered to grant an equivalent exemption if it grants such an exemption through an income tax convention with the United States.

Accordingly, Table II is relevant only in determining whether a shareholder of a foreign corporation seeking an exemption from tax under section 883 is a shareholder that qualifies under section 883(c)(1) because the shareholder's country of residence grants an equivalent exemption under an income tax convention with the United States. Table II is not relevant in determining whether a nonresident alien individual or a foreign corporation itself is eligible to claim an exemption under section 872(b) or 883(a), respectively.

Table II includes a summary of the requirements for the exemption, such as whether the exemption is based solely on residence, or, as in the case of certain older income tax conventions, the exemption has an additional requirement of documentation or registration. Table II does not set forth other benefits relating to a shipping or an air transport business that may be provided under articles covering business profits, rentals and royalties, and other income because such benefits are not relevant for purposes of section 883(c).

These Tables are intended only as a summary. The full text of any relevant diplomatic note, foreign law, or income tax

convention should be consulted. It may be necessary to consult the technical explanation of an income tax convention, including any protocol thereto, any agreement, or any diplomatic note accompanying a convention, to determine the items of income exempted. Income tax conventions and diplomatic notes are published in the Cumulative Bulletin and Internal Revenue Bulletins. These Tables will continue to be updated periodically.

CHANGES TO REV. RUL. 97-31

The changes to the table published in Rev. Rul. 89-42, as supplemented by Rev. Rul. 97-31, are summarized below.

The table in the prior rulings has been reorganized to clarify the limited relevance of Part I of that table, relating to treaties, as discussed above. Accordingly, in this revenue ruling Part II of the prior table (diplomatic notes) has become Part A of Table I; Part III (domestic law) of the prior table has become Part B of Table I; and Part I of the prior table (treaties) has become Table II.

In Part A of Table I, Bahrain, Ethiopia, Saudi Arabia, and the United Arab Emirates have been added to the list of countries that have exchanged diplomatic notes with the United States. Although a diplomatic note was signed with Bolivia in November 1987, that note required ratification by the Bolivian Government to enter into force. The diplomatic note was ratified on March 24, 1999, and officially became effective upon publication in the official Gazette on March 31, 1999, for income earned after that date. Therefore, Bolivia also has been added to the list.

In Part B of Table I, Aruba, Peru (with respect to aircraft), and the Republic of Surinam have been added to the list of countries whose domestic law has been determined to provide an equivalent exemption.

In Table II, the following countries have been added to the list of countries that provide an exemption under an income tax convention: Estonia, Latvia, Lithuania, Slovenia, South Africa, Thailand, Turkey, the Ukraine, and Venezuela. The following countries have entered into new income tax conventions with the United States that supersede prior income tax conventions reported in Rev. Rul. 97-31: Austria, Denmark, Ireland, Luxembourg, and Switzerland.

TO CLAIM AN EXEMPTION

Taxpayers claiming an exemption from U.S. Federal income tax under section 872(b) of the Code must file a return on Form 1040NR (U.S. Income Tax Return of a Nonresident Alien).

Taxpayers claiming an exemption from U.S. Federal income tax under section 883 must file a return on Form 1120F (U.S. Income Tax Return of a Foreign Corporation). Both must comply with the relevant provisions of section 8 of Rev. Proc. 91-12, 1991-1 C.B. 473.

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 97-31 and Rev. Rul. 89-42 are modified and superseded.

DRAFTING INFORMATION

The principal author of this revenue ruling is Patricia A. Bray of the Office of Associate Chief Counsel (International).

For information regarding this revenue ruling contact Ms. Bray on
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TABLE I

Countries Currently Granting Equivalent Exemptions For
Income From The International Operation of
Ships and Aircraft

PART A - EXCHANGE OF NOTES¹

Countries And Territories	Cumulative Bulletin Or Internal Revenue Bulletin Citation	<u>TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED²</u>				
		Opera- ting Income	Full Rental (Time or voy- age char- ter)	Bare- Boat Rental	Con- tainer Rental ³	Capital Gains ³
Argentina	1988-1 C.B. 456	X	X	X	X	X
Bahamas	1988-1 C.B. 458	X	X	X	X	-
Bahrain	2000-46 I.R.B. 475	X	X	X	X	X
Belgium	1988-1 C.B. 459	X	X	-	X	-
Bolivia ⁴	1988-1 C.B. 460	X	X	X	X	-
Chile ⁵	1991-1 C.B. 304	X	X	X ³	X	-
Colombia	1988-1 C.B. 461	X	X	X	X	-
Cyprus	1989-2 C.B. 332	X	X	X	X	-
Denmark	1988-1 C.B. 462	X	X	X	X	-
El Salvador ⁵	1988-1 C.B. 463	X	X	X	X	X
Ethiopia	1999-1 C.B. 1134	X	X	X	X	X
Fiji	1996-2 C.B. 202	X	X	X	X	X
Finland	1989-2 C.B. 334	X	X	X	X	-
Greece	1988-2 C.B. 366	X	X	X	X	-
Hong Kong ^{6/7}	1995-1 C.B. 228	X	X	X	X	X
India	1990-2 C.B. 316	X	X	X ³	X	X
Isle of Man ⁶	1990-2 C.B. 317	X	X	X	X	X
Japan	1990-2 C.B. 318	X	X	X	X	-
Jordan	1996-2 C.B. 202	X	X	X	X	-
Liberia	1988-1 C.B. 463	X	X	X	X	X
Luxembourg	1996-2 C.B. 203	X	X	X	X	-
Malaysia	1990-2 C.B. 319	X	X	X ³	X	X
Malta	1997-1 C.B. 314	X	X	X	X	X

Marshall Islands	1990-2 C.B. 321	X	X	X	X	X
Norway	1991-1 C.B. 304	X	X	X	X	X
Pakistan ⁶	1991-1 C.B. 305	X ⁸	-	-	-	-
Panama	1988-2 C.B. 366	X	X	X	X	-
Peru ⁶	1989-2 C.B. 335	X	X	X ³	X	-
Saudi Arabia ⁹	2000-22 I.R.B. 1126	X	X	X	X	X
St. Vincent & Grenadines	1989-2 C.B. 336	X	X	X	X	-
Singapore	1990-2 C.B. 323	X	X	X	X	-
Sweden	1988-1 C.B. 466	X	X	X ³	X	-
Taiwan	1989-2 C.B. 337	X	X	X	X	-
United Arab Emirates	1998-2 C.B. 528	X	X	X	X	X
Venezuela	1988-1 C.B. 467	X	X	X ³	X	X

PART B - DOMESTIC LAW

Countries and Territories	Date Foreign Law Reviewed	TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED ²				
		Operating Income	Full Rental (Time or voyage character)	Bare-Boat Rental	Container Rental ³	Capital Gains ³
Antigua & Barbuda ⁶	NOV 1991	X	X	X	X	X
Aruba	JUNE 1999	X	X	X	X	-
Barbados	OCT 1989	X	X	X	X	X
Bermuda	NOV 1988	X	X	X	X	X
Brazil ¹⁰	DEC 1988	X	X	X ³	X	-
Bulgaria	FEB 1989	X	X	X	X	X
Cayman Islands ¹¹	JAN 1987	X	X	X	X	X
Chile ⁶	OCT 1988	X	X	X	X	X
Ecuador ^{6/12}	DEC 1989	X	X	X ³	X	X
Israel	FEB 1991	X	X	X	X	X
Netherlands	OCT 1988	X	X	X ³	X	-
Netherlands Antilles	MAY 1988	X	X	X	X	X
Peru ⁵	SEPT 1995	X	X	X	X	X
Portugal ¹⁰ Ships Aircraft	JUNE 1989	X	X	X	-	-
	FEB 1989	X	X	X	-	-
Qatar ⁵	AUG 1994	X ⁸	-	-	-	-
Spain ¹³	DEC 1988	X	X	-	X	-
Surinam	NOV 1999	X	X	X	X	X
Turkey ¹⁴	JAN 1987	X	-	-	X	-
Turks & Caicos ¹¹	FEB 1990	X	X	X	X	X
U.S. Virgin Islands	OCT 1988	X	X	X	X	X
Vanuatu	MAY 1987	X	X	X	X	X

TABLE II

Countries Currently Granting by Income Tax Convention
Equivalent Exemptions For Purposes of Qualifying a
Shareholder Under Section 883(c)(1)¹⁵

Countries and Territories	BASIS FOR EXEMPTION			TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED ²				
	Resi- Dence Based No Flag	Resi- dence & Flag & Flag Reci- procal	Resi- dence & Flag & Flag Uni- lateral	Opera- ting Income	Full Rental (Time or voy- age char- ter)	Bare- Boat Rental	Con- tainer Rental	Capital Gains
Australia	X			X	X ¹⁶	X ¹⁷	X ¹⁷	X ^{3/18}
Austria ¹⁹	X			X	X ²⁰	X ²⁰	X	X
Barbados	X			X	X ²⁰	X ²⁰	X	X
Belgium		X ²¹		X	X ³	X ³	X ³	X ³
Canada	X			X	X	X	X	X
China ²² (Peoples Republic)	X			X	X ²⁰	X ²⁰	X	X
Cyprus	X			X	X ²⁰	X ²⁰	X	X
Czech Republic	X			X	X	X ³	X	X
Denmark ¹⁹	X			X	X	X ²⁰	X	X
Egypt	X			X	X ³	X ³	X ³	-
Estonia ¹⁹	X			X	X	X ³	X	X
Finland	X			X	X ³	X ³	X ²³	X
France	X			X	X	X ²⁰	X ³	X ³
Germany ²⁴	X			X	X	-	X	X
Greece		X		X ⁸	-	-	-	-
Hungary	X			X	X ³	X ³	X	X
Iceland			X ²⁵	X	X ³	X ³	X ³	X
India	X			X	X ³	X ³	X	X ^{3/26}
Indonesia	X			X	X	X ²⁷	X ³	X
Ireland ¹⁹	X			X	X	X ²⁰	X	X
Israel	X			X	X ³	X ³	X ³	X ³
Italy ^{28/29}			X ²⁵	X	X ³⁰	X ³	X	X ³
Jamaica	X			X	X ²⁰	X ²⁰	X	X ³

Japan ²⁸		X ³¹	X	X ³	X ³	X ³	X ³
Kazakhstan	X		X	X	X ²⁰	X	X
Korea	X		X	X ³²	-	X ³	-
Latvia ¹⁹	X		X	X	X ¹⁷	X	X
Lithuania ¹⁹	X		X	X	X ¹⁷	X ³	X
Luxembourg ¹⁹	X		X	X	X ²⁰	X	X
Mexico	X		X	X	X ²³	X	X
Morocco		X ²¹	X ⁸	-	-	-	X ³
Netherlands	X		X	X ³	X ³	-	X
New Zealand	X		X	X	X ³	X ³	X ¹⁸
Norway ²⁸	X		X	X ³²	X ³	X ³	X
Pakistan ⁵		X	X ⁸	-	-	-	-
Philippines ⁶	X		-	-	-	-	X ³
Poland		X ²⁵	X	X ³	X ³	X ³	X
Portugal	X		X	X	X ³	-	X
Romania		X	X	X ³	X ³	X ³	X
Russian Federation	X		X	X	X ²⁰	X	X
Slovak Republic	X		X	X	X ³	X	X
Slovenia ¹⁹	X		X	X	X ²⁰	X	X
South Africa ¹⁹	X		X	X	X ²⁰	X	X
Spain	X		X	X	X ³	X	X
Sweden	X		X	X	X ³	X	X
Switzerland ¹⁹	X		X	X ³³	X ³	-	X
Thailand ¹⁹	X ⁵ X ⁶		X	X	X ³	X ³	X X
Trinidad & Tobago		X ²⁵	X	X ³	X ³	-	X
Tunisia	X		X	X ²⁰	X ²⁰	X ³	X
Turkey ¹⁹	X		X	X	X ³	X	X
Ukraine ¹⁹	X		X	X	X ²⁰	X	X ³
USSR/NIS ³⁴		X	X ⁸	-	-	-	X ³
U.K. ²⁹		X ²⁵	X	X	X ³	X	X ³

Venezuela¹⁹

x

x

x

x²⁰

x

x

FOOTNOTES TO TABLES

- 1 Notes signed prior to the Technical and Miscellaneous Revenue Act of 1988 will be interpreted in accordance with Technical Corrections enacted by that Act.
- 2 Unless otherwise footnoted, an "X" indicates full exemption whether or not there is a permanent establishment.
- 3 The tax exemption is available only if the income is incidental to operating income.
- 4 The note was ratified by the Bolivian Congress and signed by the Bolivian President. The note and exemption officially became effective upon publication in the official Gazette on March 31, 1999, for income earned after that date.
- 5 This exemption applies to aircraft only.
- 6 This exemption applies to shipping only.
- 7 This diplomatic note applies to Hong Kong before July 1, 1997, and pursuant to Notice 97-40, 1997-2 C.B. 287, to the Hong Kong Special Administrative Region of the People's Republic of China on or after July 1, 1997. The note does not apply with respect to the People's Republic of China, which will continue to be treated as a separate country for purposes of the Internal Revenue Code.
- 8 Operating income is not defined.
- 9 The note is effective for all taxable years beginning on or after January 1, 1999, and for all prior open taxable years.
- 10 Brazilian and Portuguese statutes exempt only companies.
- 11 The country generally imposes no income tax.
- 12 This exemption is generally effective for all open years beginning on or after January 1, 1987.
- 13 The Spanish statute exempts only corporations.
- 14 See generally Rev. Rul. 87-18, 1987-1 C.B. 178 (explaining the application of Turkey's domestic-law exemption).
- 15 Table II is relevant only in determining whether a shareholder of a foreign corporation seeking an exemption from tax under section 883 is a shareholder that qualifies under section 883(c)(1) because the shareholder's country of residence grants an equivalent exemption under an income tax convention with the United States. Table II is not relevant in determining whether a nonresident alien individual or

foreign corporation itself is eligible to claim an exemption under section 872(b) or 883(a), respectively.

- 16 Lessor must either regularly lease ships or aircraft on a full basis or operate them in international traffic.
- 17 This exemption applies if the ships or aircraft are operated in international traffic by the lessee, and the rental income is incidental to the operation of ships or aircraft in international traffic by the lessor.
- 18 Except to the extent depreciation has been allowed in the other country.
- 19 The following income tax treaties were ratified after the publication of Rev. Rul. 97-31 and are generally effective on the following dates:

Austria.....	January 1, 1999
Denmark.....	January 1, 2001
Estonia.....	January 1, 2000
Ireland.....	January 1, 1998
Latvia.....	January 1, 2000
Lithuania.....	January 1, 2000
Luxembourg.....	January 1, 2001
Slovenia.....	January 1, 2002
South Africa.....	January 1, 1998
Switzerland.....	January 1, 1998
Thailand.....	January 1, 1998
Turkey.....	January 1, 1998
Ukraine.....	January 1, 2001
Venezuela.....	January 1, 2000

The U.S.-Slovenia tax treaty entered into force on June 22, 2001. The treaty applies, with respect to taxes withheld at source, in respect of amounts paid or credited on or after September 1, 2001, and, with regard to other taxes, in respect of taxable years beginning on or after January 1, 2002.

- 20 This exemption applies if the ships or aircraft are operated in international traffic by the lessee, or the rental income is incidental to the operation of ships or aircraft in international traffic by the lessor.
- 21 In the case of aircraft only, the registration may be in the country of residence or in any country with a treaty providing a reciprocal exemption between such country and the country of residence.
- 22 Pursuant to Notice 97-40, 1997-2 C.B. 287, the treaty between the United States and the People's Republic of China (China) will continue to apply only to China and will not

apply to the Hong Kong Special Administrative Region of the People's Republic of China.

- 23 The exemption applies except where the containers are used solely between places within the other Contracting State.
- 24 This treaty is effective for the eastern States of Germany (the former East Germany) from January 1, 1991.
- 25 Documentation or registration required for ships or aircraft of United States residents only.
- 26 This treaty exempts gains derived by an enterprise of a Contracting State if the ships, aircraft or containers are owned and operated by the enterprise and the income from them is taxable only in that State.
- 27 Income from the bareboat rental of aircraft used in international traffic is exempt. Income from the bareboat rental of ships also is exempt if the ship is operated in international traffic and if the lessee is not a resident of, or does not have a permanent establishment in, the other Contracting State.
- 28 See also the diplomatic notes or protocol accompanying this treaty.
- 29 The United States has entered into new treaties with Italy and the United Kingdom, but neither treaty has entered into force as of the date of publication of this ruling.
- 30 This exemption applies if the ship or aircraft is operated in international traffic or if the rental income is incidental to income from such international operation.
- 31 With regard to residents of Japan, the ships or aircraft need not be registered in Japan if the ships or aircraft are leased by such a resident.
- 32 As a result of correspondence, it was clarified that income from the international operation of ships or aircraft includes this category of income.
- 33 This exemption applies if the ships or aircraft are used by the lessee in international traffic.
- 34 The U.S. - U.S.S.R. income tax treaty signed June 20, 1973, continues to apply to the New Independent States (NIS) of Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan.