

Section 872. — Gross Income

(Also Section 883; 1.883-1; 894.)

International operation of ships and aircraft; income exempt from tax. Those countries that currently provide exemptions from tax to U.S. persons for income from the international operation of ships and aircraft through income tax conventions, diplomatic notes, or the country's domestic law are listed. Rev. Rul. 89-42 supplemented.

Rev. Rul. 97-31

PURPOSE

The purpose of this revenue ruling is to supplement Rev. Rul. 89-42, 1989-1 C.B. 234, by providing a current list of countries that grant United States persons equivalent exemptions from tax for income from the international operation of ships and aircraft for purposes of section 872(b) of the Internal Revenue Code, section 883 of the Code, and the shipping and air transport articles in United States income tax conventions.

A foreign country may grant an equivalent exemption from tax through an income tax convention or exchange of diplomatic notes, by not imposing a tax, or by a decree or specific statutory exemption if a tax is generally imposed. The following Table includes a current list of such countries and summarizes the types of income that qualify for exemption.

Part I of the Table summarizes equivalent exemptions under shipping and aircraft articles and capital gains articles of income tax conventions to which the United States is a party. Part I includes a summary of the requirements for the exemption, such as whether the exemption is based solely on residence or has an additional requirement of documentation or registration. Part I generally does not set forth other benefits that may be provided under articles covering business profits, rentals and royalties, and other income.

Part II of the Table summarizes exemptions available in countries that have exchanged diplomatic notes with the United States that cover shipping and aircraft income.

Finally, Part III of the Table provides a list of the countries for which the Service has determined, upon examination of

their laws, that an equivalent exemption is granted by statute or decree, or by not imposing a tax on such income.

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 III of the Table. Since its initial review, the Service has not attempted to determine whether any of the foreign laws of the countries listed in Part III have been amended or repealed. Therefore, taxpayers should independently verify the accuracy of the information in Part III of the Table at such time that a determination is relevant.

In addition, this list does not represent an exclusive list of countries whose domestic law provides an equivalent exemption. Other countries that have not submitted the information necessary for the Service to make a determination also may grant an exemption. In those cases, a corporation organized in, or an individual resident of, such a foreign country may qualify for an exemption even though the Internal Revenue Service has not yet made a determination to include the country in Part III of the Table.

The Table is intended only as a summary. The full text of any relevant income tax convention, diplomatic note, or foreign law should be consulted. It may be necessary to consult the technical explanation of an income tax convention, a protocol, or a diplomatic note accompanying a convention to determine the items of income exempted. Income tax conventions and diplomatic notes are published in the Cumulative Bulletin. The Table will be updated periodically.

CHANGES TO REV. RUL. 89-42

The changes to the Table published in Rev. Rul. 89-42 are summarized as follows. In Part I, the following countries have been added to the list of countries that provide an exemption under an income tax convention: Czech Republic, India, Indonesia, Israel, Mexico, Portugal, the Russian Federation, the Slovak Republic, Spain, Sweden, and Tunisia. The following countries have entered into new

income tax conventions with the United States that supersede prior income tax conventions reported in Rev. Rul. 89-42; Finland, France, Germany, Kazakhstan, and the Netherlands. The Income tax conventions between the United States and the Netherlands, as extended to the Netherlands Antilles and Aruba, and between the United States and Malta have been terminated, in relevant part, effective January 1, 1988, and January 1, 1997, respectively, and have been deleted from the list.

In Part II, new diplomatic notes have been exchanged with Chile, Hong Kong, India, Isle of Man, Japan, Luxembourg, Malaysia, Malta, Marshall Islands, Norway, Pakistan, Peru, and St. Vincent and the Grenadines. After the publication of Rev. Rul. 89-42, Mexico entered into a diplomatic note with the United States effective retroactively to January 1, 1987.¹ This note, however, terminated on January 1, 1994, the general effective date of the new U.S. — Mexico Income Tax Convention. In addition, the Russian Federation entered into a diplomatic note effective retroactively to January 1, 1991.² This note also terminated on January 1, 1994, the general effective date of the New U.S. — Russian Federation Income Tax Convention. Although a diplomatic note was signed with Bolivia, that note has never entered into force. Therefore Bolivia has been removed from the list.

In Part III, Antigua and Barbuda, Barbados, Ecuador (shipping only), Israel, Qata (aircraft only), Turks and Caicos, and the U.S. Virgin Islands have been added to the list of countries whose domestic law has been determined to provide an equivalent exemption.

Consistent with past practice, the Service will entertain a request from a foreign government to make a determination that the domestic law of the country provides an equivalent exemption. However, the Service will not accept requests from individual taxpayers; instead, taxpayers should seek to have the relevant foreign government request a determination that the particular country qualifies as an equivalent exemption jurisdiction.

¹This note is published at 1990-2 C.B. 322.

²This note is published at 1996-36 I.R.B. 6.

Taxpayers claiming an exemption under the terms of an income tax convention, or under section 872(b) or section 883 of the Code, must file a return on Form 1040NR (U.S. Nonresident Alien Income Tax Return) or Form 1120F (U.S. Income Tax Return of a Foreign Corpora-

tion) and comply with the provisions of section 8 of Rev. Proc. 91-12, 1991-1 C.B. 473.

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 89-42 is supplemented.

DRAFTING INFORMATION

The principal author of this revenue ruling is Patricia C. Bray of the Office of Associate Chief Counsel (International). For information regarding this revenue ruling contact Ms. Bray on (202) 622-3880 (not a toll-free call).

TABLE

Countries Currently Granting Equivalent Exemptions for Income From the International Operation of Ships and Aircraft

Countries and Territories	Basis for Exemption			TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED ²				
	Residence Based No Flag	Residence & Flag Reciprocal	Residence & Flag Unilateral	Operating Income	Full Rental (Time or voyage charter)	Bare-Boat Rental	Container Rental	Capital Gains
<i>PART I TREATIES¹</i>								
Australia	X			X	X ⁴	X ²⁷	X ²⁷	X ^{5/6}
Austria	X			X ³	—	—	—	—
Barbados	X			X	X ¹⁵	X ¹⁵	X	X
Belgium		X ⁷		X	X ⁵	X ⁵	X ⁵	X ⁵
Canada	X			X	X	X	X	X
China ²⁹ (Peoples Republic)	X			X	X ¹⁵	X ¹⁵	X	X
Cyprus	X			X	X ¹⁵	X ¹⁵	X	X
Czech Republic	X			X	X	X ⁵	X	X
Denmark		X		X ³	—	—	—	—
Egypt	X			X	X ⁵	X ⁵	X ⁵	—
Finland ²²	X			X	X ⁵	X ⁵	X ²⁸	X
France	X			X	X	X ¹⁵	X ⁵	X ⁵
Germany ^{22/24}	X			X	X	—	X	X
Greece		X		X ³	—	—	—	—
Hungary	X			X	X ⁵	X ⁵	X	X
Iceland			X ⁸	X	X ⁵	X ⁵	X ⁵	X
India ²²	X			X	X ⁵	X ⁵	X	X ^{5/9}
Indonesia ²²	X			X	X	X ¹⁰	X ⁵	X
Ireland		X		X ³	—	—	—	—
Israel	X			X	X ⁵	X ⁵	X ⁵	X ⁵
Italy ¹¹			X ⁸	X	X ²¹	X ⁵	X	X ⁵
Jamaica	X			X	X ¹⁵	X ¹⁵	X	X ⁵
Japan ¹¹		X ¹²		X	X ⁵	X ⁵	X ⁵	X ⁵
Kazakhstan	X			X	X	X ¹⁵	X	X
Korea	X			X	X ¹³	—	X ⁵	—
Luxembourg		X		X ³	—	—	—	—
Mexico ²²	X			X	X	X ²⁸	X	X
Morocco		X ⁷		X ³	—	—	—	X ⁵
Netherlands ²²	X			X	X ⁵	X ⁵	—	X
New Zealand	X			X	X	X ⁵	X ⁵	X ⁶
Norway ¹¹	X			X	X ¹³	X ⁵	X ⁵	X
Pakistan ¹⁴		X		X ³	—	—	—	—

TABLE—CONTINUED

Countries and Territories	<i>Basis for Exemption</i>			<i>TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED²</i>				
	Residence Based No Flag	Residence & Flag Reciprocal	Residence & Flag Unilateral	Operating Income	Full Rental (Time or voyage charter)	Bare-Boat Rental	Container Rental	Capital Gains
<i>PART I TREATIES¹</i>								
Philippines ¹⁶	X			—	—	—	—	X ⁵
Poland			X ⁸	X	X ⁵	X ⁵	X ⁵	X
Portugal ²²	X			X	X	X ⁵	—	X
Romania		X		X	X ⁵	X ⁵	X ⁵	X
Russian Federation ²²	X			X	X	X ¹⁵	X	X
Slovak Republic ²²	X			X	X	X ⁵	X	X
Spain ²²	X			X	X	X ⁵	X	X
Sweden ²²	X			X	X	X ⁵	X	X
Switzerland		X		X ³	—	—	—	—
Trinidad & Tobago			X ⁸	X	X ⁵	X ⁵	—	X
Tunisia ²²	X			X	X ¹⁵	X ¹⁵	X ⁵	X
USSR ²⁵		X		X ³	—	—	—	X ⁵
U.K.			X ⁸	X	X	X ⁵	X	X ⁵

Countries and Territories	<i>Cumulative Bulletin Citation</i>	<i>TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED²</i>				
		Operating Income	Full Rental (Time or voyage charter)	Bare-Boat Rental	Incidental Container Rental	Incidental Capital Gains
<i>PART II EXCHANGE OF NOTES²³</i>						
Argentina	1988-1 C.B. 456	X	X	X	X	X
Bahamas	1988-1 C.B. 458	X	X	X	X	—
Belgium	1988-1 C.B. 459	X	X	—	X	—
Chile ¹⁴	1991-1 C.B. 304	X	X	X ⁵	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 ¹⁴	1988-1 C.B. 463	X	X	X	X	X
Fiji	1996-40 I.R.B. 8	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 ^{16/31}	1995-1 C.B. 228	X	X	X	X	X
India	1990-2 C.B. 316	X	X	X ⁵	X	X
Isle of Man ¹⁶	1990-2 C.B. 317	X	X	X	X	X
Japan	1990-2 C.B. 318	X	X	X	X	—
Jordan	1996-50 I.R.B. 8	X	X	X	X	—
Liberia	1988-1 C.B. 463	X	X	X	X	X
Luxembourg	1996-28 I.R.B. 36	X	X	X	X	—
Malaysia	1990-2 C.B. 319	X	X	X ⁵	X	X
Malta	1997-17 I.R.B. 5	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 ¹⁶	1991-1 C.B. 305	X ³	—	—	—	—

TABLE—CONTINUED

<i>Cumulative Bulletin Citation</i>		<i>TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED²</i>				
Countries and Territories		Operat- ing Income	Full Rental (Time or voyage charter)	Bare- Boat Rental	Incidental Container Rental	Incidental Capital Gains
<i>PART II EXCHANGE OF NOTES²³</i>						
Panama	1988-2 C.B. 366	X	X	X	X	—
Peru ¹⁶	1989-2 C.B. 335	X	X	X ⁵	X	—
St. Vincent & Grenadines	1989-2 C.B. 336	X	X	X	X	—
Singapore	1990-2 C.B. 323	X	X	— ³⁰	X	—
Sweden	1988-1 C.B. 466	X	X	X ⁵	X	—
Taiwan	1989-2 C.B. 337	X	X	X	X	—
Venezuela	1988-1 C.B. 467	X	X	X ⁵	X	X

<i>TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED²</i>						
Countries and Territories	Date Foreign Law Reviewed	Operat- ing Income	Full Rental (Time or voyage charter)	Bare- Boat Rental	Incidental Container Rental	Incidental Capital Gains
<i>PART III DOMESTIC LAW</i>						
Antigua & Barbuda ¹⁶	NOV 1991	X	X	X	X	X
Barbados	OCT 1989	X	X	X	X	X
Bermuda	NOV 1988	X	X	X	X	X
Brazil ¹⁸	DEC 1988	X	X	X ⁵	X	—
Bulgaria	— 1989	X	X	X	X	X
Cayman Islands ²⁶	JAN 1987	X	X	X	X	X
Chile ¹⁶	OCT 1988	X	X	X	X	X
Ecuador ^{16/17}	DEC 1989	X	X	X ⁵	X	X
Israel	FEB 1991	X	X	X	X	X
Netherlands	OCT 1988	X	X	X ⁵	X	—
Netherlands Antilles	MAY 1988	X	X	X	X	X
Portugal ¹⁴	ships JUNE 1989	X	X	X	—	—
	aircraft FEB 1989					
Qatar ¹⁴	AUG 1994	X ³	—	—	—	—
Spain ¹⁹	DEC 1988	X	X	—	X	—
Turkey ²⁰	JAN 1987	X	—	—	X	—
Turks & Caicos ²⁶	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

¹A reciprocal exemption based on treaty relief is limited to the circumstances in which the treaty itself would be available. In such cases the exemption is based on section 894 and the treaty itself, rather than on section 872(b) or section 883.

²Unless otherwise footnoted, an X indicates full exemption whether or not there is a permanent establishment.

³Operating income is not defined.

⁴Lessors must either regularly lease ships or aircraft on a full basis or operate them in international traffic.

⁵The U.S. tax exemption is available only if the income is incidental to operating income.

⁶Except to the extent depreciation has been allowed in the other country.

⁷In the case of aircraft only, the registration may be in the country of residence or in any country with a treaty providing for such exemption between such country and the country of residence.

⁸Documentation or registration required for ships or aircraft of United States residents only.

⁹This 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.

¹⁰Income from the bareboat rental of aircraft used in international traffic is exempt. Income from the bareboat rental of ships is also 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.

¹¹See also the diplomatic notes or protocol accompanying this treaty.

¹²With 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.

¹³As a result of correspondence, it was clarified that income from the international operation of ships or aircraft includes this category of income.

¹⁴This exemption applies to aircraft only.

¹⁵This 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.

¹⁶This exemption applies to shipping only.

¹⁷This exemption is generally effective for all open years beginning on or after January 1, 1987.

¹⁸Brazilian and Portuguese laws exempt only companies.

¹⁹The Spanish statute exempts only corporations.

²⁰See Rev. Rul. 87-18, 1987-1 C.B. 178.

²¹This 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.

²²The following income tax treaties were ratified after the publication of Rev. Rul. 89-42 and were generally effective on the following dates:

Czech Republic	January 1, 1993
Finland	January 1, 1991
France	January 1, 1996
Germany	January 1, 1990
India	January 1, 1991
Indonesia	January 1, 1990
Israel	January 1, 1995
Kazakhstan	January 1, 1996
Mexico	January 1, 1994
Netherlands	January 1, 1994
Portugal	January 1, 1996
Russian Federation	January 1, 1994
Slovak Republic	January 1, 1993
Spain	January 1, 1991
Sweden	January 1, 1996
Tunisia	January 1, 1990

²³Notes signed prior to the Technical and Miscellaneous Revenue Act of 1988, will be interpreted in accordance with Technical Corrections.

²⁴This treaty is effective for the eastern States of Germany (the former East Germany) from January 1, 1991.

²⁵The U.S. — U.S.S.R. income tax treaty signed June 20, 1973, continues to apply to the countries of Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

²⁶The country generally imposes no income tax.

²⁷This 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.

²⁸The exemption applies except where the containers are used solely between places within the other Contracting State.

²⁹Pursuant to Notice 97-40, 1997-28 I.R.B. 6 dated July 14, 1997, 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.

³⁰A dialogue is currently taking place between the Government of the United States and Singapore concerning the scope of the reciprocal exemption.

³¹This diplomatic note applies to Hong Kong before July 1, 1997, and pursuant to Notice 97-40, 1997-28 I.R.B. 6 dated July 14, 1997, 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.