AIRAC date	State	City	Airport	FDC No.	FDC date	Procedure name
16–May–24	NC	Edenton	Northeastern Rgnl	4/7817	3/15/2024	This NOTAM, published in Docket No. 31540, Amdt No. 4108, TL 24–11, (89 FR 24369, April 08, 2024) is hereby rescinded in its entirety.
16–May–24	TN	Clarksville	Outlaw Fld	4/0038	3/22/2024	LOC RWY 35, Amdt 6A.
16–May–24	MO	Fredericktown	A Paul Vance Fredericktown Rgnl.	4/2850	3/28/2024	RNAV (GPS) RWY 1, Amdt 1A.
16–May–24	MO	Fredericktown	A Paul Vance Fredericktown Rgnl.	4/2852	3/28/2024	VOR/DME RWY 1, Amdt 3B.
16–May–24	LA	Rayville	John H Hooks Jr Meml	4/3522	3/28/2024	Takeoff Minimums and Obstacle DP, Orig.
16–May–24	MO	Cape Girardeau	Cape Girardeau Rgnl	4/3630	3/28/2024	ILS OR LOC RWY 10, Amdt 12B.
16–May–24	CO	Eagle	Eagle County Rgnl	4/4026	2/12/2024	RNAV (GPS) Y RWY 25, Orig.
16–May–24	CO	Eagle	Eagle County Rgnl	4/4029	2/12/2024	RNAV (RNP) X RWY 25, Orig.
16–May–24	CO	Eagle	Eagle County Rgnl	4/4030	2/12/2024	RNAV (RNP) Z RWY 25, Orig.
16–May–24	NJ	Toms River	Ocean County	4/4131	3/29/2024	ILS OR LOC RWY 6, Amdt 2C.
16–May–24	NJ	Toms River	Ocean County	4/4132	3/29/2024	RNAV (GPS) RWY 24, Amdt 1A.
16–May–24	NJ	Toms River	Ocean County	4/4134	3/29/2024	RNAV (GPS) RWY 6, Orig-C.
16–May–24	NJ	Toms River	Ocean County	4/4135	3/29/2024	VOR RWY 6, Amdt 7C.
16–May–24	PA	Philipsburg	Mid-State	4/4192	3/29/2024	VOR RWY 24, Amdt 16D.
16–May–24	PA	Lock Haven	William T Piper Meml	4/4872	4/1/2024	RNAV (GPS)–A, Orig-B.
16–May–24	IA	Iowa Falls	Iowa Falls Muni	4/5333	4/2/2024	RNAV (GPS) RWY 31, Amdt 2A.
16–May–24	PR	Ponce	Mercedita	4/5424	4/2/2024	RNAV (GPS) RWY 30, Orig-C.
16–May–24	TX	Longview	East Texas Rgnl	4/5578	4/2/2024	VOR/DME OR TACAN RWY 31, Amdt 7B.
16–May–24	TX	Longview	East Texas Rgnl	4/5581	4/2/2024	RNAV (GPS) RWY 18, Amdt 2B.
16–May–24	NC	Edenton	Northeastern Rgnl	4/7059	4/5/2024	RNAV (GPS) RWY 19, Amdt 2C.
16–May–24	TN	Clarksville	Outlaw Fld	4/7062	4/5/2024	RNAV (GPS) RWY 35, Amdt 1A.
16–May–24	TN	Clarksville	Outlaw Fld	4/7266	3/22/2024	VOR RWY 35, Amdt 15H.
16–May–24	NE	Lincoln	Lincoln	4/7349	3/18/2024	ILS Y OR LOC Y RWY 18, Amdt 7C.
16–May–24	NY	Ogdensburg	Ogdensburg Intl	4/7854	3/18/2024	RNAV (GPS) RWY 27, Amdt 2.
16–May–24	NY	Ogdensburg	Ogdensburg Intl	4/7856	3/18/2024	RNAV (GPS) RWY 9, Amdt 1A.
16–May–24	FL	Jacksonville	Jacksonville Intl	4/8317	3/18/2024	ILS Y OR LOC Y RWY 14, Amdt 7C.
16–May–24	FL	Jacksonville	Jacksonville Intl	4/8336	3/18/2024	RNAV (GPS) Z RWY 8, Amdt 2C.
16–May–24	FL	Jacksonville	Jacksonville Intl	4/8359	3/18/2024	RNAV (GPS) Z RWY 14, Amdt 2C.
16–May–24	FL	Jacksonville	Jacksonville Intl	4/8367	3/18/24	RNAV (GPS) Z RWY 26, Amdt 2D.
16–May–24	FL	Jacksonville	Jacksonville Intl	4/8377	3/18/24	VOR/DME RWY 32, Amdt 2C.
16–May–24	FL	Jacksonville	Jacksonville Intl	4/8395	3/18/24	RNAV (GPS) Z RWY 32, Amdt 2E.
16–May–24	MO	Mountain View	Mountain View	4/9019	3/22/2024	RNAV (GPS) RWY 28, Amdt 1.
16–May–24	AR	Stuttgart	Stuttgart Muni Carl Humphrey Fld.	4/9034	3/20/2024	ILS OR LOC RWY 36, Orig-E.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9992]

RIN 1545–BQ36

Guidance on the Definition of Domestically Controlled Qualified Investment Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that address the determination of whether a qualified investment entity is domestically controlled, including the treatment of qualified foreign pension funds for this purpose. In particular, these final regulations provide guidance as to when foreign persons are considered to hold directly or indirectly stock in a qualified investment entity. The final regulations primarily affect foreign persons that own stock in a qualified investment entity that would be a United States real property interest if the qualified investment entity were not domestically controlled.

DATES:

Effective date: These regulations are effective on *April 25, 2024.*

Applicability date: For the date of applicability, *see* §§ 1.897–1(a)(2) and 1.1445–2(e).

FOR FURTHER INFORMATION CONTACT: Milton Cahn at (202) 317–4934 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 29, 2022, the Treasury Department and the IRS published proposed regulations (REG–100442–22), relating to the treatment of certain entities, including qualified foreign pension funds (''QFPFs''), for purposes of the exemption from taxation afforded to foreign governments under section

892 of the Internal Revenue Code (the ''Code''), and the determination of whether a qualified investment entity (''QIE'') is domestically controlled under section 897(h)(4)(B) of the Code, in the **Federal Register** (87 FR 80097) (the ''proposed regulations''). This Treasury decision finalizes the proposed regulations, other than those portions addressing the section 892 exemption (which will be addressed in a separate rulemaking), after taking into account and addressing comments with respect to the proposed regulations. Terms used but not defined in this preamble have the meaning provided in the final regulations.

Comments outside the scope of this rulemaking are generally not addressed but may be considered in connection with future regulations. All written comments received in response to the proposed regulations are available at *www.regulations.gov* or upon request. A public hearing on the proposed regulations was not held because there were no requests to speak.

Summary of Comments and Explanation of Revisions

The final regulations retain the general approach and structure of the proposed regulations, with certain revisions. This section of the preamble discusses the comments received in response to the proposed regulations and explains the revisions reflected in the final regulations.

I. Domestic Corporation Look-Through Rule

A. Background

The proposed regulations set forth proposed rules for determining whether stock of a QIE is considered ''held directly or indirectly'' by foreign persons for purposes of defining a domestically controlled QIE under section 897(h)(4)(B). The proposed regulations defined stock in a QIE that is held ''indirectly'' by taking into account stock of the QIE held through certain entities under a limited ''look-through'' approach. As described in the preamble to the proposed regulations, this approach gives effect to both the policy of the exception for domestically controlled QIEs in section 897(h)(2) (''DC–QIE exception''), which is limited to QIEs controlled by United States persons, and the requirement in section 897(h)(4)(B) to take into account ''indirect'' ownership of QIE stock by foreign persons in determining whether a QIE is domestically controlled. 87 FR 80100. The preamble to the proposed regulations also explained that this approach prevents the use of intermediary entities to achieve results contrary to the purposes of the DC–QIE exception. *Id.* at 80100–01.

The proposed regulations addressed the meaning of direct or indirect ownership by setting forth two categories of potential QIE owners, ''look-through persons'' and ''non-look-through persons.'' Proposed § 1.897–1(c)(3)(ii). The proposed regulations generally treated a ''domestic C corporation,'' defined as any domestic corporation other than a regulated investment company (''RIC'') under section 851, a real estate investment trust (''REIT'') under section 856, or an S corporation under section 1361, as a non-look-through person. Proposed § 1.897–1(c)(3)(v)(A) and (D). However, the proposed regulations treated non-publicly traded domestic C corporations as look-through persons if foreign persons hold a 25 percent or greater interest (by value) in the stock of the corporation (the ''domestic corporation look-through rule''). Proposed § 1.897–1(c)(3)(iii)(B) and (c)(3)(v)(B).

Comments generally did not raise concerns with the general look-through approach for determining domestic control of a QIE as it applied to most entities (for example, the treatment of partnerships) but asserted that the domestic corporation look-through rule raises significant issues and should be withdrawn or, if retained, modified to reduce its scope. These comments are addressed in turn in parts I.B. and I.C. of this Summary of Comments and Explanation of Revisions.

B. Comments Recommending Withdrawal of the Domestic Corporation Look-Through Rule

Comments generally recommended that the domestic corporation look-through rule be withdrawn on three related grounds: first, that the rule is based on an incorrect reading of the Code, which for this purpose does not permit look-through treatment for domestic C corporations, including because there are no explicit rules providing for constructive ownership (such as those in section 318) under section 897(h)(4)(B); second, that the enactment of other related legislation (or consideration of legislation) demonstrates the rule is inconsistent with congressional intent; and third, that the rule is not necessary because domestic C corporations are subject to U.S. tax. Certain comments also based their recommendation to withdraw the domestic corporation look-through rule on the contention that the rule would negatively impact the U.S. real estate market or otherwise harm the broader U.S. economy.

The Treasury Department and the IRS have determined that it is necessary and appropriate to provide guidance regarding the meaning of ''indirect'' for determining whether foreign persons are considered to hold less than 50 percent of the value of the stock of a QIE. Every word in a statute must be given effect, and both the proposed and final regulations give effect to the term ''indirectly'' as used in section 897(h)(4)(B) by adopting a limited look-through approach that includes the domestic corporation look-through rule (as modified in the final regulations). The domestic corporation look-through rule does not apply specific constructive ownership rules like those in section 318. Rather, the guidance gives meaning to indirect ownership under section 897(h)(4)(B) in light of the purpose of the DC–QIE exception. Because the final regulations carry out the statute's mandate to determine indirect ownership rather than constructive ownership, the fact that other parts of section 897 refer to section 318 is irrelevant to the determination of whether a QIE is domestically controlled.

The Treasury Department and the IRS do not agree that the enactment of section 897(h)(4)(E) in section 322(b)(1)(A) of the Protecting Americans from Tax Hikes Act of 2015, Public Law 114–113, div. Q (the ''PATH Act''), informs whether the domestic corporation look-through rule should be applied under section 897(h)(4)(B). The rules added in section 897(h)(4)(E) do not prescribe how to interpret the meaning of ''indirectly'' in section 897(h)(4)(B), nor do they suggest that Congress intended for that provision to set out the only rules for QIE stock held by domestic corporations. Although section 897(h)(4)(E) provides certain rules for looking through QIE stock held by another QIE for purposes of the DC–QIE exception, the absence of other specific rules in the statute on whether domestic C corporations (or any other type of entity) should be looked through does not mean that all other entities should be non-look-through persons.

The Treasury Department and the IRS also disagree with the observation in comments that Congress sanctioned the approach taken by a 2009 private letter ruling (the ''2009 PLR'') that treated QIE stock held by a domestic C corporation as owned by a domestic person.[1] The brief citation to that ruling in a report by the Joint Committee on Taxation is neutral and merely restates the holding in the ruling in its description of the then current law. *See* STAFF OF THE

[1] PLR 200923001 (February 26, 2009).

JOINT COMM. ON TAX'N, General Explanation of Tax Legislation Enacted in 2015 (JCS–1–16) 279 (2016) (the ''JCT Report'').[2] The JCT Report did not express any view regarding the effect of the 2009 PLR or indicate that Congress endorsed a rule that precludes looking through domestic C corporations in all cases, and it caveated that a private letter ruling may only be relied on by the specific taxpayer to which it was issued and only provided ''some indication of administrative practice.'' *See* section 6110(k)(3). This is in contrast to other instances where Congress has explicitly endorsed an approach taken by the IRS. *See, for example,* H.R. Rep. No. 103–111, at 727–29 (1993) (in enacting section 7701(l), citing Rev. Rul. 84–152, 1984–2 C.B. 381, Rev. Rul. 84–153 1984–2 C.B. 1, and Rev. Rul. 87–89, 1987–2 C.B. 195, in stating the ''committee believes that the above-cited IRS rulings appropriately ignore conduit entities and properly recharacterize the transactions described therein.''); S. Rep. No. 95–762, at 8 (1978) (stating that the IRS's ''ruling position is correct'' in enacting rules consistent with private letter rulings indicating that certain income earned by exempt organizations was not taxable as debt-financed income). Accordingly, the Treasury Department and the IRS have concluded that the JCT Report's reference to the 2009 PLR does not affect the application of the domestic corporation look-through rule.

Likewise, the Treasury Department and the IRS disagree with comments that emphasized the discussion draft released by the Senate Committee on Finance in 2013 (the ''2013 Discussion Draft'') and the absence of any related changes to section 897 in the PATH Act. The relevant provision in the 2013 Discussion Draft would have replaced the ''held directly or indirectly'' language in section 897(h)(4)(B) with specific constructive ownership rules in section 318 (not just those applicable to corporations) to address uncertainty in the determination of indirect ownership. *See* STAFF OF THE JOINT COMM. ON TAX'N, Technical Explanation of the Senate Committee on Finance Chairman's Staff Discussion Draft of Provisions to Reform International Business Taxation (JCX–15–13) 84 (2013). The 2013 Discussion Draft, however, is not authoritative and has no relevance because it was neither introduced as a bill nor enacted into law. Moreover, Congress did not provide any explanation as to why constructive ownership rules under section 318, as proposed in the 2013 Discussion Draft, were not adopted in the PATH Act nor did it provide any indication as to its interpretation of ''indirectly'' under the statute, and nothing in the legislative history of the PATH Act or otherwise suggests draft legislation from more than two years earlier during a different Congress informed what was ultimately enacted in the PATH Act. *See United States* v. *Wise,* 370 U.S. 405, 411 (1962) (''[S]tatutes are construed by the courts with reference to the circumstances existing at the time of the passage. The interpretation placed upon an existing statute by a subsequent group of Congressmen who are promoting legislation and who are unsuccessful has no persuasive significance here.'').

The Treasury Department and the IRS also disagree with one comment's assertion that the legislative re-enactment doctrine bears on whether to issue the domestic corporation look-through rule. *See Helvering* v. *Reynolds,* 313 U.S. 428, 432 (1941) (''[The doctrine of legislative reenactment] does not mean that the prior construction has become so imbedded in the law that only Congress can effect a change.'').[3] Accordingly, the Treasury Department and the IRS have determined that no changes to section 897 made in, or contemplated in connection with, the PATH Act, or any explanation of those changes, preclude, or otherwise affect, adoption of the domestic corporation look-through rule.

Finally, the Treasury Department and the IRS have determined that the domestic corporation look-through rule is the appropriate interpretation of the term ''indirectly'' in section 897(h)(4)(B) irrespective of whether the domestic C corporation is subject to U.S. tax on income derived from its QIE stock. As expressed through the statutory text, the policy underlying the DC–QIE exception looks to whether control of the QIE is held directly or indirectly by United States or foreign persons, which does not depend on whether United States persons are subject to U.S. tax with respect to income derived from their QIE stock. The determination of domestic control is likewise not affected by whether a foreign shareholder of the domestic C corporation is subject to tax on a disposition of its stock in the corporation under section 897. The purpose of the inquiry is to determine control, and the status of an entity as taxable is not determinative for this purpose.

Accordingly, the Treasury Department and the IRS do not adopt the recommendation to withdraw the domestic corporation look-through rule. However, the final regulations modify the domestic corporation look-through rule as discussed in part I.C of this Summary of Comments and Explanation of Revisions.

C. Comments Recommending Modifications to the Domestic Corporation Look-Through Rule; Explanation of Revision

Comments recommended that, if the final regulations retain a rule similar to the domestic corporation look-through rule, then the approach should be narrowed from what was proposed so that the final rule more directly addresses potentially inappropriate planning and is easier to comply with and administer.

One comment suggested a variety of potential approaches to narrow the domestic corporation look-through rule. Under one such approach, a non-public domestic C corporation that owns 10 percent or less of a QIE (determined after applying constructive ownership rules under section 318, so as to prevent circumvention of the threshold) would be treated as a non-look-through person. The comment asserted that this approach would be less burdensome on taxpayers and the IRS than the proposed regulations and is premised on the view that a foreign person would not structure an investment through a taxable domestic C corporation so that an unrelated foreign person may apply the DC–QIE exception. The comment described an alternative approach, also intended to reduce compliance and administrative burdens, that would treat a non-public domestic C corporation as a look-through person only if there is at least one foreign person that is a non-look-through person that holds, directly or indirectly (using constructive ownership rules under section 318), 25 percent or more of the value of the corporation's stock. Under this alternative, look-through treatment would also apply only as to those foreign non-look-through persons. As another alternative, the comment

[2] *See also* STAFF OF THE JOINT COMM. ON TAX'N, Technical Explanation of the Revenue Provisions of the Protecting Americans from Tax Hikes Act of 2015, House Amendment #2 to the Senate Amendment to H.R. 2029 (JCX–144–15) 186–87 (2015). As noted in the JCT Report, a Senate Committee on Finance report on an earlier, separate bill referenced the 2009 PLR in the same manner in describing provisions similar to those in section 322 of the PATH Act. *See* JCT Report at 277, note 943; S. Rep. No. 114–25, 6 (2015).

[3] *See also Helvering* v. *Wilshire Oil Co.,* 308 U.S. 90, 100 (1939) (holding that the legislative reenactment doctrine applies where ''it does not appear that the rule or practice has been changed by the administrative agency through exercise of its continuing rule-making power''); *McCoy* v. *United States,* 802 F.2d 762 (4th Cir. 1986); *Interstate Drop Forge Co.* v. *Comm'r,* 326 F2d 743 (7th Cir. 1964).

suggested a look-through rule that would apply only if a foreign person or a foreign related party holds both a direct interest in the QIE and a substantial indirect interest in the QIE through a non-public domestic C corporation.

A different comment also recommended an approach that focused on commonality of substantial ownership by a foreign person of the QIE and the domestic C corporation. Specifically, a domestic C corporation would be treated as a foreign person for purposes of section 897(h)(4)(B) (but not for section 897(h)(4)(C)), if more than 50 percent of its stock is owned, by voting power or value, by foreign persons that also hold stock of the QIE directly, or indirectly through one or more partnerships, grantor trusts, or QIEs. Under this comment's recommended approach, a foreign person would be included in the more than 50 percent control test if the domestic C corporation had actual knowledge that the foreign person has cross-ownership of the QIE after inquiry with any person that is at least a 5-percent shareholder of the domestic C corporation (after applying the rules of section 318(a)). The comment reasoned that foreign investors should be considered incidental and thus should not be counted when measuring direct or indirect foreign control of the QIE when they invest through a domestic C corporation and do not have cross-ownership of the QIE directly or through related parties, or do hold interests in both entities but do not individually or collectively control the domestic C corporation.

Finally, one comment advocated that a look-through approach to a domestic C corporation should not apply when that corporation has material business activities unrelated to its investment in a QIE's stock with potential safe harbors such as where the corporation is registered as an investment adviser under the Investment Company Act of 1940 or the foreign owner of the domestic C corporation is actively traded on an established securities market outside of the United States. The comment reasoned that such cases are unlikely to be structured transactions of the type identified by the proposed regulations. Similarly, another comment also proposed that the look-through approach should not apply if a domestic C corporation would be treated as engaged in a U.S. trade or business if it had been a foreign corporation (such that the corporation is not a mere shell), and this exception could be further limited by ensuring that the value of the QIE stock held by the domestic C corporation is less than a certain threshold of the affiliated group's total assets.

The final regulations do not adopt any of the recommended modifications to the domestic corporation look-through rule. Several suggested modifications would limit the application of the rule to situations that indicate that foreign persons are using a domestic C corporation to establish domestic control of a QIE so that their direct investments in the QIE benefit from the DC–QIE exception. However, as discussed in part I.A of this Summary of Comments and Explanation of Revisions, the proposed and final regulations serve a broader purpose by interpreting the meaning of ''indirect'' ownership under section 897(h)(4)(B) to effectuate the policy of the DC–QIE exception by ensuring that the exception is available only when a QIE is controlled by United States persons. The comments also proposed various modifications intended to limit or alter the application of the rule; the Treasury Department and the IRS are of the view that these would introduce additional complexity, such as requiring an examination of the business activities of a domestic C corporation. Furthermore, a modification that would treat domestic C corporations that own less than 10 percent of a QIE as a non-look-through person would not alleviate concerns regarding the ability to identify shareholders through multiple tiers of ownership, and could result in disparate and inconsistent results as to which foreign owners are taken into account in measuring domestic control of a QIE (for example, a foreign non-look-through person that wholly owns a domestic C corporation that owns 9 percent of a QIE would not be taken into account, while a foreign non-look-through person that owns 50 percent of a domestic C corporation that owns 10 percent of the QIE would be taken into account). The Treasury Department and the IRS also do not agree that the domestic corporation look-through rule should only apply if 25 percent or more of the corporation's stock is owned by a single foreign non-look-through person (taking into account section 318 constructive ownership rules), as the DC–QIE exception looks to any measure of foreign ownership of a QIE and such a high threshold would inappropriately exempt foreign persons owning significant indirect interests in QIEs from look-through treatment.

Although the final regulations do not adopt any of the specific recommendations to the domestic corporation look-through rule, the Treasury Department and the IRS agree that the scope of the rule should be narrowed to address compliance concerns and to ensure the rule is more appropriately limited to situations where significant indirect ownership by foreign persons indicative of foreign control is present. After considering the various suggestions raised in comments, the Treasury Department and the IRS have determined that this is best achieved by increasing the amount of foreign ownership required to look through a non-public domestic C corporation from 25 percent or more to more than 50 percent. Increasing the threshold to more than 50 percent significantly narrows the scope of look-through treatment to non-public domestic C corporations that are controlled by foreign persons, and is consistent with the measurement of control for purposes of the domestically controlled QIE test. This change is also consistent with the policy of the DC–QIE exception and other provisions in section 897 that are based on a 50-percent threshold. *See, for example,* section 897(c)(2) (providing that a corporation is a United States real property holding corporation if the fair market value of its United States real property interests (''USRPIs'') meets a 50 percent or greater threshold). Thus, rather than a ''foreign-owned domestic corporation,'' the final regulations apply look-through treatment with respect to a ''foreign-controlled domestic corporation,'' which is defined as any non-public domestic C corporation if foreign persons hold directly or indirectly more than 50 percent of the fair market value of that corporation's outstanding stock (the ''final domestic corporation look-through rule''). § 1.897–1(c)(3)(v)(B). In addition, the final regulations adopt a transition rule for existing QIE structures, as discussed in part IV of this Summary of Comments and Explanation of Revisions.

II. Effect of Section 897(l) on the DC–QIE Exception

A. Background on Section 897(l) and Interaction With the DC–QIE Exception

Section 897(l) provides an exception to the application of section 897(a) for certain foreign pension funds and their wholly owned subsidiaries. As originally enacted in the PATH Act, section 897(l)(1) provided that section 897 does not apply to any USRPI held directly (or indirectly through one or more partnerships) by, or to any distribution received from a REIT by, a QFPF or any entity all of the interests of which are held by a QFPF. Congress later made several technical amendments to section 897(l) in section

101(q) of the Tax Technical Corrections Act of 2018, Public Law 115–141, div. U (the ''2018 technical correction''). As amended by the 2018 technical correction, section 897(l) provides that neither a QFPF nor an entity all the interests of which are held by a QFPF is treated as a nonresident alien individual or foreign corporation for purposes of section 897.

The proposed regulations addressed uncertainty as to whether QFPFs and entities wholly owned by one or more QFPFs (''QCEs''), which are treated as not ''nonresident alien individuals or foreign corporations'' for purposes of section 897, are treated as foreign persons for purposes of the DC–QIE exception. Specifically, proposed § 1.897–1(c)(3)(iv)(A) provided that a QFPF, including any part of a QFPF, or a QCE is a foreign person for purposes of the DC–QIE exception (the ''QFPF DC–QIE rule'').

B. Comments Regarding Authority To Issue the QFPF DC–QIE Rule

Although one comment stated that it was generally in agreement with the QFPF DC–QIE rule, other comments recommended that the rule be withdrawn because it is an incorrect reading of the statute and contrary to congressional intent. One comment contended that the preamble to the proposed regulations failed to consider the existing definition of ''foreign person'' in § 1.897–9T(c) (which includes a foreign corporation, a foreign partnership, a foreign trust, or a nonresident alien individual) and noted that Congress is presumed to have knowledge of that regulatory definition. The comment also contended that the text of section 897(l) is clear and that, without any textual ambiguity, the Treasury Department and the IRS lack the authority to issue the QPFF DC–QIE rule.

Another comment submitted that the legislative history and policy of section 897, including the DC–QIE exception and the section 897(l) exception for QFPFs, indicate that 50 percent or more ownership of a QIE by a QFPF results in the DC–QIE exception being available to other foreign investors. The comment's overall recommendation was to clarify the definition of foreign person in section 897(h)(4)(B) and (C) to have the same meaning as ''a nonresident alien individual or a foreign corporation'' in section 897(a). The comment included several reasons for its recommendation. First, section 897(l) refers generally to section 897, rather than solely to section 897(a), which the comment argued indicates that section 897(l) is intended to be given effect for all purposes under section 897. According to the comment, the effect of section 897(l) on the DC–QIE exception can be analogized to a special election in section 897(i) for a foreign corporation to be treated as a domestic corporation for purposes of section 897 because, when that election applies, it has effect for all of section 897 and can benefit other investors in QIEs even though they are not party to the election. The comment also noted that the 2018 technical correction should be presumed to be a more accurate reflection of the original intent of Congress, which was to align QFPFs with exempt U.S. pension funds. Finally, the comment noted that because a QFPF is not taxed under section 897(h)(1), there is no policy reason to treat it as a foreign person for other rules such as the DC–QIE exception, the foreign ownership percentage rule in section 897(h)(3) or the wash sale rule in section 897(h)(5).

The Treasury Department and the IRS have determined that the QFPF DC–QIE rule reflects the proper interpretation of the statute and congressional intent. The term ''nonresident alien individuals or foreign corporations'' in section 897(l) (introduced only in the 2018 technical correction) differs from ''foreign persons'' in section 897(h)(4)(B), and the purposes of the two provisions also differ. Congress provided no indication that it intended for the definition of foreign person in § 1.897–9T(c) to apply to confer non-foreign person status on QFPFs for purposes of the DC–QIE exception. Instead, the term ''nonresident alien individuals or foreign corporations'' appears in section 897(a) and similar provisions to refer to the persons that are directly subject to tax under FIRPTA. The Treasury Department and the IRS also do not agree that a QFPF is analogous to a foreign corporation that has elected to be treated as a domestic corporation under section 897(i) because that election explicitly treats a foreign corporation as a domestic corporation and therefore not a foreign person. In contrast, section 897(l) treats a QFPF as not a nonresident alien individual or a foreign corporation but does not address whether a QFPF is also not a foreign person.

The Treasury Department and the IRS agree that it is reasonable to presume that the changes made in the 2018 technical correction are a more accurate reflection of original congressional intent, which the preamble to the proposed regulations described (allowing a QFPF and QCE to jointly own a USRPI and qualify for section 897(l) with respect to their partial USRPI interests, as well as clarifying that the section 897(l) exception applies to distributions from all QIEs and not just REITs). 87 FR 80100. However, the Treasury Department and the IRS disagree with the assertion that the 2018 technical correction should be interpreted to bestow the benefit of the DC–QIE exception on foreign investors that cannot claim the section 897(l) exception. Such an interpretation would be inconsistent with the intent of section 897(l) as originally enacted in the PATH Act, which was to provide an exception from section 897 to QFPFs (and QCEs). Where possible, as in this case, the technical correction should be viewed in a manner consistent with a core principle of the original legislation. *See Fed. Nat'l Mortgage Assoc.* v. *United States,* 56 Fed. Cl. 228, 234, 237 (2003), *rev'd and remanded on other grounds,* 379 F.3d 1303 (Fed. Cir. 2004) (''Congress turns to technical corrections when it wishes to clarify existing law or repair a scrivener's error, rather than to change the substantive meaning of the statute. . . . [A] technical correction that merely restores the rule Congress intended to enact cannot be construed as a fundamental change in the operation of the statute.''); STAFF OF THE JOINT COMM. ON TAX'N, Overview of Revenue Estimating Procedures and Methodologies Used by the Staff of the Joint Committee on Taxation (JCX–1–05) 33 (2005) (describing a technical correction as ''legislation that is designed to correct errors in existing law in order to fully implement the intended policies of previously enacted legislation'' and a change that ''conforms to and does not alter the intent'' of the underlying legislation).

The comment discussed above asserts that there is no policy reason to treat a QFPF as a foreign person for other provisions in section 897(h) such as the DC–QIE exception, given that the QFPF is not taxed under section 897(h)(1). The Treasury Department and the IRS disagree based on the statute and its policy. As described earlier in this preamble, the policy of the DC–QIE exception looks to foreign control, not control by taxable persons. The presence or absence of taxation of the controlling persons is not determinative. Additionally, Congress expressed in section 897(l) an intent to provide a tax benefit specifically for QFPFs, and not for other owners of a DC–QIE that would benefit from the QFPF's treatment. Therefore, the Treasury Department and the IRS have determined that the appropriate interpretation of the statute is one that

only gives effect to the purpose of section 897(l) to provide an exception from section 897 for QFPFs, rather than a construction that would give non-QFPF investors the ability to rely on section 897(l) to benefit under the DC–QIE exception. The DC–QIE exception is a separate provision with underlying policies that focus on foreign control rather than taxability of controlling persons, and these policies are inconsistent with treating a QFPF as a United States person for purposes of the DC–QIE exception. Accordingly, the final regulations do not adopt the comments' recommendations.

III. Other Comments and Revisions

A. Certain Registered Investment Vehicles

One comment noted that there are a large number of investment vehicles that are publicly registered with the Securities and Exchange Commission (''SEC'') that own QIEs but are not regularly traded and asserted that the final regulations should treat these investment vehicles offered to retail investors (for example, non-traded publicly registered REITs, non-traded publicly registered RICs, or publicly registered open-ended funds) as non-look-through persons. The comment noted that the same reasoning for applying non-look-through treatment to public domestic C corporations and publicly traded partnerships—that is, difficulty in looking through to the entity's owners and the unlikelihood for use as an intermediary entity to establish domestic control—applied equally to those investment vehicles.

The final regulations do not adopt this comment with respect to registered investment vehicles that are QIEs because section 897(h)(4)(E) already provides specific rules with respect to QIE ownership by other QIEs that are incorporated in the final regulations. In particular, under section 897(h)(4)(E)(ii), stock in a QIE held by certain public QIEs is treated as held by a foreign or United States person based on whether the public QIE is itself domestically controlled. § 1.897–1(c)(3)(iii)(C). Section 897(h)(4)(E)(iii) provides that stock of a QIE held by a QIE that is not a public QIE is only treated as held by a United States person in proportion to the stock of the non-public QIE that is held by a United States person. Section 897(h)(4)(E)(iii) thus contemplates look-through treatment for non-public QIEs, even if such QIEs are publicly registered with the SEC, and this treatment is reflected in the final regulations. § 1.897–1(c)(3)(v)(C).

However, the Treasury Department and the IRS are of the view that the treatment of certain RICs that are not QIEs should be aligned with the treatment of other publicly held entities that are not QIEs. The proposed regulations provided that any RIC that is not a QIE, and thus not subject to the rules that apply to public QIEs, is treated as a look-through person. With respect to RICs whose shares are publicly traded or otherwise widely held, this treatment may be viewed as inconsistent with the treatment of publicly traded partnerships and public domestic C corporations, neither of which is subject to look-through treatment under the proposed regulations primarily due to compliance and administrability concerns. The final regulations therefore provide that a public RIC, generally defined as a RIC that is not a QIE and whose shares are (i) regularly traded on an established securities market or (ii) common stock that is continuously offered pursuant to a public offering and held by at least 500 shareholders, is generally treated as a non-look-through person. § 1.897–1(c)(3)(v)(D) and (I). However, for reasons similar to those discussed in part I.C of this Summary of Comments and Explanation of Revisions (regarding foreign-controlled domestic corporations, which are treated as look-through persons), a RIC will not be a public RIC, and thus will be a look-through person, if the QIE being tested for domestically controlled status under § 1.897–1(c)(3) has actual knowledge that the RIC is foreign controlled, which is determined by treating the RIC as a non-public domestic C corporation and applying § 1.897–1(c)(3)(v)(B). § 1.897–1(c)(3)(v)(I).

B. Public Entities

The proposed regulations provided that a person holding less than five percent of U.S. publicly traded stock of a QIE at all times during the testing period, determined without regard to proposed § 1.897–1(c)(3)(ii)(A), is treated as a United States person that is a non-look-through person with respect to that stock, unless the QIE has actual knowledge that such person is not a United States person. Section 897(h)(4)(E)(i); proposed § 1.897–1(c)(3)(iii)(A). To prevent the avoidance of the actual knowledge exception to this rule, the final regulations modify the rule to provide that it will also not apply if the QIE has actual knowledge that such person is foreign controlled (treating any person that is not a non-public domestic C corporation as a non-public domestic C corporation for this purpose). § 1.897–1(c)(3)(iii)(A).

The proposed regulations also provided non-look-through treatment for public domestic C corporations and publicly traded partnerships, which were generally defined to include entities with a class of stock or interests regularly traded on an established securities market. Proposed § 1.897–1(c)(3)(v)(D), (G) and (I). In the final regulations, these definitions exclude domestic entities that are known to be foreign controlled. Thus, consistent with the treatment of public RICs and for reasons similar to those discussed in part I.C of this Summary of Comments and Explanation of Revisions (regarding foreign-controlled domestic corporations, which are treated as look-through persons), a domestic C corporation or a domestic partnership will not be a public domestic C corporation or a publicly traded partnership, respectively, if the QIE being tested for domestically controlled status under § 1.897–1(c)(3) has actual knowledge that the corporation or partnership is foreign controlled (treating the entity as a non-public domestic C corporation for this purpose). § 1.897–1(c)(3)(v)(G) and (J). In such case, the domestic C corporation or domestic partnership will therefore be a look-through person. § 1.897–1(c)(3)(v)(B) through (E).

C. Certification by Domestic C Corporation

One comment recommended that the final regulations provide guidance on how a domestic C corporation may certify to a QIE that it is not a foreign-owned domestic corporation. The comment suggested that the regulations provide a model certification to confirm that a domestic C corporation is not foreign owned, such as a revised Form W–9.

The final regulations do not provide guidance regarding the procedures for determining whether a domestic C corporation is a foreign-controlled domestic corporation, nor do they provide any procedures generally for a QIE to identify its non-look-through person owners for purposes of determining whether the QIE is domestically controlled. A QIE must take appropriate measures to determine the identity of its direct and indirect shareholders in determining whether it is domestically controlled, and the final regulations do not prescribe a specific form or method as to how it solicits or receives information from its shareholders. Guidance with respect to the manner in which a QIE determines the identity of its relevant shareholders for purposes of establishing domestic control is beyond the scope of this

rulemaking but may be considered in a separate guidance project.

D. Section 1445 Withholding on Dispositions of USRPI

Current regulations under section 1445 (imposing withholding of tax on dispositions of USRPI) provide the circumstances under which a transferee of property can ascertain that there is no duty to withhold under section 1445(a) because the transferor is not a foreign person, the property acquired is not a USRPI, or an exception to withholding applies. § 1.1445–2. Section 1.1445–2(c)(3) provides that no withholding is required with respect to an acquisition of an interest in a domestic corporation if the transferor provides the transferee with a copy of a statement, issued by the corporation pursuant to § 1.897–2(h), certifying that the interest in the corporation is not a USRPI. The transferor must request the statement before the transfer, which may be relied on if the statement is dated not more than 30 days before the date of the transfer. A transferee may also rely on a corporation's statement that is voluntarily provided by the domestic corporation in response to a request from the transferee, if that statement otherwise complies with the requirements of §§ 1.1445–2(c)(3) and 1.897–2(h).

Under § 1.897–2(h)(1), a foreign person holding an interest in a domestic corporation may request that the corporation inform the person whether the interest constitutes a USRPI, which the corporation is required to provide within a reasonable period after receipt of such a request. A statement must be provided by the domestic corporation to the foreign person indicating the corporation's determination, and notice must be provided to the IRS in accordance with § 1.897–2(h)(2). Section 1.897–2(h)(3), however, provides that the requirements of § 1.897–2(h) do not apply to ''domestically-controlled REITs, as defined in section 897(h)(4)(B),'' although a corporation not otherwise required to comply with the requirements of § 1.897–2(h) may voluntarily choose to comply with the requirements of § 1.897–2(h)(4) and attach a statement to its income tax return informing the IRS that it is not a United States real property holding corporation.

The availability of the procedures in § 1.1445–2(c)(3) to holders of stock in a domestically controlled QIE is unclear given its reference to a statement provided under § 1.897–2(h), which is explicitly inapplicable to domestically controlled QIEs under § 1.897–2(h)(3). Although § 1.897–2(h) generally does not apply to domestically controlled QIEs pursuant to § 1.897–2(h)(3) (and, therefore, the corporation is not *required,* upon request, to provide a statement to a person holding an interest in the corporation), this should not preclude the availability of the rules in § 1.1445–2(c)(3) to transferors of interests seeking to avoid withholding under section 1445 when the corporation *voluntarily* provides a statement to an interest holder that otherwise complies with § 1.897–2(h). Absent the availability of these procedures, the transferor would not be able to establish that it is transferring an interest in a domestically controlled QIE and is thus not subject to withholding under section 1445(a). The final regulations thus revise the rules in §§ 1.897–2(h)(3) and 1.1445–2(c)(3) to clarify the procedures available to a transferor to certify to a transferee that no withholding is required because the DC–QIE exception applies. As revised, the final regulations confirm that a domestic corporation may voluntarily provide a statement in response to a request from a transferor certifying that an interest in the corporation is not a USRPI because the corporation is a domestically controlled QIE, which the transferor may furnish to the transferee, provided the statement issued by the corporation otherwise complies with the requirements of § 1.897–2(h).

E. Revisions to Examples

A comment observed that proposed § 1.897–1(c)(3)(vi)(D) (*Example 4*) contained a mathematical error. The final version of this example corrects that error, which does not otherwise affect the overall conclusion that the entity at issue does not qualify as a domestically controlled QIE. § 1.897–1(c)(3)(vii)(D) (*Example 4*). The final regulations make other revisions to the examples in proposed § 1.897–1(c)(3)(vi) to clarify the operation of certain rules, but which are not intended to alter the conclusions or substance of those examples.

IV. Applicability Date and Transition Rules

The proposed regulations generally were proposed to apply to transactions occurring on or after the date that those regulations are published as final regulations in the **Federal Register** (''the finalization date''). The preamble to the proposed regulations noted, however, that the rules applicable for determining whether a QIE is domestically controlled may be relevant for determining QIE ownership during periods before the finalization date to the extent the testing period related to a transaction that occurs on or after the finalization date includes periods before that date.

Comments raised concerns with the proposed applicability date; in particular, they noted that it would have a retroactive effect because of the testing period element of the DC–QIE exception and argued that, if adopted, the domestic corporation look-through rule should apply on a fully prospective basis with no application to any portion of a testing period before the finalization date. Further, these comments characterized the proposed regulations as a change from existing law and asserted that applying the rules to existing structures would be inappropriate because restructuring to comply with the rules would be difficult and costly, and buyers may be less inclined to invest in a structure that may be ''tainted'' as failing to qualify for the DC–QIE exception.

Comments generally advocated for the following types of transition relief: (i) for QIEs in existence on the date the proposed regulations were issued, provide an exception (subject to termination rules like those in § 301.7701–2(d)) such that a foreign-owned domestic corporation is not treated as a look-through person; (ii) exempt foreign investors in existing QIEs from the domestic corporation look-through rule to the extent of existing ownership and capital commitments as of the date the proposed regulations were issued; (iii) only apply the domestic corporation look-through rule to QIE stock acquired by a foreign-owned domestic corporation after the finalization date; or (iv) delay application of the domestic corporation look-through rule to existing QIEs for some period ranging from at least 120 days after the finalization date to tax years beginning on or after January 1, 2028 (drawing from the general five-year testing period standard).

The final regulations do not adopt the suggestion to delay application of the final domestic corporation look-through rule, which would exempt both existing and new QIE structures from the rule. However, the Treasury Department and the IRS have determined that, although the final domestic corporation look-through rule represents the appropriate application of section 897(h)(4)(B), its effect should be limited with respect to investors that may have entered into structures with the expectation that domestic control of a QIE would be determined without regard to that rule. Thus, consistent with the first three types of comments noted above, the final regulations include a transition

rule that, for a ten-year period, exempts existing structures from the final domestic corporation look-through rule, provided they meet certain requirements. § 1.897–1(c)(3)(vi). These requirements are intended to ensure that the final domestic corporation look-through rule does not apply to preexisting business arrangements, but only to the extent the QIE does not acquire a significant amount of new USRPIs and does not undergo a significant change in its ownership (subject to an exception for acquisitions of a USRPI or QIE interest pursuant to a previous binding commitment). § 1.897–1(c)(3)(vi)(A) and (E). If either of these two thresholds is exceeded, the QIE at that time becomes subject to the final domestic corporation look-through rule like any other QIE. § 1.897–1(c)(3)(vi)(B).

A QIE is considered to have acquired a significant amount of new USRPIs if the total fair market value of the USRPIs it acquires directly and indirectly exceeds 20 percent of the fair market value of the USRPIs held directly and indirectly by the QIE as of April 24, 2024. § 1.897–1(c)(3)(vi)(A)(*2*). The final regulations provide that the value of the USRPIs held directly and indirectly by a QIE on April 24, 2024 is determined as of that date and that, for this purpose, taxpayers may use the most recently calculated amounts under the quarterly tests described in section 851(b)(3) or 856(c)(4), as applicable. § 1.897–1(c)(3)(vi)(D). By using these existing rules the final regulations minimize the need to make additional or complex valuations.

In determining whether there has been a significant change in the ownership of a QIE, the final regulations consider whether the direct or indirect ownership of the QIE by non-look-through persons (determined by applying the final domestic corporation look-through rule) has increased by more than 50 percentage points in the aggregate relative to the QIE stock owned by such non-look-through persons on April 24, 2024. § 1.897–1(c)(3)(vi)(A)(*3*). Because this rule applies on a percentage basis, a non-pro-rata issuance or redemption of stock is counted towards the 50 percentage point amount. To simplify the determination of changes in ownership of stock of a QIE that is publicly traded, the final regulations disregard transfers by any person (regardless of whether they are a non-look-through person) that owns a less than five-percent interest in the stock of the QIE, unless the QIE has actual knowledge of that person's ownership. § 1.897–1(c)(3)(vi)(G).

The transition rule applies until April 24, 2034, or, if earlier, until the requirements precluding significant acquisitions of USRPIs and changes in ownership are not met, at which time the final domestic corporation look-through rule applies in determining whether a QIE is domestically controlled. § 1.897–1(c)(3)(vi)(B). The ten-year period is intended to provide sufficient time to mitigate the impact of the final domestic corporation look-through rule on existing QIEs and their investors, but ensures that all QIEs are eventually subject to the same rules. However, even after the transition rule no longer applies, the final domestic corporation look-through rule is prospective only and thus does not apply to any portion of a testing period during which the transition rule applied to a QIE. § 1.897–1(c)(3)(vi)(C). Thus, for example, if the transition rule ceases to apply to a QIE due to a change in its ownership but, at such time, the QIE is a domestically controlled QIE notwithstanding the final domestic corporation look-through rule, the determination of domestic control for the testing period of a subsequent disposition of QIE stock may disregard the final domestic corporation look-through rule to the extent the transition rule applied.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) generally requires that a Federal agency obtain the approval of the OMB before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. The collection of information in § 1.1445–2(c)(3) is a statement provided by a domestic corporation that certifies that an interest in such corporation is not a U.S. real property interest. Section 1.1445–2(c)(3) clarifies that the existing procedure may also be used by a domestic corporation to certify that it is a domestically controlled QIE (as determined under § 1.897–1(c)(3)), as long as the certification is voluntarily issued and otherwise complies with the existing requirements in § 1.897–2(h).

This modification to § 1.1445–2(c)(3) clarifies the existing scope of the collection of information. For purposes of the PRA, the reporting burden associated with the collections of information in § 1.1445–2(c)(3) will be reflected in the Paperwork Reduction Act Submissions associated with the section 1445 regulations (OMB control number 1545–0902).

III. Regulatory Flexibility Act

A. Succinct Statement of the Need for, and Objectives of, the Final Regulations

As discussed in the preamble to the proposed regulations, there may be some uncertainty as to whether QFPFs and QCEs, which are treated as not ''nonresident alien individuals or foreign corporations'' for purposes of section 897, are treated as foreign persons for purposes of the DC–QIE exception. Treating QFPFs and QCEs as non-foreign investors for purposes of the DC–QIE exception has the potential to expand the effect of section 897(l) to foreign investors who are neither QFPFs nor QCEs (by exempting such investors from tax under section 897(a)). These regulations eliminate any uncertainty that taxpayers may have as to the proper classification of QFPFs and QCEs for purposes of the DC–QIE exception by providing that QFPFs and QCEs are treated as foreign persons for purposes of the DC–QIE exception.

Also as discussed in the preamble to the proposed regulations, there is uncertainty regarding the determination of whether stock of a QIE is held ''directly or indirectly'' by foreign persons for purposes of the DC–QIE exception. These regulations provide rules to clarify this determination.

Because there was a possibility of significant economic impact on a substantial number of small entities as a result of the rules relating to the treatment of QFPFs and QCEs for purposes of the DC–QIE exception and the definition of a domestically controlled QIE, the proposed regulations provided an initial regulatory flexibility analysis and requested comments from the public on the number of small entities that may be impacted and whether that impact will be economically significant. No comments were received.

B. Small Entities to Which These Regulations Will Apply

The regulation relating to the treatment of QFPFs and QCEs for purposes of the DC–QIE exception affects other foreign investors in QIEs.

The regulation defining a domestically controlled QIE also affects foreign investors in QIEs. Because an estimate of the number of small businesses affected is not currently feasible, this final regulatory flexibility analysis assumes that a substantial number of small businesses will be affected. The Treasury Department and the IRS do not expect that these regulations will affect a substantial number of small nonprofit organizations or small governmental jurisdictions.

C. Projected Reporting, Recordkeeping, and Other Compliance Requirements

These regulations do not impose additional reporting or recordkeeping obligations. However, see Part II of this Special Analysis describing certain voluntary reporting that these regulations clarify is available in § 1.1445–2(c)(3) by a domestic corporation to certify that it is a domestically controlled QIE.

D. Steps Taken To Minimize Significant Economic Impact, Legal Reasons, and Alternatives Considered

The final regulations address potential uncertainty under current law and do not impose an additional economic burden. Consequently, the rules represent the approach with the least economic impact.

These regulations clarify the treatment of QFPFs and QCEs for purposes of the DC–QIE exception. The rules are intended to ensure that the exemption under section 897(l) does not inappropriately inure to non-QFPFs or non-QCEs by treating QFPFs and QCEs as domestic investors for purposes of the DC–QIE exception. These regulations also clarify whether stock of a QIE is held ''directly or indirectly'' by foreign persons in determining whether the DC–QIE exception applies. The legal basis for these regulations is contained in sections 897(l) and 7805.

Section 897(a) applies to nonresident alien individuals and foreign corporations, and neither the statute nor prior regulations establish different rules for small entities. Moreover, the DC–QIE exception is measured based on the ownership interests in a QIE, regardless of the size of the investor. Because the DC–QIE exception takes into account all investors, regardless of size, the Treasury Department and the IRS have concluded that the DC–QIE exception should apply uniformly to large and small business entities. The Treasury Department and the IRS did not consider any significant alternative to the rule that provides for the treatment of QFPFs and QCEs under the DC–QIE exception.

The Treasury Department and the IRS did consider alternatives for the rule that defines a domestically controlled QIE, including one alternative that generally would treat all domestic C corporations as non-look-through persons (that is, without the special rule for foreign-controlled domestic corporations discussed in part I of the Summary of Comments and Explanation of Revisions section of this preamble). However, the Treasury Department and the IRS concluded that the look-through approach in the final regulations best serves the purposes of the DC–QIE exception while also taking into account ''indirect'' ownership of QIE stock by foreign persons in determining whether a QIE is domestically controlled under section 897(h)(4)(B).

IV. Section 7805(f)

Pursuant to section 7805(f) of the Code, the proposed regulations (REG–100442–22) preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small businesses and no comments were received.

V. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. The final regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

VI. Executive Order 13132: Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. The final regulations do not have federalism implications, do not impose substantial direct compliance costs on State and local governments, and do not preempt State law within the meaning of the Executive order.

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 Publishing Office, Washington, DC 20402, or by visiting the IRS website at *www.irs.gov.*

Drafting Information

The principal author of these final regulations is Arielle Borsos, Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order for §§ 1.897–1, 1.897–2, and 1.1445–2 to read in part as follows:

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

* * * * *

Section 1.897–1 also issued under 26 U.S.C. 897 and 897(l)(3).

Section 1.897–2 also issued under 26 U.S.C. 897.

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Section 1.1445–2 also issued under 26 U.S.C. 1445.

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■ **Par. 2.** Section 1.897–1 is amended by:

■ 1. Revising paragraph (a)(2);

■ 2. Removing and reserving paragraph (c)(2)(i);

■ 3. Adding paragraphs (c)(3) and (4) and (k);

■ 4. Revising and republishing paragraph (l); and

■ 5. Adding paragraph (n).

The revisions and additions read as follows:

§ 1.897–1 Taxation of foreign investment in United States real property interests, definition of terms.

(a) * * *

(2) *Applicability date.* Except as otherwise provided in this paragraph (a)(2), the regulations set forth in this section and §§ 1.897–2 through 1.897–4 apply to transactions occurring after June 18, 1980. Except as otherwise

provided in paragraph (c)(3)(vi) of this section, paragraphs (c)(3) and (4), (k), and (l) of this section apply to transactions occurring on or after April 25, 2024, and transactions occurring before April 25, 2024, resulting from an entity classification election under § 301.7701–3 of this chapter that was effective on or before April 25, 2024, but was filed on or after April 25, 2024. For transactions occurring before April 25, 2024, *see* paragraphs (c)(2)(i) and (l) of this section and § 1.897–9T(c) contained in 26 CFR part 1, as revised April 1, 2024.

* * * * *

(c) * * *

(3) *Domestically controlled QIE*—(i) *In general.* An interest in a domestically controlled qualified investment entity (QIE) is not a United States real property interest. A QIE is domestically controlled if foreign persons hold directly or indirectly less than 50 percent of the fair market value of the QIE's outstanding stock at all times during the testing period. For rules that apply to distributions by a QIE (including a domestically controlled QIE) attributable to gain from the sale or exchange of a United States real property interest, *see* section 897(h)(1).

(ii) *Look-through approach for determining QIE stock held directly or indirectly.* The following rules apply for purposes of determining whether a QIE is domestically controlled:

(A) *Non-look-through persons considered holders.* Only a non-look-through person is considered to hold directly or indirectly stock of the QIE.

(B) *Attribution from look-through persons.* Stock of a QIE that, but for the application of paragraph (c)(3)(ii)(A) of this section, would be considered directly or indirectly held by a look-through person, is instead considered held directly or indirectly by the look-through person's shareholders, partners, or beneficiaries, as applicable, that are non-look-through persons based on the non-look-through person's proportionate interest in the look-through person. To the extent the shareholders, partners, or beneficiaries, as applicable, of the look-through person are also look-through persons, this paragraph (c)(3)(ii)(B) applies to such shareholders, partners, or beneficiaries as if they directly or indirectly held, but for the application of paragraph (c)(3)(ii)(A) of this section, their proportionate share of the stock of the QIE.

(C) *No attribution from non-look-through persons.* Stock of a QIE considered held directly or indirectly by a non-look-through person is not considered held directly or indirectly by any other person.

(iii) *Special rules for applying look-through approach.* The following additional special rules apply for purposes of determining whether a QIE is domestically controlled:

(A) *Certain holders of U.S. publicly traded QIE stock.* Notwithstanding any other provision of this paragraph (c)(3), a person holding less than five percent of U.S. publicly traded stock of a QIE at all times during the testing period, determined without regard to paragraph (c)(3)(ii)(A) of this section, is treated as a United States person that is a non-look-through person with respect to that stock, unless the QIE has actual knowledge that such person is not a United States person or has actual knowledge that such person is foreign controlled as determined under paragraph (c)(3)(v)(B) of this section (treating any person that is not a non-public domestic C corporation as if it were a non-public domestic C corporation for this purpose). For an example illustrating the application of this paragraph (c)(3)(iii)(A), *see* paragraph (c)(3)(vii)(C) of this section (*Example 3*).

(B) *Certain foreign-controlled domestic C corporations.* A non-public domestic C corporation is treated as a look-through-person if it is a foreign-controlled domestic corporation. For an example illustrating the application of this paragraph (c)(3)(iii)(B), *see* paragraph (c)(3)(vii)(B) of this section (*Example 2*).

(C) *Public QIEs.* A public QIE is treated as a foreign person that is a non-look-through person. The preceding sentence does not apply, however, if the public QIE is a domestically controlled QIE as defined in this paragraph (c)(3), determined after the application of this paragraph (c)(3)(iii), in which case the public QIE is treated as a United States person that is a non-look-through person. For an example illustrating the application of this paragraph (c)(3)(iii)(C), *see* paragraph (c)(3)(vii)(C) of this section (*Example 3*).

(iv) *Treatment of certain persons as foreign persons*—(A) *Qualified foreign pension fund or qualified controlled entity.* For purposes of this paragraph (c)(3), a qualified foreign pension fund (including any part of a qualified foreign pension fund) or a qualified controlled entity is treated as a foreign person, irrespective of whether the fund or entity qualifies for the exception from section 897 provided in § 1.897(l)–1(b)(1). For an example illustrating the application of this paragraph (c)(3)(iv)(A), *see* paragraph (c)(3)(vii)(A) of this section (*Example 1*). *See also* paragraph (k) of this section for a definition of foreign person that applies for purposes of sections 897, 1445, and 6039C.

(B) *International organization.* For purposes of this paragraph (c)(3), an international organization (as defined in section 7701(a)(18)) is treated as a foreign person. *See* § 1.897–9T(e) (regarding the treatment of international organizations under sections 897, 1445, and 6039C), which provides that an international organization is not a foreign person with respect to United States real property interests, and is not subject to sections 897, 1445, and 6039C on the disposition of a United States real property interest.

(v) *Definitions.* The following definitions apply for purposes of this paragraph (c)(3):

(A) A *domestic C corporation* is any domestic corporation other than a regulated investment company (RIC) as defined in section 851, a real estate investment trust (REIT) as defined in section 856, or an S corporation as defined in section 1361.

(B) A *foreign-controlled domestic corporation* is any non-public domestic C corporation if foreign persons hold directly or indirectly more than 50 percent of the fair market value of the non-public domestic C corporation's outstanding stock. For purposes of determining whether a non-public domestic C corporation is a foreign-controlled domestic corporation, the rules of paragraphs (c)(3)(ii)(A) through (C) and (c)(3)(iii)(C) of this section apply with the following modifications—

(*1*) In paragraphs (c)(3)(ii)(A) through (C) of this section, treating references to *QIE* as references to *non-public domestic C corporation;* and

(*2*) A non-public domestic C corporation that is a foreign-controlled domestic corporation under this paragraph (c)(3)(v)(B) is treated as a look-through person for purposes of determining whether any other non-public domestic C corporation is a foreign-controlled domestic corporation.

(C) A *look-through person* is any person other than a non-look-through person. Thus, for example, a look-through person includes a REIT that is not a public QIE, an S corporation, a partnership (domestic or foreign) that is not a publicly traded partnership, a RIC that is not a public RIC, and a trust (domestic or foreign, whether or not the trust is described in sections 671 through 679). For a special rule that treats certain non-public domestic C corporations as look-through persons, *see* paragraph (c)(3)(iii)(B) of this section.

(D) A *non-look-through person* is an individual, a domestic C corporation (other than a foreign-controlled domestic corporation), a nontaxable holder, a foreign corporation (including a foreign government pursuant to section 892(a)(3)), a publicly traded partnership (domestic or foreign), a public RIC, an estate (domestic or foreign), an international organization (as defined in section 7701(a)(18)), a qualified foreign pension fund (including any part of a qualified foreign pension fund), or a qualified controlled entity. For special rules that treat certain holders of QIE stock as non-look-through persons, *see* paragraphs (c)(3)(iii)(A) and (C) of this section.

(E) A *non-public domestic C corporation* is any domestic C corporation that is not a public domestic C corporation.

(F) A *nontaxable holder* is—

(*1*) Any organization that is exempt from taxation by reason of section 501(a);

(*2*) The United States, any State (as defined in section 7701(a)(10)), any territory of the United States, or a political subdivision of any State or any territory of the United States; or

(*3*) Any Indian Tribal government (as defined in section 7701(a)(40)) or its subdivision (determined in accordance with section 7871(d)).

(G) A *public domestic C corporation* is a domestic C corporation any class of stock of which is regularly traded on an established securities market within the meaning of §§ 1.897–1(m) and 1.897–9T(d). A domestic C corporation is not a public domestic C corporation, however, if the QIE whose status as domestically controlled is being determined under this paragraph (c)(3) has actual knowledge that the domestic C corporation is foreign controlled as determined under paragraph (c)(3)(v)(B) of this section (treating the domestic C corporation for this purpose as if it were a non-public domestic C corporation).

(H) A *public QIE* is a QIE any class of stock of which is regularly traded on an established securities market within the meaning of §§ 1.897–1(m) and 1.897–9T(d), or that is a RIC that issues redeemable securities within the meaning of section 2 of the Investment Company Act of 1940.

(I) A *public RIC* is a RIC that is not a QIE and any class of stock of which is either regularly traded on an established securities market within the meaning of §§ 1.897–1(m) and 1.897–9T(d), or common stock that is continuously offered pursuant to a public offering (within the meaning of section 4 of the Securities Act of 1933, as amended (15 U.S.C. 77a to 77aa)) and held by or for no fewer than 500 persons. A RIC is not a public RIC, however, if the QIE whose status as domestically controlled is being determined under this paragraph (c)(3) has actual knowledge that the RIC is foreign controlled as determined under paragraph (c)(3)(v)(B) of this section (treating the RIC for this purpose as if it were a non-public domestic C corporation).

(J) A *publicly traded partnership* is a partnership any class of interest of which is regularly traded on an established securities market within the meaning of §§ 1.897–1(m) and 1.897–9T(d). A domestic partnership is not a publicly traded partnership, however, if the QIE whose status as domestically controlled is being determined under this paragraph (c)(3) has actual knowledge that the domestic partnership is foreign controlled as determined under paragraph (c)(3)(v)(B) of this section (treating the partnership for this purpose as if it were a non-public domestic C corporation).

(K) A *qualified controlled entity* has the meaning set forth in § 1.897(l)–1(e)(9).

(L) A *qualified foreign pension fund* has the meaning set forth in § 1.897(l)–1(c).

(M) A *QIE* is a qualified investment entity, as defined in section 897(h)(4)(A).

(N) *Testing period* has the meaning set forth in section 897(h)(4)(D).

(O) *U.S. publicly traded QIE stock* is any class of stock of a QIE that is regularly traded on an established securities market within the meaning of §§ 1.897–1(m) and 1.897–9T(d), but only if the established securities market is in the United States.

(vi) *Transition rule for certain QIEs owned by foreign-controlled domestic corporations*—(A) *General rule.* Except as provided in paragraph (c)(3)(vi)(B) of this section, paragraph (c)(3)(iii)(B) of this section does not apply with respect to a QIE that is in existence as April 24, 2024, and satisfies the following requirements at all times on and after April 24, 2024—

(*1*) The QIE is domestically controlled (as determined under this paragraph (c)(3), but without regard to paragraph (c)(3)(iii)(B) of this section);

(*2*) The aggregate fair market value of any United States real property interests acquired by the QIE directly and indirectly after April 24, 2024, is no more than 20 percent of the aggregate fair market value of the United States real property interests held directly and indirectly by the QIE as of April 24, 2024 (determined in accordance with paragraph (c)(3)(vi)(D) of this section); and

(*3*) The percentage of the stock of the QIE held directly or indirectly by one or more non-look-through persons (determined based on fair market value and under the rules of paragraphs (c)(3)(ii) through (v) of this section and this paragraph (c)(3)(vi), including paragraph (c)(3)(iii)(B) of this section) does not increase by more than 50 percentage points in the aggregate over the percentage of stock of the QIE owned directly or indirectly by such non-look-through persons on April 24, 2024.

(B) *Termination of transition rule.* The transition rule described in paragraph (c)(3)(vi)(A) of this section will cease to apply, and the rule in paragraph (c)(3)(iii)(B) of this section will apply for purposes of determining whether a QIE is domestically controlled, with respect to transactions occurring on or after the earlier of:

(*1*) The date immediately following the date on which the QIE fails to meet any of the requirements described in paragraph (c)(3)(vi)(A) of this section; and

(*2*) April 24, 2034. For an example illustrating the application of paragraph (c)(3)(vi)(A) of this section and this paragraph (c)(3)(vi)(B), *see* paragraph (c)(3)(vii)(E) of this section (*Example 5*).

(C) *Effect of transition rule on testing period.* If the transition rule described in paragraph (c)(3)(vi)(A) of this section ceases to apply to a QIE under paragraph (c)(3)(vi)(B) of this section, the rule in paragraph (c)(3)(iii)(B) of this section will not apply to the QIE with respect to the portion of any testing period during which the transition rule in this paragraph (c)(3)(vi) applied.

(D) *Determination of fair market value of United States real property interests.* For purposes of paragraph (c)(3)(vi)(A)(*2*) of this section, the fair market value of the United States real property interests held directly and indirectly by a QIE on April 24, 2024, is the value of such property interests as calculated under section 851(b)(3) or 856(c)(4) as of the close of the most recent quarter of the QIE's taxable year before April 24, 2024. For purposes of paragraph (c)(3)(vi)(A)(*2*) of this section, the fair market value of any property acquired after the close of the most recent quarter of the QIE's taxable year before April 24, 2024, whether acquired before or after April 24, 2024, is determined on the date of such acquisition using a reasonable method, provided the QIE consistently uses the same method with respect to all of its United States real property interests when applying this paragraph (c)(3)(vi).

(E) *Binding commitments.* For purposes of paragraphs (c)(3)(vi)(A)(*2*) and (*3*) of this section, a direct or indirect acquisition of a United States real property interest, or of stock of a QIE pursuant to a written agreement that was (subject to customary conditions) binding before April 24, 2024, and all times thereafter, or pursuant to a tender offer announced before April 24, 2024, that is subject to section 14(e) of the Securities and Exchange Act of 1934 (15 U.S.C. 78n(e)) and 17 CFR 240.14e–1 through 240.14e–8 (Regulation 14E), is treated as occurring on April 24, 2024.

(F) *Ownership by certain successors under section 368(a)(1)(F).* For purposes of paragraph (c)(3)(vi)(A)(*3*) of this section, the transferor corporation and the resulting corporation (as defined in § 1.368–2(m)(1)) in a reorganization described under section 368(a)(1)(F) (whether engaged in by the QIE or by another corporation) are treated as the same corporation.

(G) *Ownership by less than five-percent public shareholders.* For purposes of paragraph (c)(3)(vi)(A)(*3*) of this section, in the case of any class of stock of a QIE that is regularly traded on an established securities market within the meaning of §§ 1.897–1(m) and 1.897–9T(d), all such stock owned by persons holding less than 5 percent of that class of stock, determined without regard to paragraph (c)(3)(ii)(A) of this section, is treated as stock owned by a single non-look-through person except to the extent that the QIE has actual knowledge regarding the ownership of any person.

(vii) *Examples.* The rules of this paragraph (c)(3) are illustrated by the following examples. It is assumed that each entity has a single class of stock or other ownership interests, that the ownership described existed throughout the relevant testing period and that, unless otherwise stated, a QIE is not a public QIE as defined under paragraph (c)(3)(v)(H) of this section.

(A) *Example 1: QIE stock held by public domestic C corporation*—(*1*) *Facts.* USR is a REIT, 51 percent of the stock of which is held by X, a public domestic C corporation as defined in paragraph (c)(3)(v)(G) of this section, and 49 percent of the stock of which is held by nonresident alien individuals, which are foreign persons as defined in paragraph (k) of this section.

(*2*) *Analysis.* Under paragraph (c)(3)(v)(M) of this section, USR is a QIE. Because X is a public domestic C corporation, it cannot be a foreign-controlled domestic corporation and, therefore, is a non-look-through person as defined under paragraph (c)(3)(v)(D) of this section. Thus, under paragraph (c)(3)(ii)(A) of this section X is considered as holding directly or indirectly stock of USR for purposes of determining whether USR is a domestically controlled QIE. Under paragraph (c)(3)(ii)(C) of this section, the USR stock held directly or indirectly by X is not considered held directly or indirectly by any other person, including the shareholders of X. Because X is not a foreign person as defined in paragraph (k) of this section and holds directly or indirectly 51 percent of the single class of outstanding stock of USR, foreign persons hold directly or indirectly less than 50 percent of the fair market value of the stock of USR, and USR therefore is a domestically controlled QIE under paragraph (c)(3)(i) of this section.

(*3*) *Alternative facts: QIE stock held by domestic partnership.* The facts are the same as in paragraph (c)(3)(vii)(A)(*1*) of this section (*Example 1*), except that, instead of being a public domestic C corporation, X is a domestic partnership that is not a publicly traded partnership as defined in paragraph (c)(3)(v)(J) of this section. In addition, FC1, a foreign corporation, holds a 50 percent interest in X, and the remaining interests in X are held by U.S. citizens. X is not a non-look-through person as defined in paragraph (c)(3)(v)(D) of this section and, therefore, is a look-through person as defined in paragraph (c)(3)(v)(C) of this section. Accordingly, under paragraph (c)(3)(ii)(A) of this section, X is not considered as holding directly or indirectly stock of USR for purposes of determining whether USR is a domestically controlled QIE. Under paragraph (c)(3)(ii)(B) of this section, the stock of USR that, but for paragraph (c)(3)(ii)(A) of this section, is considered held by X, a look-through person, is instead considered held proportionately by X's partners that are non-look-through persons. Accordingly, because FC1 and the U.S. citizen partners in X are non-look-through persons as defined in paragraph (c)(3)(v)(D) of this section, 25.5 percent of the stock of USR is considered as held directly or indirectly by FC1 (50% x 51%), a foreign person as defined in paragraph (k) of this section, and 25.5 percent (in the aggregate) of the stock of USR is considered as held directly or indirectly by the U.S. citizen partners in X (50% x 51%), who are not foreign persons as defined in paragraph (k) of this section. Foreign persons therefore hold directly or indirectly 74.5 percent of the stock of USR (49 percent of the stock of USR held directly or indirectly by nonresident alien individuals, who are non-look-through persons as defined in paragraph (c)(3)(v)(D) of this section, plus the 25.5 percent held directly or indirectly by FC1), and USR is not a domestically controlled QIE under paragraph (c)(3)(i) of this section. The result described in this paragraph (c)(3)(vii)(A)(*3*) would be the same if, instead of being a domestic partnership, X were a foreign partnership.

(*4*) *Alternative facts: QIE stock held by a qualified foreign pension fund.* The facts are the same as in paragraph (c)(3)(vii)(A)(*3*) of this section (*Example 1*), except that, instead of being a foreign corporation, FC1 is a qualified foreign pension fund. The analysis is the same as in paragraph (c)(3)(vii)(A)(*3*) (*Example 1*) regarding the treatment of X as a look-through person as defined in paragraph (c)(3)(v)(C) of this section. In addition, FC1, a foreign person under paragraph (c)(3)(iv)(A) of this section, is a non-look-through person as defined in paragraph (c)(3)(v)(D) of this section. Because FC1 and the U.S. citizen partners in X are non-look-through persons, 25.5 percent of the stock of USR is considered as held directly or indirectly by FC1 (50% x 51%), and 25.5 percent (in the aggregate) of the stock of USR is considered as held directly or indirectly by the U.S. citizen partners in X (50% x 51%). Thus, for the same reasons described in paragraph (c)(3)(vii)(A)(*3*) (*Example 1*), foreign persons hold directly or indirectly 74.5 percent of the stock of USR, and USR is not a domestically controlled QIE under paragraph (c)(3)(i) of this section.

(B) *Example 2: QIE stock held by non-public domestic C corporation that is a foreign-controlled domestic corporation*—(*1*) *Facts.* USR is a REIT, 51 percent of the stock of which is held by X, a non-public domestic C corporation as defined in paragraph (c)(3)(v)(E) of this section, and 49 percent of the stock of which is held by nonresident alien individuals, which are foreign persons as defined in paragraph (k) of this section. FC1, a foreign corporation, holds 40 percent of the stock of X, and Y, a nonresident alien individual, holds 15 percent of the stock of X. The remaining 45 percent of the stock of X is held by U.S. citizens.

(*2*) *Analysis.* Under paragraph (c)(3)(v)(M) of this section, USR is a QIE. X, a non-public domestic C corporation, is a non-look-through person as defined under paragraph (c)(3)(v)(D) of this section, unless paragraph (c)(3)(iii)(B) of this section applies to treat X as a look-through person because X is a foreign-controlled domestic corporation. FC1, Y, and the U.S. citizen shareholders of X are non-look-through persons as defined under paragraph (c)(3)(v)(D).

Under paragraph (c)(3)(v)(B)(*1*) of this section, FC1, Y, and the U.S. citizen shareholders are all considered as holding directly or indirectly stock of X for purposes of determining whether X is a foreign-controlled domestic corporation. Under paragraph (c)(3)(v)(B)(*1*) of this section, the stock held directly or indirectly by FC1, Y, and the U.S. citizen shareholders is not considered held directly or indirectly by any other person. Because FC1 and Y, both foreign persons as defined in paragraph (k) of this section, hold directly or indirectly 40 percent and 15 percent of the stock of X, respectively, foreign persons hold directly or indirectly more than 50 percent of the fair market value of the stock of X, and X is a foreign-controlled domestic corporation under paragraph (c)(3)(v)(B) of this section. Accordingly, under paragraph (c)(3)(iii)(B) of this section, X is a look-through person as defined in paragraph (c)(3)(v)(C) of this section and, therefore, under paragraph (c)(3)(ii)(A) of this section is not considered as holding directly or indirectly stock of USR for purposes of determining whether USR is a domestically controlled QIE. Under paragraph (c)(3)(ii)(B) of this section, the stock of USR that, but for paragraph (c)(3)(ii)(A), is considered held by X, a look-through person, is instead considered held proportionately by X's shareholders that are non-look-through persons. Accordingly, because FC1, Y, and the U.S. citizen shareholders of X are non-look-through persons, 20.4 percent of the stock of USR is considered as held directly or indirectly by FC1 (40% x 51%), 7.65 percent of the stock of USR is considered as held directly or indirectly by Y (15% x 51%), and 22.95 percent (in the aggregate) of the stock of USR is considered as held directly or indirectly by the U.S. citizen shareholders (45% x 51%). Foreign persons therefore hold directly or indirectly 77.05 percent of the stock of USR (49 percent of the stock of USR held directly by nonresident alien individuals, who are foreign persons and non-look-through persons as defined in paragraph (c)(3)(v)(D), plus the 20.4 percent and 7.65 percent held indirectly by FC1 and Y, respectively), and USR is not a domestically controlled QIE under paragraph (c)(3)(i) of this section. The result described in this paragraph (c)(3)(vii)(B)(*2*) would be different if Y were a U.S. citizen instead of a nonresident alien individual, in which case X would be a non-look-through person because it is not a foreign-controlled domestic corporation under paragraph (c)(3)(v)(B) (the only foreign non-look-through person to hold directly or indirectly stock in X is FC1, which holds a 40-percent interest). Consequently, USR would be a domestically controlled QIE under paragraph (c)(3)(i) of this section because foreign persons hold directly or indirectly less than 50 percent of the stock of USR.

(C) *Example 3: QIE stock held by public QIE that is a domestically controlled QIE*—(*1*) *Facts.* USR2 is a REIT, 51 percent of the stock of which is held by USR1, a REIT that is a public QIE as defined in paragraph (c)(3)(v)(H) of this section, and 49 percent of the stock of which is held by nonresident alien individuals, which are foreign persons as defined in paragraph (k) of this section. The stock of USR1 is U.S. publicly traded QIE stock as defined in paragraph (c)(3)(v)(O) of this section. FC1 and FC2, both foreign corporations, each hold 20 percent of the stock of USR1. The remaining 60 percent of the stock of USR1 is held by persons that each hold less than 5 percent of the stock of USR1 and with respect to which USR1 has no actual knowledge that such person is not a United States person or is foreign controlled (as determined under paragraph (c)(3)(v)(B) of this section by treating any person that is not a non-public domestic C corporation as if it were a non-public domestic C corporation for this purpose) (USR1 less than five-percent public shareholders).

(*2*) *Analysis.* Under paragraph (c)(3)(v)(M) of this section, USR2 and USR1 are QIEs. Under paragraph (c)(3)(iii)(A) of this section, each of the USR1 less than five-percent public shareholders is treated as a United States person that is a non-look-through person. Consequently, under paragraph (c)(3)(i) of this section USR1 is a domestically controlled QIE because FC1 and FC2, each a foreign person as defined in paragraph (k) of this section that is a non-look-through person under paragraph (c)(3)(v)(D) of this section, together hold directly or indirectly only 40 percent of the stock of USR1 and, thus, foreign persons hold directly or indirectly less than 50 percent of the fair market value of the stock of USR1. In addition, the USR2 stock held by USR1 is treated as held directly or indirectly by a United States person that is a non-look-through person under paragraph (c)(3)(iii)(C) of this section. Because USR1 holds directly or indirectly 51 percent of the stock of USR2, foreign persons hold directly or indirectly less than 50 percent of the fair market value of the stock of USR2, and USR2 is a domestically controlled QIE under paragraph (c)(3)(i) of this section.

(*3*) *Alternative facts: QIE stock held by public QIE that is not a domestically controlled QIE.* The facts are the same as in paragraph (c)(3)(vii)(C)(*1*) of this section (*Example 3*), except that 25 percent of the stock of USR1 is held by each of FC1 and FC2, with the remaining 50 percent of the stock of USR1 held by the USR1 less than five-percent public shareholders. Regardless of the treatment of the USR1 less than five-percent public shareholders, USR1 is not a domestically controlled QIE under paragraph (c)(3)(i) of this section because FC1 and FC2, each a foreign person as defined in paragraph (k) of this section that is a non-look-through person under paragraph (c)(3)(v)(D) of this section, together hold directly or indirectly 50 percent of the stock of USR1 and, thus, foreign persons do not hold directly or indirectly less than 50 percent of the fair market value of the stock of USR1. In addition, the USR2 stock held by USR1 is treated as held by a foreign person that is a non-look-through person under paragraph (c)(3)(iii)(C) of this section. Because USR1 holds directly or indirectly 51 percent of the stock of USR2, foreign persons do not hold directly or indirectly less than 50 percent of the fair market value of the stock of USR2, and USR2 is not a domestically controlled QIE under paragraph (c)(3)(i) of this section.

(D) *Example 4: QIE stock held by non-public QIE*—(*1*) *Facts.* USR2 is a REIT, 49 percent of the stock of which is held by nonresident alien individuals, and 51 percent of the stock of which is held by USR1, a REIT. USR1 is not a public QIE as defined in paragraph (c)(3)(v)(H) of this section. U.S. citizens hold 50 percent of the stock of USR1. The remaining 50 percent of the stock of USR1 is held by PRS, a domestic partnership, 50 percent of the interests in which are held by DC, a public domestic C corporation as defined in paragraph (c)(3)(v)(G) of this section, and 50 percent of the interests in which are held by nonresident alien individuals.

(*2*) *Analysis.* Under paragraph (c)(3)(v)(M) of this section, USR2 and USR1 are QIEs. USR1 is not treated as a non-look-through person under paragraph (c)(3)(iii)(C) of this section because USR1 is not a public QIE as defined in paragraph (c)(3)(v)(H) of this section. Each of USR1 and PRS is a look-through person as defined in paragraph (c)(3)(v)(C) of this section that is not treated as holding directly or indirectly stock in USR2 for purposes of determining whether USR2 is a domestically controlled QIE under paragraph (c)(3)(ii)(A) of this section.

Because the U.S. citizens who hold USR1 stock are non-look-through persons as defined in paragraph (c)(3)(v)(D) of this section, those U.S. citizens are treated under paragraph (c)(3)(ii)(B) of this section as holding directly or indirectly 25.5 percent of the stock of USR2 through their USR1 stock interest (50% x 51%) in accordance with paragraph (c)(3)(ii)(A) of this section. Similarly, because DC and the nonresident alien partners in PRS are non-look-through persons, each is treated under paragraph (c)(3)(ii)(B) of this section as holding directly or indirectly the stock of USR2 through its interest in PRS and PRS's interest in USR1. Thus, DC is treated as holding directly or indirectly 12.75 percent of the stock of USR2 (50% × 50% × 51%) and the nonresident alien individual partners, which are foreign persons as defined in paragraph (k) of this section, are treated as directly or indirectly holding a 12.75 percent aggregate interest in the stock of USR2 (50% × 50% × 51%). Foreign persons therefore hold directly or indirectly 61.75 percent of the stock of USR2 (the 49 percent stock in USR2 directly held by nonresident alien individuals, who are foreign persons and non-look-through persons as defined in paragraph (c)(3)(v)(D), plus the 12.75 percent in stock indirectly held by the nonresident alien individual partners in PRS), and USR2 is not a domestically controlled QIE under paragraph (c)(3)(i) of this section.

(E) *Example 5: Transition rule asset requirement*—(*1*) *Facts.* USR is a REIT formed on January 1, 2018. From formation, 51 percent of the stock of USR is held by X, a non-public domestic C corporation as defined in paragraph (c)(3)(v)(E) of this section, 25 percent of the stock of USR is held by FC1, a foreign corporation, and 24 percent of the stock of USR is held by nonresident alien individuals. FC2, a foreign corporation, and FC3, also a foreign corporation, each hold 50 percent of the stock of X. On April 24, 2024, USR's only property is Asset 1, a United States real property interest. The value of Asset 1, calculated under section 856(c)(4) as of the most recent quarter of USR's taxable year before 24, is $100x. On January 1, 2026, USR borrows $30x and acquires Asset 2, a United States real property interest, for $30x.

(*2*) *Analysis.* As of April 24, 2024, USR is a domestically controlled QIE under paragraph (c)(3)(i) of this section, because, as determined without regard to paragraph (c)(3)(iii)(B) of this section, X is a non-look-through person and, consequently, foreign persons hold directly or indirectly less than 50 percent of the stock of USR. Accordingly, USR satisfies the requirement under paragraph (c)(3)(vi)(A)(*1*) of this section. USR also satisfies the requirements under paragraphs (c)(3)(vi)(A)(*2*) and (*3*) of this section, respectively, as of such date, because USR has not acquired directly or indirectly any United States real property interests, and the ownership of stock of USR has not changed. Thus, as of April 24, 2024, USR qualifies for the transition relief under paragraph (c)(3)(vi)(A) of this section. However, on January 1, 2026, USR no longer meets the requirement for transition relief in paragraph (c)(3)(vi)(A)(*2*) of this section because the fair market value of Asset 2, $30x, is 30 percent (which is more than 20 percent) of $100x, which (as calculated in accordance with paragraphs (c)(3)(vi)(A)(*2*) and (c)(3)(vi)(D) of this section) is the fair market value of USR's United States real property interests, namely Asset 1, as of April 24, 2024. Therefore, under paragraph (c)(3)(vi)(B)(*1*) of this section the transition rule ceases to apply to USR and, thus, paragraph (c)(3)(iii)(B) applies for purposes of determining whether USR is domestically controlled with respect to transactions occurring after January 1, 2026. Because FC2 and FC3 are non-look-through persons that hold more than 50 percent of the stock of X, X is a foreign-controlled domestic corporation under paragraph (c)(3)(iii)(B), and USR will not be a domestically controlled QIE under paragraph (c)(3)(i) of this section as of January 2, 2026, because foreign non-look-through persons (FC1, 25 percent, FC2, 25.5 percent, FC3, 25.5 percent, and the nonresident alien individuals, 24 percent) directly or indirectly hold more than 50 percent of the stock of USR.

(*3*) *Alternative facts: transition rule ownership requirement.* The facts are the same as in paragraph (c)(3)(vii)(E)(*1*) of this section (*Example 5*), except that instead of USR borrowing funds and acquiring Asset 2, FC3 sells its 50-percent stock interest in X to FC2 on June 1, 2024, and, on January 1, 2026, FC1 sells its 25-percent stock interest in USR to FC4, a foreign corporation. Following FC3's sale of its X stock to FC2 on June 1, 2024, FC2's stock interest in USR has increased by 25.5 percentage points, from 25.5 percent on April 24, 2024 (which is 50 percent of 51 percent), to 51 percent. Following FC1's sale of its USR stock to FC4 on January 1, 2026, FC4's stock interest in USR has increased by 25 percentage points, from zero percent on April 24, 2024, to 25 percent. Accordingly, in the aggregate, non-look-through persons have increased their ownership in USR by 50.5 percentage points (25.5 percent and 25 percent for FC2 and FC4, respectively), and USR no longer meets the requirement for transition relief in paragraph (c)(3)(vi)(A)(*3*) of this section as of January 1, 2026. Therefore, under paragraph (c)(3)(vi)(B)(*1*) of this section the transition rule ceases to apply to USR and, thus, paragraph (c)(3)(iii)(B) of this section applies for purposes of determining whether USR is domestically controlled with respect to transactions occurring after January 1, 2026. Because FC2, a non-look-through person, holds more than 50 percent of the stock of X, X is a foreign-controlled domestic corporation under paragraph (c)(3)(iii)(B) of this section, and USR will not be a domestically controlled QIE under paragraph (c)(3)(i) of this section because foreign non-look-through persons (FC2, 51 percent, FC4, 25 percent, and the nonresident alien individuals, 24 percent) directly or indirectly hold more than 50 percent of the stock of USR.

(4) *Foreign ownership percentage.* For purposes of calculating the foreign ownership percentage under section 897(h)(4)(C), the determination of the QIE stock that was held directly or indirectly by foreign persons is made under the rules of paragraphs (c)(3)(ii) through (vii) of this section.

* * * * *

(k) *Foreign person.* The term *foreign person* means a nonresident alien individual (including an individual subject to the provisions of section 877), a foreign corporation as defined in paragraph (l) of this section, a foreign partnership, a foreign trust or a foreign estate, as such persons are defined by section 7701 and the regulations in this chapter under section 7701. A resident alien individual, including a nonresident alien individual with respect to whom there is in effect an election under section 6013(g) or (h) to be treated as United States resident, is not a foreign person. With respect to the status of foreign governments and international organizations, *see* § 1.897–9T(e). *See* paragraph (c)(3)(iv)(A) of this section regarding the treatment of qualified foreign pension funds and qualified controlled entities as foreign persons for purposes of section 897(h)(4)(B).

(l) *Foreign corporation.* The term *foreign corporation* has the meaning ascribed to such term in section 7701(a)(3) and (5) and § 301.7701–5. For purposes of sections 897 and 6039C, however, the term does not include a foreign corporation with respect to

which there is in effect an election under section 897(i) and § 1.897–3 to be treated as a domestic corporation. For purposes of section 897, the term does not include a qualified holder described in § 1.897(l)-1(d); *see* paragraph (c)(3)(iv)(A) of this section regarding the treatment of qualified foreign pension funds and qualified controlled entities as foreign persons for purposes of section 897(h)(4)(B).

* * * * *

(n) *Regularly traded cross-reference. See* § 1.897–9T(d) for a definition of regularly traded for purposes of sections 897, 1445, and 6039C.

* * * * *

■ **Par. 3.** Section 1.897–2 is amended by revising paragraph (h)(3) to read as follows:

§ 1.897–2 United States real property holding corporations.

* * * * *

(h) * * *

(3) *Requirements not applicable.* The requirements of this paragraph (h) do not apply to domestically-controlled qualified investment entities, as defined in section 897(h)(4)(B). *But see* § 1.1445–2(c)(3) for rules providing that no withholding is required under section 1445(a) in certain cases when a statement is voluntarily issued by the corporation and otherwise complies with the requirements of this paragraph (h). The requirements of this paragraph (h) also do not apply to a corporation any class of stock in which is regularly traded on an established securities market at any time during the calendar year. However, such a corporation may voluntarily choose to comply with the requirements of paragraph (h)(4) of this section.

* * * * *

■ **Par. 4.** Section 1.897–9T is amended by:

■ 1. Removing and reserving paragraph (c); and

■ 2. Revising and republishing paragraph (e).

The revision reads as follows:

§ 1.897–9T Treatment of certain interest in publicly traded corporations, definition of foreign person, and foreign governments and international organizations (temporary).

* * * * *

(e) *Foreign governments and international organizations.* A foreign government shall be treated as a foreign person with respect to U.S. real property interests, and shall be subject to sections 897, 1445, and 6039C on the disposition of a U.S. real property interest except to the extent specifically otherwise provided in the regulations in this chapter issued under section 892. An international organization (as defined in section 7701(a)(18)) is not a foreign person with respect to U.S. real property interests, and is not subject to sections 897, 1445, and 6039C on the disposition of a U.S. real property interest. *See* § 1.897–1(c)(3)(iv)(B) regarding the treatment of international organizations as foreign persons for purposes of section 897(h)(4)(B). Buildings or parts of buildings and the land ancillary thereto (including the residence of the head of the diplomatic mission) used by the foreign government for a diplomatic mission shall not be a U.S. real property interest in the hands of the respective foreign government.

* * * * *

■ **Par. 5.** Section 1.1445–2 is amended by:

■ 1. Revising paragraph (c)(3)(i); and

■ 2. Adding two sentences at the end of paragraph (e).

The revision and additions read as follows:

§ 1.1445–2 Situations in which withholding is not required under section 1445(a).

* * * * *

(c) * * *

(3) * * *

(i) *In general.* No withholding is required under section 1445(a) upon the acquisition of an interest in a domestic corporation, if the transferor provides the transferee with a copy of a statement, issued by the corporation pursuant to § 1.897–2(h), certifying that the interest is not a U.S. real property interest, or if the transferor provides the transferee with a statement certifying that the corporation is a domestically controlled qualified investment entity (as determined under § 1.897–1(c)(3)) that is voluntarily issued by the corporation but otherwise complies with the requirements of § 1.897–2(h). In general, a corporation may issue such a statement only if the corporation was not a U.S. real property holding corporation at any time during the previous five years (or the period in which the interest was held by its present holder, if shorter), the corporation is a domestically controlled qualified investment entity (as determined under § 1.897–1(c)(3)), or if interests in the corporation ceased to be United States real property interests under section 897(c)(1)(B). (A corporation may not provide such a statement based on its determination that the interest in question is an interest solely as a creditor.) *See* § 1.897–2(f) and (h). The corporation may provide such a statement directly to the transferee at the transferor's request. The transferor must request such a statement before the transfer, and shall, to the extent possible, specify the anticipated date of the transfer. A corporation's statement may be relied upon for purposes of this paragraph (c)(3) only if the statement is dated not more than 30 days before the date of the transfer. A transferee may also rely upon a corporation's statement that is voluntarily provided by the corporation in response to a request from the transferee, if that statement otherwise complies with the requirements of this paragraph (c)(3) and § 1.897–2(h).

* * * * *

(e) * * * Paragraph (c)(3)(i) of this section applies with respect to dispositions of U.S. real property interests, and distributions described in section 897(h), occurring on or after April 25, 2024. For dispositions of U.S. real property interests, and distributions described in section 897(h), occurring before April 25, 2024, *see* § 1.1445–2(c)(3)(i), as contained in 26 CFR part 1, revised as of April 1, 2024.

Douglas W. O'Donnell,

Deputy Commissioner.

Approved: April 2, 2024.

Aviva Aron-Dine,

Acting Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2022–0008; T.D. TTB–193; Ref: Notice No. 214]

RIN 1513–AC85

Establishment of the Yucaipa Valley Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the 36,467-acre ''Yucaipa Valley'' American viticultural area (AVA) in San Bernardino County, California. The Yucaipa Valley viticultural area is not located within, nor does it contain, any other established viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.