



[4830-01-p]

## DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-113604-18]

RIN 1545-BO86

Gain or Loss of Foreign Persons from Sale or Exchange of Certain Partnership Interests

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations implementing section 864(c)(8) of the Internal Revenue Code. The proposed regulations affect certain foreign persons that recognize gain or loss from the sale or exchange of an interest in a partnership that is engaged in a trade or business within the United States. The proposed regulations also affect partnerships that, directly or indirectly, have foreign persons as partners.

DATES: Written or electronic comments and requests for a public hearing must be received by **INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL**

**REGISTER**].

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-113604-18), Internal Revenue Service, Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-113604-18), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or sent

electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-113604-18).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Ronald M. Gootzeit or Chadwick Rowland, (202) 317-6937; concerning submissions of comments or requests for a public hearing, Regina L. Johnson, (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

**Background**

A foreign partner in a partnership that is engaged in the conduct of a trade or business within the United States is itself considered to be so engaged. See section 875. Under a 1991 revenue ruling, in determining the tax consequences of the sale or exchange of a foreign partner's interest in a partnership engaged in the conduct of a trade or business within the United States, the IRS held that the partnership's property located in the United States that is used or held for use in the partnership's trade or business within the United States is used to determine the extent to which income derived from the sale or exchange of the partnership interest is effectively connected with the conduct of the partner's trade or business within the United States. Rev. Rul. 91-32, 1991-1 C.B. 107. Under the ruling, if there is unrealized gain or loss in partnership assets that would be treated as effectively connected with the conduct of the partnership's trade or business within the United States if those assets were sold by the partnership, some or all of the foreign person's gain or loss from the sale or exchange of a partnership interest may be treated as effectively connected with the partner's conduct of a trade or business within the United States. However, a 2017 Tax

Court case held instead that, generally, gain or loss on the sale or exchange by a foreign person of an interest in such a partnership is foreign source gain or loss based on the residence of the selling partner because gain on the sale of the partnership interest is not attributable to the partnership's assets and activities. As a result, such gain or loss generally would not be treated as effectively connected with the conduct of a trade or business. Grecian Magnesite Mining v. Commissioner, 149 T.C. No. 3 (2017), appeal argued, No. 17-1268 (D.C. Cir. Oct. 9, 2018).

Section 864(c)(8), which was added to the Internal Revenue Code (the "Code") by section 13501 of the Tax Cuts and Jobs Act, Public Law 115-97 (2017) (the "Act"), generally overturns the result of Grecian Magnesite Mining v. Commissioner by providing that gain or loss of a nonresident alien individual or foreign corporation (a "foreign transferor") from the sale, exchange, or other disposition ("transfer") of a partnership interest is treated as effectively connected with the conduct of a trade or business within the United States ("effectively connected gain" or "effectively connected loss") to the extent that the transferor would have had effectively connected gain or loss if the partnership had sold all of its assets at fair market value as of the date of the sale or exchange ("deemed sale").

Section 864(c)(8)(E) generally provides that the Secretary shall prescribe such regulations or other guidance as the Secretary determines appropriate for the application of section 864(c)(8). Section 864(c)(8) is effective for sales, exchanges, and dispositions on or after November 27, 2017.

New section 1446(f) was also added to the Code by section 13501 of the Act. Section 1446(f)(1) requires that the transferee of a partnership interest withhold 10

percent of the amount realized on the transferor's disposition of the partnership interest (if any portion of the gain would be treated as effectively connected gain) unless the transferor certifies that the transferor is not a foreign person. Section 1446(f) is effective for sales, exchanges, and dispositions after December 31, 2017.

On December 29, 2017, the Department of the Treasury (the "Treasury Department") and the IRS released Notice 2018-08, 2018-7 I.R.B. 352 (the "PTP Notice"). The PTP Notice temporarily suspends the requirement to withhold on amounts realized in connection with the sale, exchange, or disposition of certain interests in publicly traded partnerships ("PTPs") in response to stakeholder concerns that applying section 1446(f) to dispositions of interests in PTPs without guidance presented significant practical problems. On April 2, 2018, the Treasury Department and the IRS released Notice 2018-29, 2018-16 I.R.B. 495, which announced an intent to issue proposed regulations under section 1446(f) that apply in the case of a disposition of a partnership interest that is not publicly traded and provided temporary guidance.

## **Explanation of Provisions**

### **I. Gain or Loss on the Transfer of a Partnership Interest**

Section 864(c)(8)(A) provides that gain or loss of a foreign transferor from the transfer of an interest, owned directly or indirectly, in a partnership that is engaged in any trade or business within the United States is treated as effectively connected gain or loss to the extent such gain or loss does not exceed the amount determined under section 864(c)(8)(B). In general, section 864(c)(8)(B) limits the amount of effectively connected gain or loss to the portion of the foreign transferor's distributive share of gain or loss that would have been effectively connected gain or loss if the partnership had

sold all of its assets at fair market value. The proposed regulations set forth rules for determining gain or loss described in section 864(c)(8)(A) and the limitation described in section 864(c)(8)(B), each of which is discussed in this section I of this Explanation of Provisions.

#### A. Determination of Gain or Loss Described in Section 864(c)(8)(A)

To determine the amount of gain or loss described in section 864(c)(8)(A), generally, the proposed regulations require that a foreign transferor first determine its gain or loss on the transfer of a partnership interest (“outside gain” and “outside loss”). For this purpose, the proposed regulations provide that outside gain or loss is determined under all relevant provisions of the Code and the regulations thereunder. As described in section I.A.1 of this Explanation of Provisions, a foreign transferor may recognize capital gain or loss (“outside capital gain” or “outside capital loss”) and ordinary gain or loss (“outside ordinary gain” or “outside ordinary loss”) on the transfer of its partnership interest and must separately apply section 864(c)(8) with respect to its capital gain or loss and its ordinary gain or loss.

##### 1. Interaction with Sections 741 and 751

Section 864(c)(8) provides rules regarding the treatment of gain or loss on the transfer of a partnership interest as effectively connected gain or loss, but it does not address the computation of the amount of gain or loss to a partner upon the transfer. Rather, applicable tax law, including subchapter K, determines the amount and character of outside gain or loss on the transfer of a partnership interest. For example, the reduction in a transferor’s share of partnership liabilities is treated as an amount

realized on the transfer of the partnership interest under section 1001 and the regulations thereunder. See section 752(d) and §1.752-1(h).

Section 741 provides that on a sale or exchange of an interest in a partnership, gain or loss is recognized by the transferor, and shall be considered capital gain or loss except as otherwise provided in section 751. Section 751 provides that an amount received by a transferor of a partnership interest that is attributable to unrealized receivables or inventory items of the partnership (“section 751 property”) is considered ordinary income or loss. As a result of sections 741 and 751 and the regulations thereunder, gain or loss on a sale or exchange of a partnership interest can comprise capital gain, capital loss, ordinary income, or ordinary loss (or a combination thereof). See §§1.741-1(a) and 1.751-1(a).

In general, the proposed regulations provide that a foreign transferor must determine the portion of its capital gain or loss, and the portion of its ordinary income or loss from section 751 property, that must each be characterized as effectively connected gain or loss under section 864(c)(8). See proposed §1.864(c)(8)-1(b). As provided in section 864(c)(8)(A) and further described in section I.B of this Explanation of Provisions, the proposed regulations provide that a foreign partner’s effectively connected gain or loss will not exceed its outside gain or loss on the sale of the interest as determined under sections 741 and 751 and the regulations thereunder. Thus, the amount of gain or loss determined under section 741 (before application of section 751) is not a limitation on the amount of gain or loss characterized as effectively connected with the conduct of a trade or business within the United States under the proposed regulations.

## 2. Nonrecognition Transactions

The proposed regulations provide that the gain or loss on the transfer of a partnership interest that is subject to tax as effectively connected gain or loss is limited to gain or loss otherwise recognized under the Code. See proposed §1.864(c)(8)-1(b)(2)(ii). When a nonrecognition provision results in a foreign transferor recognizing only a portion of its gain or loss on the transfer of an interest in a partnership, section 864(c)(8) may apply with respect to the portion of the gain or loss recognized.

Although section 864(c)(8)(E) authorizes regulations or other guidance with respect to the application of section 864(c)(8) to nonrecognition transactions, the proposed regulations do not contain special rules applicable to nonrecognition transactions. The Treasury Department and the IRS recognize, however, that certain nonrecognition transactions may have the effect of reducing gain or loss that would be taken into account for U.S. federal income tax purposes. For example, if a partnership that conducts a trade or business within the United States owns property not subject to tax under section 871(b) or 882(a) in the hands of a foreign partner, the partnership may distribute that property to the foreign partner rather than a U.S. partner. The Treasury Department and the IRS continue to consider, and comments are requested regarding, whether other Code provisions adequately address transactions that rely on section 731 distributions to reduce the scope of assets subject to U.S. federal income taxation, and may propose rules addressing these types of transactions.

### B. Determination of Deemed Sale Gain or Loss

#### 1. In General

After outside gain and loss are determined under proposed §1.864(c)(8)-1(b), the proposed regulations set forth three amounts that a foreign transferor must determine to derive the limitation in section 864(c)(8)(B) against which the outside gain or loss is compared: (1) With respect to each asset held by the partnership, the amount of gain or loss that the partnership would recognize in connection with a deemed sale to an unrelated party in a fully taxable transaction for cash equal to the asset's fair market value immediately before the partner's transfer of its partnership interest; (2) the amount of that gain or loss that would be treated as effectively connected gain or loss ("deemed sale EC gain" and "deemed sale EC loss"); and (3) the foreign transferor's distributive share of the ordinary and capital components of any deemed sale EC gain and deemed sale EC loss. The proposed regulations refer to the separate sums of the foreign transferor's distributive shares of the ordinary and capital components of deemed sale EC gain and deemed sale EC loss items for all assets, determined at the level of the foreign transferor, as "aggregate deemed sale EC capital gain," "aggregate deemed sale EC capital loss," "aggregate deemed sale EC ordinary gain," and "aggregate deemed sale EC ordinary loss."

After each of these aggregate amounts is determined, the proposed regulations implement the limitation described in section 864(c)(8)(B), generally, by comparing the foreign transferor's outside gain or loss amounts with the relevant aggregate deemed sale EC gain or loss. This determination is made separately with respect to capital gain or capital loss and gain or loss treated as ordinary income or ordinary loss. Thus, for example, a foreign transferor would compare its outside capital gain to its aggregate

deemed sale EC capital gain, treating the former as effectively connected gain only to the extent it does not exceed the latter. See proposed §1.864(c)(8)-1(b)(3).

## 2. Treatment of Deemed Sale Gain or Loss as Effectively Connected Gain or Loss

As described in Part I.B.1 of this Explanation of Provisions, the proposed regulations require a foreign transferor to determine the amount of gain or loss that would arise in a deemed asset sale that would be treated as effectively connected gain or loss. In general, gain or loss on the sale of personal property is effectively connected with the conduct of a trade or business within the United States if the gain is from sources within the United States and it satisfies the requirements of section 864(c) and the regulations thereunder. Accordingly, the proposed regulations provide that section 864 and the regulations thereunder apply for purposes of determining whether gain or loss that would arise in a deemed asset sale would be treated as effectively connected gain or loss. See proposed §1.864(c)(8)-1(c)(2)(i).

The determination as to whether gain or loss from a deemed asset sale by the partnership would be from sources within or without the United States, and whether that income would be treated as effectively connected gain or loss, is based on certain factual determinations, including whether the gain or loss results from a sale that is attributable to an office or other fixed place of business in the United States. The proposed regulations provide that, for purposes of determining whether gain or loss recognized in connection with a deemed asset sale by the partnership would be from sources within or without the United States, and thus whether that income would be treated as effectively connected gain or loss, the deemed asset sale is treated as attributable to an office or fixed place of business in the United States maintained by the

partnership. As a result, deemed sale gain or loss generally would be treated as from sources within the United States. To prevent this rule from potentially converting gain or loss from assets with no connection to the partnership's trade or business within the United States into effectively connected gain or loss, the proposed regulations provide that gain or loss from the deemed sale of a partnership asset is not treated as effectively connected gain or loss if (1) no income or gain previously produced by the asset was taxable as effectively connected with the conduct of a trade or business within the United States by the partnership (or a predecessor of the partnership) during the ten-year period ending on the date of the transfer, and (2) the asset was not used, or held for use, in the conduct of a trade or business within the United States by the partnership (or a predecessor of the partnership) during the ten-year period ending on the date of transfer. See proposed §1.864(c)(8)-1(c)(2)(ii). Comments are requested as to whether additional guidance is needed regarding the source of gain or loss resulting from a deemed sale by the partnership, including rules coordinating this rule with section 865(e)(2)(B).

### 3. Determining Distributive Share of Deemed Sale EC Gain and Deemed Sale EC Loss

The flush language of section 864(c)(8)(B) provides that a transferor partner's distributive share of gain or loss on the deemed sale is determined in the same manner as the transferor partner's distributive share of the non-separately stated taxable income or loss of the partnership. The term "non-separately stated taxable income or loss of the partnership" is not defined in the Code or regulations. The proposed regulations provide that a partner's distributive share of gain or loss from the deemed sale is determined under all applicable Code sections (including section 704), taking into

account allocations of tax items applying the principles of section 704(c), including any remedial allocations under §1.704-3(d), and any section 743 basis adjustment pursuant to §1.743-1(j)(3). The Treasury Department and IRS propose this approach because applying section 704 more closely ties the results of the deemed sale with regard to the selling foreign partner to the economic results of an actual sale, as compared (for example) to an approach that did not consider special allocations or considered only a partner's share of ordinary business income, which would distort the economic agreement among the partners. See proposed §1.864(c)(8)-1(c)(3)(i).

The Treasury Department and the IRS are considering whether section 704 and the regulations thereunder adequately prevent the avoidance of the purposes of section 864(c)(8) through allocations of effectively connected gain or loss to specific partners. For example, immediately before a foreign transferor sells its interest in a partnership, adjustments could be made to partnership allocations that would result in the foreign transferor recognizing less effectively connected gain from the deemed sale by the partnership. While statutory and regulatory provisions, as well as judicial doctrines, may limit the extent to which inappropriate results may be obtained in that transaction or similar transactions, the Treasury Department and the IRS are considering whether additional guidance is necessary to prevent abuse. Comments are requested as to whether there are specific situations in which the purposes of section 864(c)(8) may be avoided and specific suggestions for additional guidance to address those situations.

### C. Source

Neither section 864(c)(8) nor the proposed regulations address the source of gain or loss from the transfer of a partnership interest. Section 864(c)(4) provides that,

except as enumerated in section 864(c)(4)(B) and (C), no income, gain, or loss from sources without the United States is treated as effectively connected gain or loss. Section 864(c)(8)(A) and the proposed regulations, however, apply “[n]otwithstanding any other provision of [subtitle A of the Code],” such that gain or loss recognized on the transfer of an interest in a partnership that is engaged in a trade or business within the United States may be treated as effectively connected gain or loss even if it is from sources without the United States. Comments are requested as to whether, and what, additional guidance is necessary regarding the source of gain or loss subject to section 864(c)(8).

#### D. Provision is Non-Exclusive

The proposed regulations clarify that they do not apply to prevent any portion of gain or loss recognized on the transfer of a partnership interest from being treated as effectively connected gain or loss under other provisions of the Code (subject to a special rule coordinating the application of section 864(c)(8) and section 897). Thus, if a foreign transferor maintains an office or fixed place of business in the United States, and sells a partnership interest in a transaction that generates gain or loss attributable to that office, gain or loss recognized in connection with that transfer may be United States source income under section 865(e)(2), and may be treated as effectively connected income under section 864(c)(2). If the amount of gain or loss recognized that would be treated as effectively connected gain or loss under section 864(c)(2) exceeds the amount of gain that would be treated as effectively connected gain under section 864(c)(8), then the larger amount would be treated as effectively connected gain. See proposed §1.864(c)(8)-1(b)(1).

## II. Coordination with Section 897

Section 897(g) generally provides that, under regulations prescribed by the Secretary, the amount realized by a nonresident alien individual or foreign corporation in exchange for all or part of its interest in a partnership is, to the extent attributable to United States real property interests (as defined in section 897(c)), considered as an amount received from the sale or exchange in the United States of such property. Accordingly, section 897(g) generally provides the same result for United States real property interests as Revenue Ruling 91-32 provides for property used, or held for use, in a trade or business in the United States. In general, section 864(c)(8)(C) provides that if a partnership described in section 864(c)(8)(A) holds any United States real property interest at the time of the transfer of the partnership interest, then the gain or loss treated as effectively connected gain or loss under section 864(c)(8)(A) is reduced by the amount treated as effectively connected gain or loss with respect to that United States real property interest under section 897. The effect of section 864(c)(8)(C) is to prevent gain or loss from a United States real property interest that is taxed under section 897 from being taken into account a second time under section 864(c)(8).

In the proposed regulations, the limitation on effectively connected gain or loss in section 864(c)(8)(B) is based on a deemed sale by the partnership of all of its assets, including all United States real property interests held by the partnership, which are treated as effectively connected assets under section 897. See proposed §1.864(c)(8)-1(c)(2)(i). To coordinate the taxation of United States real property interests under sections 897(g) and 864(c)(8), the proposed regulations provide that when a partnership holds United States real property interests and is also subject to section 864(c)(8)

because it is engaged in the conduct of a trade or business within the United States without regard to section 897, the amount of the foreign transferor's effectively connected gain or loss will be determined under section 864(c)(8) and not under section 897(g). Therefore, the reduction called for by section 864(c)(8)(C) is not necessary. See proposed §1.864(c)(8)-1(d).

The regulations include a proposed rule in regulations under section 897, which serves as a cross-reference to this coordination rule. See section V of this Explanation of Provisions for a discussion of a proposed anti-stuffing rule that also applies in the context of section 897. Further, comments are requested as to the interaction of this rule with other rules in the regulations under section 897, including the special rule for publicly traded partnerships in §1.897-1(c)(2)(iv).

### III. Tiered Partnerships

Section 864(c)(8) applies to a foreign nonresident alien individual or foreign corporation that owns an interest in a partnership directly or indirectly. Consistent with section 12 of Notice 2018-29, the proposed regulations provide that if a foreign transferor transfers an interest in an upper-tier partnership that owns, directly or indirectly, an interest in one or more lower-tier partnerships that are engaged in the conduct of a trade or business within the United States, then the deemed sale gain or loss must be computed with respect to each lower-tier partnership, the amount of effectively connected gain or loss that would be allocated to the upper-tier partnership must be determined, and the amount of gain or loss recognized by a foreign transferor that is treated as effectively connected gain or loss under proposed §1.864(c)(8)-1(c) must be determined by reference to the transferor's distributive share of effectively

connected gain or loss arising from each lower-tier partnership. See proposed §1.864(c)(8)-1(e)(1).

The proposed regulations also clarify that when a foreign transferor is a partner in an upper-tier partnership and the upper-tier partnership transfers an interest in a lower-tier partnership that is engaged in the conduct of a trade or business within the United States, the upper-tier partnership must determine its effectively connected gain or loss by applying the principles of the proposed regulations, including the tiered partnership rules described in proposed §1.864(c)(8)-1(e)(1).

#### IV. Treaties

The business profits articles of many U.S. income tax treaties limit the taxation of income that is otherwise treated as effectively connected with the conduct of a trade or business within the United States under the Code to income and gain attributable to a permanent establishment in the United States. The applicable gains articles of many U.S. income tax treaties allow the country in which a permanent establishment is located to tax gains from the alienation of movable property forming part of the business property of a permanent establishment, including gains from the alienation of a permanent establishment, alone or with the whole enterprise of which it is a part. In general, the permanent establishment of a partnership in the United States is considered a permanent establishment of the partners of the partnership. See Donroy, Ltd. v. United States, 196 F.Supp. 54 (N.D. Cal. 1961), aff'd 301 F.2d 200 (9th Cir. 1962), and Unger v. Comm'r, T.C. Memo. 1990-15, 58 TCM 1157, aff'd 936 F.2d 1316 (D.C. Cir. 1991).

The proposed regulations provide that the disposition of a foreign partner's interest in a partnership, in whole or in part, is a disposition of all or part of a partner's permanent establishment. Thus, to the extent the partnership's assets form part of a foreign partner's permanent establishment in the United States, the permanent establishment paragraph of the gains article would generally preserve the United States' taxing jurisdiction over the gain on the transfer of a partnership interest that is subject to tax under section 864(c)(8). In addition, if an income tax treaty has a gains article that permits the United States to apply its domestic laws to tax gains or does not have a gains article, the treaty does not prevent the application of section 864(c)(8).

Gains articles of treaties also frequently have special provisions covering certain assets, regardless of whether the assets form part of a permanent establishment, such as gains from dispositions of United States real property interests and ships and aircraft used in international traffic. If a gains article of an income tax treaty prohibits taxation of the gain from the disposition of any asset, such as ships or aircraft used in international traffic, the gains and losses from those assets will not be considered assets that form part of the permanent establishment, nor will they be taken into account in determining deemed sale EC gain or deemed sale EC loss, for purposes of computing the section 864(c)(8)(B) limitation. If the gains article of an applicable income tax treaty allows the taxation of gain from the disposition of a United States real property interest, the transfer of an interest in a partnership that holds a United States real property interest remains subject to section 897(g) even if the transfer is not subject to section 864(c)(8) (because the partnership's assets are not treated as forming part of a permanent establishment in the United States). See proposed §1.864(c)(8)-1(d).

## V. Anti-Stuffing Rule

The proposed regulations include an anti-stuffing rule applicable to both these regulations and section 897. This rule is included to prevent inappropriate reductions in amounts characterized as effectively connected with the conduct of a trade or business within the United States under section 864(c)(8) or section 897. A cross-reference to this rule is also included in the proposed regulation under section 897.

## VI. Section 1446(f) Guidance

The proposed regulations do not provide guidance under section 1446(f). The Treasury Department and the IRS intend to issue guidance under section 1446(f) expeditiously.

### **Applicability Dates**

The proposed regulations apply to transfers occurring on or after November 27, 2017, the effective date of section 864(c)(8). See section 7805(b)(2). If any provision is finalized after June 22, 2019, the Treasury Department and the IRS expect that such provision will apply only to transfers occurring on or after **[INSERT DATE OF FILING IN THE FEDERAL REGISTER]**. See section 7805(b)(1)(B).

### **Special Analyses**

Executive Orders 13771, 13563, and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

These proposed regulations have been designated by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations. OIRA has determined that the proposed rulemaking is significant and subject to review under EO 12866 and section 1(b) of the Memorandum of Agreement. Accordingly, the proposed regulations have been reviewed by the Office of Management and Budget.

The Treasury Department and the IRS have assessed the benefits and costs of the proposed regulations relative to a no-action baseline reflecting anticipated tax-related behavior and other economic behavior in the absence of these proposed regulations. Because the proposed regulations generally provide taxpayers with additional certainty on the amount and character of gain or loss treated as effectively connected income as a result of section 864(c)(8) and concurrently coordinate section 864(c)(8) with other provisions in the Code, the Treasury Department and the IRS anticipate only minimal economic or revenue effects from the proposed regulations. The Treasury Department and the IRS estimate that between 5,000 and 10,000 taxpayers are potentially affected by section 864(c)(8), with only a fraction of these taxpayers having gain or loss from disposition of a partnership in any one year. The Treasury Department and the IRS estimate that the affected taxpayers would see a minimal difference in treatment between these proposed regulations and Revenue Ruling 91-32. Comments are requested regarding these assessments. The Treasury Department and the IRS have assessed that the proposed regulations do not establish

a new collection of information nor modify an existing collection that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). The Treasury Department and the IRS seek comments on this assessment.

Section 864(c)(8) and the proposed regulations generally apply to nonresident alien individuals and foreign corporations on the transfer of an interest in a partnership that is engaged in a trade or business within the United States, and not directly to the trade or business the partnership conducts in the United States. Under section 605 of the Regulatory Flexibility Act (5 U.S.C. chapter 6), the Treasury Department and the IRS certify that the proposed regulations will not have a significant economic impact on a substantial number of small entities. The reason is that the proposed regulations generally apply to nonresident alien individuals and foreign corporations on the transfer of an interest in a partnership and not directly to a domestic small business. Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### **Comments and Requests for Public Hearing**

Before the proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the "**ADDRESSES**" heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations, and specifically on the issues identified in sections I.A.2, I.B, and I.C of the Explanations of Provisions. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing

will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, then notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

### **Drafting Information**

The principal authors of the proposed regulations are Ronald M. Gootzeit and Chadwick Rowland, Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

### **Statement of Availability of IRS Documents**

IRS Revenue Procedures, Revenue Rulings, notices, and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### **PART 1-- INCOME TAXES**

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 1.864(c)(8)-1 also issued under 26 U.S.C. 864(c)(8) and 897(g).

\* \* \* \* \*

Section 1.897-7 also issued under 26 U.S.C. 897(g).

\* \* \* \* \*

Par. 2. Section 1.864(c)(8)-1 is added to read as follows:

§1.864(c)(8)-1 Gain or loss by foreign persons on the disposition of certain partnership interests.

(a) Overview. This section provides rules and definitions under section 864(c)(8). Paragraph (b) of this section provides the general rule treating gain or loss recognized by a nonresident alien individual or foreign corporation from the sale or exchange of a partnership interest as effectively connected gain or effectively connected loss. Paragraph (c) of this section provides rules for determining the limitation on the amount of effectively connected gain or effectively connected loss under section 864(c)(8) and paragraph (b) of this section. Paragraph (d) of this section provides rules regarding coordination with section 897. Paragraph (e) of this section provides rules regarding certain tiered partnerships. Paragraph (f) of this section provides rules regarding U.S. income tax treaties. Paragraph (g) of this section provides definitions. Paragraph (h) of this section provides a rule regarding certain contributions of property to a partnership. Paragraph (i) of this section contains examples illustrating the rules set forth in this section. Paragraph (j) of this section provides the applicability date.

(b) Gain or loss treated as effectively connected gain or loss--(1) In general. Notwithstanding any other provision of subtitle A of the Internal Revenue Code, if a foreign transferor owns, directly or indirectly, an interest in a partnership that is engaged in the conduct of a trade or business within the United States, outside capital gain, outside capital loss, outside ordinary gain, or outside ordinary loss (each as defined in paragraph (b)(2) of this section) recognized by the foreign transferor on the transfer of

all (or any portion) of the interest is treated as effectively connected gain or effectively connected loss, subject to the limit described in paragraph (b)(3) of this section. Except as provided in paragraph (d) of this section, this section does not apply to prevent any portion of the gain or loss that is otherwise treated as effectively connected gain or effectively connected loss under provisions of the Internal Revenue Code other than section 864(c)(8) from being so treated.

(2) Determination of outside gain and loss--(i) In general. The amount of gain or loss recognized by the foreign transferor in connection with the transfer of its partnership interest is determined under all relevant provisions of the Internal Revenue Code and the regulations thereunder. See, e.g., §§1.741-1(a) and 1.751-1(a)(2). For purposes of this section, the amount of gain or loss that is treated as capital gain or capital loss under sections 741 and 751 is referred to as outside capital gain or outside capital loss, respectively. The amount of gain or loss that is treated as ordinary gain or ordinary loss under sections 741 and 751 is referred to as outside ordinary gain or outside ordinary loss, respectively.

(ii) Nonrecognition provisions. A foreign transferor's gain or loss recognized in connection with the transfer of its partnership interest does not include gain or loss to the extent that the gain or loss is not recognized by reason of one or more nonrecognition provisions of the Internal Revenue Code.

(3) Limitations. This paragraph (b)(3) limits the amount of gain or loss recognized by a foreign transferor that may be treated as effectively connected gain or effectively connected loss.

(i) Capital gain limitation. Outside capital gain recognized by a foreign transferor is treated as effectively connected gain to the extent it does not exceed aggregate deemed sale EC capital gain determined under paragraph (c)(3)(ii)(B) of this section.

(ii) Capital loss limitation. Outside capital loss recognized by a foreign transferor is treated as effectively connected loss to the extent it does not exceed aggregate deemed sale EC capital loss determined under paragraph (c)(3)(ii)(B) of this section.

(iii) Ordinary gain limitation. Outside ordinary gain recognized by a foreign transferor is treated as effectively connected gain to the extent it does not exceed aggregate deemed sale EC ordinary gain determined under paragraph (c)(3)(ii)(A) of this section.

(iv) Ordinary loss limitation. Outside ordinary loss recognized by a foreign transferor is treated as effectively connected loss to the extent it does not exceed aggregate deemed sale EC ordinary loss determined under paragraph (c)(3)(ii)(A) of this section.

(c) Amount treated as effectively connected with the conduct of a trade or business within the United States. This paragraph (c) describes the steps to be followed in computing the limitations described in paragraph (b)(3) of this section.

(1) Step 1: Determine deemed sale gain and loss. Determine the amount of gain or loss that the partnership would recognize with respect to each of its assets (other than interests in partnerships described in paragraph (e) of this section) upon a deemed sale of all of the partnership's assets on the date of the transfer of the partnership interest described in paragraph (b)(1) of this section (deemed sale). For this purpose, a deemed sale is a hypothetical sale by the partnership to an unrelated person of each of

its assets (tangible and intangible) in a fully taxable transaction for cash in an amount equal to the fair market value of each asset (taking into account section 7701(g)) immediately before the partner's transfer of the interest in the partnership. For rules concerning the deemed sale of certain partnership interests, see paragraph (e) of this section.

(2) Step 2: Determine deemed sale EC gain and loss--(i) In general. With respect to each asset deemed sold in paragraph (c)(1) of this section, determine the amount of gain or loss from the deemed sale that would be treated as effectively connected gain or effectively connected loss (including by reason of section 897, taking into account any exceptions thereto, such as section 897(k) or section 897(l)). Gain described in this paragraph (c)(2) is referred to as deemed sale EC gain, and loss described in this paragraph (c)(2) is referred to as deemed sale EC loss. Section 864 and the regulations thereunder apply for purposes of determining whether gain or loss that would arise in a deemed asset sale would be treated as effectively connected gain or loss. For purposes of this paragraph (c)(2)(i), gain or loss from the deemed sale of an asset is treated as attributable to an office or other fixed place of business maintained by the partnership in the United States, and is not treated as sold for use, disposition, or consumption outside the United States in a sale in which an office or other fixed place of business maintained by the partnership in a foreign country materially participated in the sale.

(ii) Exception. Gain or loss from the deemed sale of an asset described in paragraph (c)(2)(i) of this section (other than a United States real property interest) is not treated as deemed sale EC gain or deemed sale EC loss if--

(A) No income or gain produced by the asset was taxable as income that was effectively connected with the conduct of a trade or business within the United States by the partnership (or a predecessor of the partnership) during the ten-year period ending on the date of the transfer; and

(B) The asset has not been used, or held for use, in the conduct of a trade or business within the United States by the partnership (or a predecessor of the partnership) during the ten-year period ending on the date of the transfer.

(3) Step 3: Determine the foreign transferor's distributive share of deemed sale EC gain or deemed sale EC loss--(i) In general. Determine the foreign transferor's distributive share of deemed sale EC gain and deemed sale EC loss. A foreign transferor's distributive share of deemed sale EC gain or deemed sale EC loss with respect to each asset is the amount of the deemed sale EC gain and deemed sale EC loss determined under paragraph (c)(2) of this section that would have been allocated to the foreign transferor by the partnership under all applicable Code sections (including section 704) upon the deemed sale described in paragraph (c)(1) of this section, taking into account allocations of tax items applying the principles of section 704(c), including any remedial allocations under §1.704-3(d), and any section 743 basis adjustment pursuant to §1.743-1(j)(3)).

(ii) Aggregate deemed sale EC items--(A) Ordinary gain or loss. A foreign transferor's aggregate deemed sale EC ordinary gain (if the aggregate results in a gain) or aggregate deemed sale EC ordinary loss (if the aggregate results in a loss) is the sum of--

(1) The portion of the foreign transferor's distributive share of deemed sale EC gain and deemed sale EC loss that is attributable to the deemed sale of the partnership's assets that are section 751(a) property; and

(2) Deemed sale EC gain and deemed sale EC loss from the sale of assets that are section 751(a) property that would be allocated to the foreign transferor with respect to interests in partnerships that are engaged in the conduct of a trade or business within the United States under paragraph (e)(1)(ii) of this section upon the deemed asset sales described in paragraph (e)(1)(i) of this section.

(B) Capital gain or loss. A foreign transferor's aggregate deemed sale EC capital gain (if the aggregate of the foreign transferor's distributive share of the deemed sale EC capital gain and loss results in a gain) or aggregate deemed sale EC capital loss (if the aggregate of the foreign transferor's distributive share of the deemed sale EC capital gain and loss results in a loss) is the sum of--

(1) The portion of the foreign transferor's distributive share of deemed sale EC gain and deemed sale EC loss that is attributable to the deemed sale of assets that are not section 751(a) property; and

(2) Deemed sale EC gain and deemed sale EC loss from the sale of assets that are not section 751(a) property and that would be allocated to the foreign transferor with respect to all interests in partnerships that are engaged in the conduct of a trade or business within the United States under paragraph (e)(1)(ii) of this section upon the deemed asset sales described in paragraph (e)(1)(i) of this section.

(iii) Partial transfers. If a foreign transferor transfers less than all of its interest in a partnership, then for purposes of paragraph (c)(3)(i) of this section, the foreign

transferor's distributive share of deemed sale EC gain and deemed sale EC loss is determined by reference to the amount of deemed sale EC gain or deemed sale EC loss determined under paragraph (c)(3)(i) of this section that is attributable to the portion of the foreign transferor's partnership interest that was transferred.

(d) Coordination with section 897. If a foreign transferor transfers an interest in a partnership in a transfer that is subject to section 864(c)(8), and the partnership owns one or more United States real property interests (as defined in section 897(c)), then the foreign transferor determines its effectively connected gain and effectively connected loss under this section, and not pursuant to section 897(g). Accordingly, with respect to a transfer described in the preceding sentence, section 864(c)(8)(C) does not reduce the amount of gain or loss treated as effectively connected gain or loss under this section. For rules regarding a transfer not subject to section 864(c)(8) of an interest in a partnership that owns one or more United States real property interests, see section 897(g) and the regulations thereunder.

(e) Tiered partnerships--(1) Transfers of upper-tier partnerships. Assets sold in a deemed sale described in paragraph (c)(1) of this section do not include interests in partnerships that are engaged in the conduct of a trade or business within the United States or interests in partnerships that hold, directly or indirectly, partnerships that are engaged in the conduct of a trade or business within the United States. Rather, if a foreign transferor transfers an interest in a partnership (upper-tier partnership) that owns, directly or indirectly, an interest in one or more partnerships that are engaged in the conduct of a trade or business within the United States, then--

(i) Beginning with the lowest-tier partnership that is engaged in the conduct of a trade or business within the United States in a chain of partnerships and going up the chain, each partnership that is engaged in the conduct of a trade or business within the United States is treated as selling its assets in a deemed sale in accordance with the principles of paragraph (c)(1) of this section; and

(ii) Each partnership must determine its deemed sale EC gain and deemed sale EC loss in accordance with the principles of paragraph (c)(2) of this section, and determine the distributive share of deemed sale EC gain and deemed sale EC loss for each partner that is either a partnership (in which the foreign transferor is a direct or indirect partner) or a foreign transferor, in accordance with the principles of paragraph (c)(3)(i) of this section.

(2) Transfers by upper-tier partnerships. If a foreign transferor is a direct or indirect partner in an upper-tier partnership and the upper-tier partnership transfers an interest in a partnership that is engaged in the conduct of a trade or business within the United States (including a partnership held indirectly through one or more partnerships), then the principles of this section (including paragraph (e)(1) of this section) apply with respect to the gain or loss on the transfer that is allocated to the foreign transferor by the upper-tier partnership.

(3) Coordination with section 897. For purposes of this paragraph (e), a lower-tier partnership that holds one or more United States real property interests is treated as engaged in the conduct of a trade or business within the United States.

(f) Income tax treaties--(1) In general. This paragraph (f) describes how the provisions of a U.S. income tax treaty apply to the transfer by a foreign transferor that is

eligible for benefits under the treaty of an interest in a partnership that is engaged in the conduct of a trade or business within the United States.

(2) Application of gains article. Treaty provisions applicable to gains from the alienation of property forming part of a permanent establishment, including gains from the alienation of a permanent establishment in the United States, apply to the transfer by a foreign transferor of an interest in a partnership with a permanent establishment in the United States.

(3) Coordination rule. For purposes of applying paragraph (c) of this section to gains described in paragraph (f)(2) of this section, a foreign transferor's distributive share of deemed sale EC gain and deemed sale EC loss are determined with respect to the assets of the partnership that form part of the partnership's permanent establishment in the United States and that are not otherwise exempt from U.S. taxation under the treaty.

(g) Definitions. The following definitions apply for purposes of this section.

(1) Effectively connected gain. The term effectively connected gain means gain that is treated as effectively connected with the conduct of a trade or business within the United States.

(2) Effectively connected loss. The term effectively connected loss means loss treated as effectively connected with the conduct of a trade or business within the United States.

(3) Foreign transferor. The term foreign transferor means a nonresident alien individual or foreign corporation.

(4) Section 751(a) property. The term section 751(a) property means unrealized receivables described in section 751(c) and inventory items described in section 751(d).

(5) Transfer. The term transfer means a sale, exchange, or other disposition, and includes a distribution from a partnership to a partner to the extent that gain or loss is recognized on the distribution, as well as a transfer treated as a sale or exchange under section 707(a)(2)(B).

(h) Anti-stuffing rule. If a foreign transferor (or a person that is related to a foreign transferor within the meaning of section 267(b) or 707(b)) transfers property (including another partnership interest) to a partnership in a transaction with a principal purpose of reducing the amount of gain treated as effectively connected gain, or increasing the amount of loss treated as effectively connected loss, under section 864(c)(8) or section 897, the transfer is disregarded for purposes of section 864(c)(8) or section 897, as appropriate, or otherwise recharacterized in accordance with its substance.

(i) Examples. This paragraph provides examples that illustrate the rules of this section. For purposes of this paragraph, unless otherwise provided, the following facts are presumed. FP is a foreign corporation. USP is a domestic corporation. PRS is a partnership that was formed on January 1, 2018, when FP and USP each contributed \$100x in cash. PRS has made no distributions and received no contributions other than those described in paragraph (i)(1)(iii) of this section. FP's adjusted basis in its interest in PRS is \$100x. X is a foreign corporation that is unrelated to FP, USP, or PRS. Upon the formation of PRS, FP and USP entered into an agreement providing that all income, gain, loss, and deduction of PRS will be allocated equally between FP and USP. PRS

is engaged in the conduct of a trade or business within the United States (the U.S. Business) and an unrelated business in Country A (the Country A Business). In a deemed sale described in paragraph (c)(1) of this section, gain or loss on assets of the U.S. Business would be treated as effectively connected gain or effectively connected loss, and gain or loss on assets of the Country A Business would not be so treated (including by reason of paragraph (c)(2)(ii) of this section). PRS has no liabilities. FP does not qualify for the benefits of an income tax treaty between the United States and another country.

(1) Example 1. Deemed sale limitation--(i) Facts. On January 1, 2019, FP sells its entire interest in PRS to X for \$105x. Immediately before the sale, PRS's balance sheet appears as follows:

	<u>Adjusted Basis</u>	<u>Fair Market Value</u>
U.S. Business capital asset	\$100x	\$104x
Country A Business capital asset	100x	106x
Total	\$200x	\$210x

(ii) Analysis--(A) Outside gain or loss. FP is a foreign transferor (within the meaning of paragraph (g)(3) of this section) and transfers (within the meaning of paragraph (g)(5) of this section) its interest in PRS to X. FP recognizes a \$5x capital gain under section 741, which is an outside capital gain within the meaning of paragraph (b)(2)(i) of this section. Under paragraph (b)(1) of this section, FP's \$5x capital gain is treated as effectively connected gain to the extent that it does not exceed the limitation described in paragraph (b)(3)(i) of this section, which is FP's aggregate deemed sale EC capital gain.

(B) Deemed sale. FP's aggregate deemed sale EC capital gain is determined according to the three-step process set forth in paragraph (c) of this section. First, the amount of gain or loss that PRS would recognize with respect to each of its assets upon a deemed sale described in paragraph (c)(1) of this section is a \$4x gain with respect to the U.S. Business capital asset and a \$6x gain with respect to the Country A Business capital asset. Second, under paragraph (c)(2) of this section, PRS's deemed sale EC gain is \$4x. PRS recognizes no deemed sale EC gain or loss with respect to the Country A Business capital asset under section 864 and paragraph (c)(2)(ii) of this section. Third, under paragraph (c)(3)(ii)(B) of this section, FP's aggregate deemed sale EC capital gain is \$2x (that is, the aggregate of its distributive share of deemed sale EC gain attributable to the deemed sale of assets that are not section 751(a)

property, which is 50% of \$4x).

(C) Limitation. Under paragraph (b)(3)(i) of this section, the \$5x outside capital gain recognized by FP is treated as effectively connected gain to the extent that it does not exceed FP's \$2x aggregate deemed sale EC capital gain. Accordingly, FP recognizes \$2x of capital gain that is treated as effectively connected gain.

(2) Example 2. Outside gain limitation--(i) Facts. On January 1, 2019, FP sells its entire interest in PRS to X for \$110x. Immediately before the sale, PRS's balance sheet appears as follows:

	<u>Adjusted Basis</u>	<u>Fair Market Value</u>
U.S. Business capital asset	\$100x	\$150x
Country A Business capital asset	100x	70x
Total	\$200x	\$220x

(ii) Analysis--(A) Outside gain or loss. FP is a foreign transferor (within the meaning of paragraph (g)(3) of this section) and transfers (within the meaning of paragraph (g)(5) of this section) its interest in PRS to X. FP recognizes a \$10x capital gain under section 741, which is an outside capital gain within the meaning of paragraph (b)(2)(i) of this section. Under paragraph (b)(1) of this section, FP's \$10x capital gain is treated as effectively connected gain to the extent that it does not exceed the limitation described in paragraph (b)(3)(i) of this section, which is FP's aggregate deemed sale EC capital gain.

(B) Deemed sale. FP's aggregate deemed sale EC capital gain is determined according to the three-step process set forth in paragraph (c) of this section. First, the amount of gain or loss that PRS would recognize with respect to each of its assets upon a deemed sale described in paragraph (c)(1) of this section is a \$50x gain with respect to the U.S. Business capital asset and a \$30x loss with respect to the Country A Business capital asset. Second, under paragraph (c)(2) of this section, PRS's deemed sale EC gain is \$50x. PRS recognizes no deemed sale EC gain or loss with respect to the Country A Business capital asset under section 864 and paragraph (c)(2)(ii) of this section. Third, under paragraph (c)(3) of this section, FP's aggregate deemed sale EC capital gain is \$25x (that is, the aggregate of its distributive share of deemed sale EC gain attributable to the deemed sale of assets that are not section 751(a) property, which is 50% of \$50x).

(C) Limitation. Under paragraph (b)(3)(i) of this section, the \$10x outside capital gain recognized by FP is treated as effectively connected gain to the extent that it does not exceed FP's \$25x aggregate deemed sale EC capital gain. Accordingly, FP recognizes \$10x of capital gain that is treated as effectively connected gain.

(3) Example 3. Interaction with section 751(a)--(i) Facts. On January 1, 2019, FP sells its entire interest in PRS to X for \$95x. Through both its U.S. Business and its

Country A Business, PRS holds inventory items that are section 751 property (as defined in §1.751-1(a)). Immediately before the sale, PRS's balance sheet appears as follows:

	<u>Adjusted Basis</u>	<u>Fair Market Value</u>
U.S. Business capital asset	\$20x	\$50x
U.S. Business inventory	30x	50x
Country A Business capital asset	100x	80x
Country A Business inventory	50x	10x
<b>Total</b>	<b>\$200x</b>	<b>\$190x</b>

(ii) Analysis--(A) Outside gain or loss. FP is a foreign transferor (within the meaning of paragraph (g)(3) of this section) and transfers (within the meaning of paragraph (g)(5) of this section) its interest in PRS to X. Under sections 741 and 751, FP recognizes a \$10x ordinary loss and a \$5x capital gain. See §1.751-1(a). Under paragraph (b)(2)(i) of this section, FP has outside ordinary loss equal to \$10x and outside capital gain equal to \$5x. Under paragraph (b)(1) of this section, FP's outside ordinary loss and outside capital gain are treated as effectively connected loss and effectively connected gain to the extent that each does not exceed the applicable limitation described in paragraph (b)(3) of this section. In the case of FP's outside ordinary loss, the applicable limitation is FP's aggregate deemed sale EC ordinary loss. In the case of FP's outside capital gain, the applicable limitation is FP's aggregate deemed sale EC capital gain.

(B) Deemed sale. FP's aggregate deemed sale EC ordinary loss and aggregate deemed sale EC capital gain are determined according to the three-step process set forth in paragraph (c) of this section.

(1) Step 1. The amount of gain or loss that PRS would recognize with respect to each of its assets upon a deemed sale described in paragraph (c)(1) of this section is as follows:

<u>Asset</u>	<u>Gain/(Loss)</u>
U.S. Business capital asset	\$30x
U.S. Business inventory	20x
Country A Business capital asset	(20x)
Country A Business inventory	(40x)

(2) Step 2. Under paragraph (c)(2) of this section, PRS's deemed sale EC gain and deemed sale EC loss must be determined with respect to each asset. The amounts determined under paragraph (c)(2) of this section are as follows:

<u>Asset</u>	<u>Deemed Sale EC Gain/(Loss)</u>
U.S. Business capital asset	\$30x
U.S. Business inventory	20x

Country A Business capital asset	0
Country A Business inventory	0

(3) Step 3. Under paragraph (c)(3) of this section, FP's aggregate deemed sale EC capital gain is \$15x (that is, the aggregate of its distributive share of deemed sale EC gain that is attributable to the deemed sale of assets that are not section 751(a) property, which is 50% of \$30x) and FP's aggregate deemed sale EC ordinary loss is \$0 (that is, the aggregate of its distributive share of deemed sale EC loss that is attributable to the deemed sale of assets that are section 751(a) property).

(C) Limitation--(i) Capital gain. Under paragraph (b)(3)(i) of this section, the \$5x outside capital gain recognized by FP is treated as effectively connected gain to the extent that it does not exceed FP's \$15x aggregate deemed sale EC capital gain. Accordingly, the amount of FP's capital gain that is treated as effectively connected gain is \$5x.

(ii) Ordinary loss. Under paragraph (b)(3)(iv) of this section, the \$10x outside ordinary loss recognized by FP is treated as effectively connected loss to the extent that it does not exceed FP's \$0 aggregate deemed sale EC ordinary loss. Accordingly, the amount of FP's ordinary loss that is treated as effectively connected loss is \$0.

(j) Applicability date. This section applies to transfers occurring on or after November 27, 2017.

Par. 3. Section 1.897-7 is added to read as follows:

§1.897-7 Treatment of certain partnership interests, trusts and estates under section 897(g).

(a) through (b) [Reserved]. For further guidance, see § 1.897-7T(a) through (b).

(c) Coordination with section 864(c)(8). Except as provided in §1.864(c)(8)-1, the amount of any money, and the fair market value of any property, received by a nonresident alien individual or foreign corporation in exchange for all or part of its interest in a partnership, trust, or estate shall, to the extent attributable to United States real property interests, be considered as an amount received from the sale or exchange in the United States of such property. See also §1.864(c)(8)-1(h) for an anti-stuffing rule that may apply to transactions subject to section 897. This paragraph applies to

transfers occurring on or after November 27, 2017.

Par. 4. Section 1.897-7T is amended by adding paragraph (c) to read as follows:

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

\* \* \* \* \*

(c) Coordination with section 864(c)(8). [Reserved]. For further guidance, see §1.897-7(c).

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

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