

# Instructions for Form 1120-F

## U.S. Income Tax Return of a Foreign Corporation

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Volume 2 of 4



Department of the Treasury  
**Internal Revenue Service**

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**Note.** The trust fund recovery penalty will not apply to any amount of trust fund taxes an employer holds back in anticipation of the credit for qualified sick and family leave wages or the employee retention credit that they are entitled to. See Pub. 15 or Pub. 51 for more information.

**Other penalties.** Other penalties may be imposed for negligence, substantial understatement of tax, reportable transaction understatements, and fraud. See sections 6662, 6662A, and 6663.

## **Special Rules for Foreign Corporations**

### **Source of Income Rules**

The source of income is important in determining the extent to which income is taxable to foreign corporations. Each type of income has its own sourcing rules.

## **Interest Income**

The source of interest income is usually determined by the residence of the obligor.

For example, interest paid by an obligor who is a resident of the United States is U.S. source income, and interest paid by an obligor who is a resident of a country other than the United States is foreign source income. Interest paid by a foreign partnership that is predominantly engaged in the active conduct of a trade or business outside the United States is treated as U.S.-source income only if the interest is paid by a U.S. trade or business conducted by the partnership or is allocable to income that is treated as effectively connected with the conduct of a U.S. trade or business. See section 861(a)(1)(B).

**Exceptions.** The following types of interest income are treated as foreign source income.

- Interest income received from foreign branches of U.S. banks and savings and loan associations.
- In the case of a foreign partnership that is predominantly engaged in the active conduct of a trade or business outside the United States, any interest not paid by a trade or business engaged in by the partnership in the United States and not allocable to income that is effectively connected (or treated as effectively connected) with the conduct of a U.S. trade or business.

The following types of interest income are treated as domestic source income even though paid by a foreign corporation.

- For a foreign corporation engaged in a U.S. trade or business, interest paid by the U.S. trade or business (branch interest) is treated as if paid by a domestic corporation to the actual recipient of the interest. See section

884(f)(1)(A) and the regulations thereunder. Interest paid from a U.S. trade or business is only treated as branch interest to the extent the interest is allocable to ECI under the interest expense allocation rules in Regulations section 1.882-5. Amounts paid but not allocable to ECI are not branch interest. See Regulations section 1.884-4(b)(6).

- If the foreign corporation has allocable interest in excess of branch interest (excess interest), the foreign corporation must treat that interest as if paid by a wholly owned domestic corporation to the foreign corporation. See section 884(f)(1)(B) and the instructions for Section III, Part II, later.

## **Dividend Income**

The source of dividend income is usually determined by the residence of the payer. For example, dividends paid by a corporation that was incorporated in the United States are

generally U.S. source income and dividends paid by a corporation that was incorporated in a foreign country are generally foreign source income. **Exceptions:**

- Dividends paid by a U.S. corporation are foreign source income:
  1. If the U.S. corporation has made a valid election under section 936 (or section 30A), relating to certain U.S. corporations operating in a U.S. territory; or
  2. To the extent the dividends are from qualified export receipts described in section 993(a)(1) (other than interest and gains described in section 995(b)(1)).
- Dividends paid by a foreign corporation are U.S. source income:
  1. If the dividend is treated under section 243(e) as a distribution from the

accumulated profits of a predecessor U.S. corporation; or

2. To the extent the foreign corporation's effectively connected gross income for the testing period (defined below) bears to all of the foreign corporation's gross income for the testing period, but only if 25% or more of the foreign corporation's gross income during the testing period was effectively connected with the conduct of a U.S. trade or business.

The **testing period** is generally the 3 tax years of the foreign corporation payer preceding the tax year during which it declared the dividend. If the foreign corporation existed for fewer than 3 years before the tax year of declaration, the testing period is the term of the foreign corporation's existence before the current year. If the foreign corporation declared the dividend in its first tax year, that year is the testing



period. Regardless of source, however, there is no tax imposed on any dividends paid by a foreign corporation out of earnings and profits for a tax year in which the foreign corporation was subject to the branch profits tax (determined after application of any income tax treaty). See Regulations section 1.1441-1(b)(4)(vii).

## **Dividend Equivalents**

A dividend equivalent is generally treated as a dividend from sources within the United States.

## **Rent and Royalty Income**

The source of rent and royalty income for the use of property is determined based on where the property is located.

## **Income From the Sale or Exchange of Real Estate**

Gain from the disposition of a U.S. real property interest (a USRPI) is U.S. source. A

USRPI includes, but is not limited to, real property situated in the United States, an interest in real property other than solely as a creditor (such as a contingent interest in real property), and an interest in a United States real property holding corporation (USRPHC). See section 897 and the regulations thereunder.

## **Income From the Sale or Exchange of Personal Property**

Income from the sale of personal property by a foreign corporation is generally treated as foreign source under section 865(a).

However, special rules may apply to source such income as follows.

- Income from the purchase and sale of inventory property is generally sourced under section 861(a)(6) as U.S. source if the property is purchased without the United States and sold within the United States and under section 862(a)(6) as foreign source if the property is purchased

within the United States and sold without the United States. See also U.S. source treatment of inventory sales attributable to a U.S. office or fixed place of business under section 865(e)(2).

- Income from the production and sale of inventory property is generally sourced solely on place-of-production activities under section 863(b).
- Income from the sale of depreciable property is generally sourced as mixed U.S. and foreign source under section 865(c).
- Income from certain sales of intangibles is generally subject to the source rules applicable to royalties, found in section 861(a)(4). See section 865(d).

**Foreign corporations with an office or fixed place of business in the United States.** Income from the sale of personal property attributable to an office or fixed

place of business is U.S. source income regardless of any of the above rules relating to the source of income from the sale or exchange of personal property, except that this source rule is not applicable for purposes of defining an export trade corporation (see sections 865(e)(2)(A) and 971).

**Exception.** Income from the sale of inventory property is foreign source income if the goods were sold for use, disposition, or consumption outside the United States and a foreign office of the corporation materially participated in the sale.

## **Income on Guarantees**

With respect to guarantees issued after September 27, 2010:

- The following income is U.S. source:  
Amounts received directly or indirectly from (1) a noncorporate resident or domestic corporation for the provision of a guarantee of any indebtedness of such

resident or corporation, or (2) any foreign person for the provision of a guarantee of any indebtedness of such person, if such amount is connected with income that is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

See section 861(a)(9).

- The following income is foreign source:  
Amounts received, directly or indirectly, from a foreign person for the provision of a guarantee of indebtedness of such person other than amounts that are derived from sources within the United States as provided in section 861(a)(9).  
See section 862(a)(9).

## **Other Special Rules**

### **Basis of Property and Inventory Costs for Property Imported by a Related Person**

If property is imported into the United States by a related person in a transaction and the

property has a customs value, the basis or inventory cost to the importer may not exceed the customs value. See section 1059A.

## **Income of Foreign Governments and International Organizations**

Income of foreign governments and international organizations from the following sources is generally not subject to tax or withholding under Chapter 3 or 4 of the Code.

- Investments in the United States in stocks, bonds, or other domestic securities owned by such foreign government or international organization.
- Interest on deposits in banks in the United States of money belonging to such foreign government or international organization.
- Investments in the United States in financial instruments held (by a foreign government) in executing governmental financial or monetary policy.

**Exception.** The income described in section 892(a)(2) that is received directly or indirectly from commercial activities is subject to both tax and withholding under Chapter 3 or 4 of the Code.

## **Specific Instructions**

### **Period Covered**

File the 2023 return for calendar year 2023 and fiscal years that begin in 2023 and end in 2024. For a fiscal or short tax year return, fill in the tax year space at the top of the form.

The 2023 Form 1120-F may also be used if:

- The corporation has a tax year of less than 12 months that begins and ends in 2024, and
- The 2024 Form 1120-F is not available at the time the corporation is required to file its return.

The corporation must show its 2024 tax year on the 2023 Form 1120-F and take into account any tax law changes that are effective for tax years beginning after December 31, 2023.

## **Address**

Include the room, suite, or other unit number after the street address. If the post office does not deliver mail to the street address and the corporation has a P.O. box, show the box number instead.

If the corporation receives its mail in care of a third party (such as an accountant or an attorney), enter "C/O" on the street address line followed by the third party's name and street address or P.O. box.

If the corporation has a foreign address, include the city or town, state or province, country, and foreign postal code. Do not abbreviate the country name. Follow the



country's practice for entering the name of the state or province and postal code.

## **Employer Identification Number (EIN)**

Enter the corporation's EIN. If the corporation does not have an EIN, it must apply for one. An EIN may be applied for:

- Online—Go to [IRS.gov/EIN](https://www.irs.gov/ein). The EIN is issued immediately once the application information is validated.
- By faxing or mailing Form SS-4, Application for Employer Identification Number.

While a corporation that was a QDD or had a branch that was a QDD is generally required to use an EIN, if the only reason the corporation is filing a Form 1120-F is because it or its branch was a QDD, it may use its QI-EIN instead.



*Corporations located in the United States or U.S. territories can use the online application. Foreign corporations should call 267-941-1099 (not a toll-free number) for more information on obtaining an EIN. See the Instructions for Form SS-4.*

**EIN applied for, but not received.** If the corporation has not received its EIN by the time the return is due, enter "Applied For" and the date the corporation applied in the space for the EIN. However, if the corporation is filing its return electronically, an EIN is required at the time the return is filed.

For more information, see the Instructions for Form SS-4.

**Initial Return, Name or Address Change,  
Final Return, First Post-Merger Return,  
Amended Return, Schedule M-3  
Attached, Protective Return**

Check all of the applicable box(es).

**Name or address change.** If the corporation has changed its name or address since it last filed Form 1120-F (including a change to an “in care of” address), check the box for “Name or address change.”

**Note.** If a change in address or responsible party occurs after the return is filed, use Form 8822-B, Change of Address or Responsible Party — Business, to notify the IRS. See the instructions for Form 8822-B for details.

**First post-merger return.** Check the “First post-merger return” box if, due to a corporate merger, the foreign corporation has acquired a new EIN. Check the “First post-merger return” box if the foreign corporation has merged with a foreign or domestic corporation with U.S. operations. Do not check the “First post-merger return” box if the foreign corporation has merged with another foreign corporation and the merger has no effect on the filer's U.S. operations.

**Schedule M-3 attached.** A corporation with total assets reportable on Form 1120-F, Schedule L, of \$10 million or more on the last day of the tax year must file Schedule M-3 (Form 1120-F), Net Income (Loss) Reconciliation for Foreign Corporations With Reportable Assets of \$10 Million or More, instead of Schedule M-1. A foreign corporation filing Form 1120-F that is not required to file Schedule M-3 (Form 1120-F) may voluntarily file Schedule M-3 (Form 1120-F) instead of Schedule M-1.

Corporations that (a) are required to file Schedule M-3 (Form 1120-F) and have less than \$50 million total assets at the end of the tax year, or (b) are not required to file Schedule M-3 (Form 1120-F) and voluntarily file Schedule M-3 (Form 1120-F), must either (i) complete Schedule M-3 (Form 1120-F) entirely, or (ii) complete Schedule M-3 (Form 1120-F) through Part I, and complete Schedule M-1, instead of completing Parts II

and III of Schedule M-3 (Form 1120-F). If the corporation chooses to complete Schedule M-1 instead of completing Parts II and III of Schedule M-3 (Form 1120-F), the amount on Schedule M-1, line 1, must equal the amount on Schedule M-3 (Form 1120-F), Part I, line 11. See the instructions for Schedule M-1 (Form 1120-F) and the Instructions for Schedule M-3 (Form 1120-F) for more details.

If you are filing Schedule M-3, check the "Schedule M-3 attached" box at the top of page 1 of Form 1120-F.

**Protective return filers.** Check the "Protective return" box if the foreign corporation is filing a protective return. See *Protective return*, earlier, for information concerning who should file a protective return.

If the corporation is filing a protective return, complete Form 1120-F as follows.

**Page 1.** Enter the complete name, address, and EIN of the corporation. Check the “Protective return” box. Provide all the information required in items A through G.

**Note.** If the corporation is filing Form 1120-F to claim a refund for overwithholding reported in Section I on page 4, the return may also assert protective return status for the right to claim deductions and credits attributable to ECI by also checking the “Protective return” box at the top of page 1.

**Refund amount.** Enter on lines 1 and 4, page 1, the amount from line 11, page 4. Enter on lines 5i and 5z the amount from line 12, page 4. Enter the excess of line 5z over line 4 on lines 8a and 9. This is the amount to be refunded to you.

***Signature.*** An authorized officer of the corporation must sign and date the return. If the protective return is being filed pursuant to an income tax treaty exemption, attach a completed Form 8833 to the return.

***Page 2.*** Provide all the information required in items N, O, Q, T, V, W(1), W(2), X, Y, AA, BB, and any other applicable questions. With respect to item Y, it is not necessary for the corporation to file Schedule P, even if the answer to item Y(1) is "Yes." However, a corporation that files a protective tax return may voluntarily file Schedules I and P to preserve certain timely elections.

***Page 3.*** Complete all applicable portions of Section I, Income From U.S. Sources Not Effectively Connected With the Conduct of a Trade or Business in the United States.

## **Identifying Information Requested at Top of Page 1 of Form**

Complete items A through G.

**Item A.** Enter the foreign corporation's country of incorporation or organization. If the corporation is incorporated or organized in more than one country, list all countries.

**Item B.** Enter the foreign country or countries under whose laws the income reported on Form 1120-F is also subject to tax. This may include the country where the corporation is managed and controlled, as well as the country or countries in which the corporation is incorporated or organized.

**Item F.** See the list of Principal Business Activity Codes at the end of these instructions. Using the list of codes and activities, determine from which activity the corporation derives the highest percentage of its total receipts. Enter on lines F(1), F(2), and F(3) the principal business activity code number, the corporation's principal business activity, and a description of the principal product or service of the corporation. For nonstore retailers, select the PBA code by the



primary product that your establishment sells. For example, establishments primarily selling prescription and non-prescription drugs, select PBA code 456110 Pharmacies & Drug Retailers.

## **Computation of Tax Due or Overpayment**

### **Line 5b. Estimated Tax Payments**

Enter any estimated tax payments the corporation made for the tax year.

**Beneficiaries of trusts.** If the corporation is the beneficiary of a trust, and the trust makes a section 643(g) election to credit its estimated tax payments to its beneficiaries, include the corporation's share of the payment in the total for line 5b. Enter "T" and the amount on the dotted line next to the entry space.

## **Line 5c. 2023 Refund Applied for on Form 4466**

If the corporation overpaid estimated tax, it may be able to get a quick refund by filing Form 4466. The overpayment must be at least 10% of the corporation's expected income tax liability and at least \$500. File Form 4466 after the end of the corporation's tax year, and no later than the due date for filing the corporation's tax return (not including extensions). Form 4466 must be filed before the corporation files its tax return. See the instructions for Form 4466.

## **Line 5f. Credit for Tax Paid on Undistributed Capital Gains**

Enter any credit from Form 2439, Notice to Shareholder of Undistributed Long-Term Capital Gains, for the corporation's share of the tax paid by a regulated investment company (RIC) or a real estate investment trust (REIT) on undistributed long-term

capital gains included in the corporation's income. Attach Form 2439.

### **Line 5g. Credit for Federal Tax on Fuels**

Enter the total income tax credit claimed on Form 4136, Credit for Federal Tax Paid on Fuels. Attach Form 4136.

**Credit for tax on ozone-depleting chemicals.** Include on line 5g any credit the corporation is claiming under section 4682(g)(2) for tax on ozone-depleting chemicals. Enter "ODC" on the dotted line to the left of the entry space.

### **Line 5h. Reserved for Future Use**

This line is reserved for future use.

### **Line 5i. U.S. Income Tax Paid or Withheld at Source**

Enter on line 5i U.S. income tax amounts paid or withheld at source and reported on:

- Form 1042-S pertaining to amounts reported on page 4, line 12 (income from U.S. sources not effectively connected with the conduct of a trade or business in the United States). The amount included on line 5i should be the total amount of federal tax withheld reported to you on the applicable Form(s) 1042-S less any amount that was repaid to you by the withholding agent. See the instructions below the title of Section I on page 4 of the form for information pertaining to when amounts should be reported on line 12.
- Form 8805 pertaining to amounts reported on Form 1120-F, page 5, Section II, that relate to ECI from a partnership under section 1446.
- Form 1042-S pertaining to amounts reported on Form 1120-F, page 5, Section II, that relate to ECI from a publicly traded partnership under section 1446.

- Form 8288-A pertaining to amounts reported on Form 1120-F, page 5, Section II, that relate to income from dispositions of U.S. real property interests under section 1445 and income from dispositions of interests in partnerships that are engaged in the conduct of a trade or business in the United States under section 1446(f).

You must attach any Forms 8288-A, 8805, and 1042-S to substantiate amounts withheld or paid that are reported on line 5i.



*Include on line 5i only amounts withheld under Chapter 3 or 4 of the Code. Do not include other amounts, such as backup withholding, on line 5i. Enter backup withholding on line 5z (see below).*

### **Line 5j. Elective Payment Election Amount from Form 3800**

Enter the total elective payment election amount from Form 3800, Part III, line 6,

column (i). See the Instructions for Form 3800.

## **Line 5z. Total Payments**

**Backup withholding.** If the corporation had income tax withheld from any payments it received due to backup withholding, include the amount withheld in the total for line 5z. Enter the amount withheld and the words “Backup Withholding” in the blank space in the right-hand column between lines 4 and 5z.

## **Line 6. Estimated Tax Penalty**

Generally, the corporation does not have to file Form 2220 because the IRS can figure the penalty amount, if any, and bill the corporation. However, even if the corporation does not owe the penalty, it must complete and attach Form 2220 if:

- The annualized income or adjusted method is used, or

- The corporation is a large corporation (as defined in the Instructions for Form 2220) computing its first required installment based on the prior year's tax.

If Form 2220 is attached, check the box on line 6, and enter any penalty on this line.



*If the corporation's tax liability includes a CAMT liability, the corporation must complete and attach Form 2220. The affected corporation must also include an amount of estimated tax penalty on Form 1120-F, page 1, line 6, even if that amount is zero. Failure to follow these instructions could result in the corporation receiving a penalty notice that will require an abatement request to apply any penalty relief. See Notice 2023-42.*

## **Line 7. Amount Owed**

If the corporation cannot pay the full amount of tax owed, it can apply for an installment

agreement online. The corporation can apply for an installment agreement online if:

- It cannot pay the full amount shown on line 7,
- The total amount owed is \$25,000 or less, and
- The corporation can pay the liability in full in 24 months. To apply using the Online Payment Agreement Application, go to [IRS.gov/ OPA](https://www.irs.gov/opa).

Under an installment agreement, the corporation can pay what it owes in monthly installments. There are certain conditions that must be met to enter into and maintain an installment agreement, such as paying the liability within 24 months and making all required deposits and timely filing tax returns during the length of the agreement.

If the installment agreement is accepted, the corporation will be charged a fee and it will be subject to penalties and interest on the



amount of tax not paid by the due date of the return.

### **Line 8b**

Enter on line 8b the amount of overpayment on line 8a resulting from tax deducted and withheld under Chapters 3 and 4. This amount is computed by completing Schedule W on page 9 of Form 1120-F.

### **Line 9**

Enter the portion of line 8a you want credited to your 2024 estimated tax and the portion of line 8a you want refunded.

**Note.** The election to apply some or all of the overpayment amount to the corporation's 2024 estimated tax cannot be changed at a later date.

**Note.** You can credit any or all of the line 8a overpayment to your 2024 estimated tax, even those amounts on line 8b resulting from

tax deducted and withheld under Chapters 3 and 4.

**Note.** Refunds of certain overpayments (for example, those which pertain to tax withheld and reported on Forms 1042-S, 8805, and 8288-A) may require additional time to be processed. Therefore, please allow up to 6 months for these refunds to be issued.

**Electronic deposit of refund.** If the corporation has a refund of \$1 million or more and wants it electronically deposited into its checking or savings account at any U.S. bank or other financial institution instead of having a check sent to the corporation, complete Form 8302 and attach it to Form 1120-F.

### **Additional Information Requested on Pages 2 and 3 of Form**

Complete items H through JJ.

## **Item K(1)**

If the foreign corporation was not engaged in a U.S. trade or business at any time during the tax year, or was engaged in a U.S. trade or business but did not derive any gross income effectively connected to such trade or business, answer "No" to item K(1).

If the foreign corporation had gross income effectively connected with or treated as effectively connected with the conduct of a trade or business in the United States, answer "Yes" to item K(1).

## **Item L**

Skip item L (leave blank) if the foreign corporation is a resident of a country that does not have an income tax treaty with the United States. If the foreign corporation is a resident of a country that has an income tax treaty with the United States:

- Answer "Yes" if the corporation had a permanent establishment in the United

States at any time during the tax year or in any prior tax year to which income was attributable, and enter the name of the country of residence of the foreign corporation.

- Answer “No” if the corporation does not have a permanent establishment in the United States.

If the answer to item L is “No” and the answer to item K(1) is “Yes,” complete item W(1) on page 2 of the form and attach a completed Form 8833 to the return, including a statement indicating the nature and amount (or reasonable estimate thereof) of gross receipts of the foreign corporation exempt by reason of not having a permanent establishment in the United States.

## **Item M**

See Form 5472, earlier.

## **Item O—Personal Service Corporation**

A personal service corporation is a corporation whose principal activity for the testing period is the performance of personal services. The services must be substantially performed by employee-owners.

**Testing period.** The testing period for a tax year is generally the prior tax year unless the corporation has just been formed.

**Performance of personal services.** The term “performance of personal services” includes any activity involving the performance of personal services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting.

**Accounting period.** A personal service corporation must use a calendar tax year unless:

- It elects to use a 52-53-week tax year that ends with reference to the calendar

year or tax year elected under section 444;

- It can establish a business purpose for a different tax year and obtains the approval of the IRS (see the Instructions for Form 1128 and Pub. 538); or
- It elects under section 444 to have a tax year other than a calendar year. To make the election, use Form 8716, Election To Have a Tax Year Other Than a Required Tax Year.

If a corporation makes the section 444 election, its deduction for certain amounts paid to employee-owners may be limited. See Schedule H (Form 1120), Section 280H Limitations for a Personal Service Corporation (PSC), to figure the maximum deduction.

If a section 444 election is terminated and the termination results in a short tax year, type or print at the top of the first page of Form

1120-F for the short tax year "SECTION 444 ELECTION TERMINATED."

**Other rules.** For other rules that apply to personal service corporations, see Passive activity limitations, later.

### **Item P**

Enter any tax-exempt interest received or accrued. Include any exempt-interest dividends received as a shareholder in a mutual fund or other RIC. Also, if required, include the same amount on Schedule M-1, line 7a, or Schedule M-3, Part II, line 4a.

### **Item R**

If the corporation has a net operating loss (NOL) for tax year 2023, it can elect to waive the entire carryback period for the NOL and instead carry the NOL forward to future tax years. To do so, check the box in item R and file Form 1120-F by its due date, including extensions. Do not attach the statement described in Temporary Regulations section

301.9100-12T. Generally, once made, the election is irrevocable.

If the corporation timely filed its return for the loss year without making the election, it can make the election on an amended return filed within 6 months of the due date of the loss year return (excluding extensions).

Attach the election to the amended return and write "Filed pursuant to section 301.9100-2" on the election statement. See the Instructions for Form 1139.

## **Item S**

Enter the amount of the NOL carryover to the tax year from prior years, even if some of the loss is used to offset income on this return.

The amount to enter is the total of all NOLs generated in prior years but not used to offset income (either as a carryback or carryover) to a tax year prior to 2023. Do not reduce the amount by any NOL deduction reported on Section II, line 30a.



## **Item T**

Check the “Yes” box for item T if the corporation is a subsidiary in a parent-subsidiary controlled group. This applies even if the corporation is a subsidiary member of one group and the parent corporation of another. For a definition of a parent-subsidiary controlled group, see the Instructions for Schedule O (Form 1120).

**Note.** If the corporation is an “excluded member” of a controlled group (see definition in the Instructions for Schedule O (Form 1120)), it is still considered a member of a controlled group for this purpose.

## **Item W(1)**

If a foreign corporation claims that a treaty overrules or modifies any provision of the Internal Revenue Code and thereby effects a reduction of any tax with respect to an item reported on this Form 1120-F, check the

“Yes” box. Check the “Yes” box, for example, if a treaty benefit has been claimed based on:

- The nondiscrimination provision of a treaty.
- The business profits article of a treaty, if expenses are claimed in determining the business profits of the foreign corporation, notwithstanding an inconsistent provision of the Code.
- The gains article, if a treaty benefit is claimed relating to gain or loss on the disposition of a U.S. real property interest.
- The branch profits tax article (or portion of the dividends article relating to the branch profits tax) and tax on excess interest.
- A waiver of insurance excise tax under section 4371 (if the foreign corporation has not entered into a closing agreement with the IRS and has not filed an annual Form 720).

- The interest, dividends, or royalty article, if a refund of withholding tax is due.

## **Item W(2)**

Check the "Yes" box if the foreign corporation is claiming tax treaty benefits pursuant to a Competent Authority determination or Advance Pricing Agreement that it qualifies for the treaty benefits being claimed. You must attach a copy of the Competent Authority determination letter or Advance Pricing Agreement to the return.

## **Item Y(1)**

For more information regarding a corporation's distributive share of income from a directly owned partnership interest that is ECI or treated as ECI by the partnership or the corporation (partner), see *Who Must Complete Schedule P* in the separate Instructions for Schedule P (Form 1120-F).

## **Item Y(2)**

In general, if a foreign corporation owns, directly or indirectly, an interest in a partnership that is engaged in a U.S. trade or business, gain or loss on the transfer of all (or any portion of) such interest is treated as effectively connected with the conduct of such trade or business to the extent effectively connected gain or loss would have flowed through the partnership to the foreign corporation had the partnership sold all of its assets at fair market value (FMV) as of the date of the sale or exchange. See section 864(c)(8) for more details. Also, see Regulations sections 1.864(c)(8)-1 and 1.864(c)(8)-2 for additional guidance concerning gain or loss of foreign persons from the transfer of certain partnership interests and the notification required to be provided to certain partnerships on the transfer.

## **Item Y(3)**

If the corporation owned at least a 10% interest, directly or indirectly, in any foreign partnership, attach a statement listing the following information for each foreign partnership. For this purpose, a foreign partnership includes an entity treated as a foreign partnership under Regulations section 301.7701-2 or 301.7701-3.

- Name and EIN (if any) of the foreign partnership.
- Identify which, if any, of the following forms the foreign partnership filed for its tax year ending with or within the corporation's tax year: Form 1042, 1065, or 8804.
- Name of partnership representative (if any).
- Beginning and ending dates of the foreign partnership's tax year.

In addition, report any ECI included on Schedule K-3 (Form 1065) reported by the foreign partnership to the corporation, and the ECI apportionment of the corporation's outside basis in the foreign partnership, as required in Schedule P.

### **Item Z(2)**

If the answer to item Z(2) is "Yes," attach a statement explaining whether the interbranch transactions are recognized under Proposed Regulations section 1.863-3(h) (Global Dealing Regulations) or some other proposed regulation. If interbranch transactions are recognized pursuant to a U.S. income tax treaty other than one that, in its text or accompanying documents (including an exchange of notes), allows for such recognition by explicitly incorporating an arm's-length method applying the OECD Transfer Pricing Guidelines, then such treaty-based position should be disclosed on Form

8275-R, in addition to the treaty disclosure required on Form 8833.

## **Item AA**

A corporation filing Form 1120-F must file Schedule UTP (Form 1120), Uncertain Tax Position Statement, with its 2023 income tax return if:

- For 2023, the corporation's total assets equal or exceed \$10 million. The assets of a corporation filing a Form 1120-F equal or exceed \$10 million if the higher of the beginning or end of year total worldwide assets of the corporation reported on Form 1120-F, Schedule L, line 17, would be at least \$10 million if the corporation were to prepare a Schedule L on a worldwide basis;
- The corporation or a related party issued audited financial statements reporting all or a portion of the corporation's

operations for all or a portion of the corporation's tax year; and

- The corporation has one or more tax positions that must be reported on Schedule UTP.

Attach Schedule UTP to the corporation's income tax return. Do not file it separately. A taxpayer that files a protective Form 1120-F must also file Schedule UTP if it satisfies the requirements set forth above.

For details, see the Instructions for Schedule UTP.

## **Item BB**

If the foreign corporation made any payment(s) in 2023 that would require the foreign corporation to file any Forms 1042 and 1042-S, check the "Yes" box. See the Instructions for Form 1042 and the Instructions for Form 1042-S for information regarding who is required to file Forms 1042 and 1042-S and what types of payments are



subject to reporting on Forms 1042 and 1042-S.

## **Item CC**

If the corporation or any branch of the corporation was a QDD, check the “Yes” box, enter the QI-EIN, and attach a Schedule Q (Form 1120-F) for each QDD.

You must complete and attach Schedule Q (Form 1120-F) even if the QDD has zero tax liability.

## **Item DD**

If the corporation had gross receipts of at least \$500 million in any 1 of the 3 preceding tax years, complete and attach Form 8991. For this purpose, the corporation's gross receipts include the gross receipts of all persons aggregated with the corporation, as specified in section 59A(e)(3). See the Instructions for Form 8991 to determine if the corporation is subject to the base erosion minimum tax.

## **Item EE**

Section 267A disallows a deduction for certain interest or royalty paid or accrued pursuant to a hybrid arrangement, to the extent that, under the foreign tax law, there is not a corresponding income inclusion (including long-term deferral). Report in Item EE the total amount of interest and royalty paid or accrued by a U.S. taxable branch (which includes a U.S. permanent establishment) of the foreign corporation for which a deduction is disallowed under section 267A.

### **Payments to which section 267A applies.**

Interest or royalty considered paid or accrued by a U.S. taxable branch of the foreign corporation is subject to section 267A. See Regulations section 1.267A-5(b)(3) for rules regarding U.S. taxable branch payments, including interest or royalties considered paid or accrued by a U.S. taxable branch. Section 267A generally applies to interest or royalties paid or accrued pursuant to a hybrid

arrangement (such as, for example, a payment pursuant to a hybrid instrument, or a payment to a reverse hybrid), provided that the payment or accrual is to a related party (or pursuant to a structured arrangement). In addition, pursuant to an imported mismatch rule, section 267A generally applies to interest or royalties paid or accrued pursuant to a non-hybrid arrangement where the income attributable to that payment or accrual is directly or indirectly offset by certain deductions involving hybridity incurred by a related party or pursuant to a structured arrangement. However, section 267A does not apply if a de minimis exception is satisfied. See Regulations section 1.267A-1(c). For purposes of section 267A, interest and royalties are defined broadly. For additional information about arrangements subject to section 267A, see Regulations sections 1.267A-2 and 1.267A-4. Also, see the anti-avoidance rule under Regulations section 1.267A-5(b)(6).

## **Extent to which deduction is disallowed.**

When section 267A applies to interest or royalties paid or accrued pursuant to a hybrid arrangement, it generally disallows a deduction for the amount to the extent that, under the foreign tax law, there is not a corresponding income inclusion (including long-term deferral). However, the deduction is not disallowed to the extent the amount is directly or indirectly included in income in the United States, such as if the amount is taken into account with respect to a U.S. shareholder under section 951(a) or section 951A. For additional information, see Regulations sections 1.267A-2 through 1.267A-4. For examples illustrating the application of section 267A, see Regulations section 1.267A-6.

## **Item FF**

The limitation on business interest expense applies to every taxpayer with a trade or business, unless the taxpayer meets certain

specified exceptions. A taxpayer may elect out of the limitation for certain businesses otherwise subject to the business interest expense limitation. See Item GG. Also, see the Instructions for Form 8990.

Certain real property trades or businesses and farming businesses qualify to make an election not to limit business interest expense. This is an irrevocable election. If you make this election, you are required to use the alternative depreciation system to depreciate any nonresidential real property, residential rental property, and qualified improvement property for an electing real property trade or business, and any property with a recovery period of 10 years or more for an electing farming business. See section 168(g)(1)(F). Also, you are not entitled to the special depreciation allowance for that property. For a taxpayer with more than one qualifying business, the election is made with respect to each business.

Check "Yes" if the corporation has an election in effect to exclude a real property trade or business or a farming business from section 163(j). For more information, see section 163(j) and the Instructions for Form 8990. Also, see the Instructions for Schedule I (Form 1120-F).

## **Item GG**

Generally, a taxpayer with a trade or business must file Form 8990 to claim a deduction for business interest. In addition, Form 8990 must be filed by any taxpayer that owns an interest in a partnership with current-year, or prior-year carryover, excess business interest expense allocated from the partnership.

***Exclusions from filing.*** A taxpayer is not required to file Form 8990 if the taxpayer is a small business taxpayer (defined below) and does not have excess business interest expense from a partnership. A taxpayer is also not required to file Form 8990 if the

taxpayer only has business interest expense from these excepted trades or businesses:

- An electing real property trade or business,
- An electing farming business, or
- Certain utility businesses.

**Small business taxpayer.** A small business taxpayer is not subject to the business interest expense limitation and is not required to file Form 8990. A small business taxpayer is a taxpayer that (a) is not a tax shelter (as defined in section 448(d)(3), and (b) meets the gross receipts test of section 448(c) discussed next.

**Gross receipts test.** For 2023, a taxpayer meets the gross receipts test if the taxpayer has average annual gross receipts of \$29 million or less for the 3 prior tax years. A taxpayer's average annual gross receipts for the 3 prior tax years is determined by adding the gross receipts for the 3 prior tax years

and dividing the total by 3. Gross receipts include the aggregate gross receipts from all persons treated as a single employer, such as a controlled group of corporations, commonly controlled partnerships, or proprietorships, and affiliated service groups. See section 448(c) and the Instructions for Form 8990 for additional information.

**Note.** A foreign corporation is required to complete Schedule I (Form 1120-F) to compute its interest expense deduction under Regulations section 1.882-5. If the foreign corporation is required to complete and file Form 8990, attach Form 8990 to Schedule I (Form 1120-F), which is attached to Form 1120-F.

## **Item HH**

If a foreign corporation is organized in a U.S. territory, it may be a Qualified Opportunity Fund (QOF) only if it is organized for the purpose of investing in qualified opportunity zone property that relates to a trade or



business operated in the U.S. territory in which the corporation is organized. To certify as a QOF, the corporation must file Form 1120-F and attach Form 8996, even if the corporation had no income or expenses to report. If the corporation is attaching Form 8996, check the "Yes" box for Item HH. On the line following the dollar sign, enter the amount from Form 8996, line 15.

The penalty reported on this line from Form 8996, line 15, is not due with the filing of this form. The IRS will separately send to you a notice setting forth the due date for the penalty payment and where that payment should be sent.

## **Item II**

If the corporation is a member of a controlled group, check the "Yes" box. Complete and attach Schedule O (Form 1120), Consent Plan and Apportionment Schedule for a Controlled Group. Component members of a controlled group must use Schedule O to report the

apportionment of certain tax benefits between the members of the group. See Schedule O and the Instructions for Schedule O for more information.

## **Item JJ**

Check the appropriate boxes to indicate if the corporation is required to file Form 4626. If the corporation does not meet the requirements of the safe harbor method, as provided under section 59(k)(3)(A) and Notice 2023-7 for the current year, Form 4626 must be completed and attached to the corporation's return. See the Instructions for Form 4626.

## **Section I—Income From U.S. Sources Not Effectively Connected With the Conduct of a Trade or Business in the United States**

**Note.** Complete Section I only if you derived U.S. source income not effectively connected

with the conduct of a trade or business in the United States and either your withholding tax liability was not correctly withheld at source or not correctly reported on Form 1042-S, you have a QDD tax liability (see section 3.09 of the Qualified Intermediary Agreement), or you are claiming a credit or refund of an amount withheld at source. You must attach any Forms 1042-S (and any supporting documentation) related to amounts for which you are claiming a credit or refund for overwithholding (see the instructions for line 5i). The amount reported in column (e) is the amount that was actually withheld at source (and not repaid to you by the withholding agent), as reported to you in box 10 of the Form(s) 1042-S issued by the withholding agent(s). See *Claim for Refund or Credit*, earlier, for additional documentation requirements. Only report amounts on these lines if:

- The amount received is fixed or determinable, annual or periodic (FDAP) (see definition below).
- The amount received is includible in the gross income of the foreign corporation. Therefore, receipts that are excluded from income (for example, interest income received on state and local bonds that is excluded under section 103) would not be included as income in Section I.
- The amount received is from U.S. sources (see Source of Income Rules, earlier).
- The amount received is not effectively connected with the conduct of a U.S. trade or business (see Section II, later).
- The amount received is not exempt (by Code) from taxation. For example, interest on deposits that are exempted by section 881(d) would not be included as income in Section I. In addition, certain portfolio interest is not taxable for

obligations issued after July 18, 1984. See section 881(c) for more details.

- If you are a QDD, report all QDD tax liabilities (see Qualified Intermediary Agreement), whether or not the amounts are subject to withholding or correctly withheld.

Such income (except as indicated below) will generally be subject to tax at a 30% rate. See section 881(a).

**Amounts fixed or determinable, annual or periodic** include the following.

1. Interest (other than original issue discount (OID) as defined in section 1273), dividends, rents, royalties, salaries, wages, premiums, annuities, compensation, and other FDAP gains, profits, and income.

**Note.** Item 1 above includes dividend equivalents described in section 871(m); however, dividends and dividend equivalents

received in calendar years 2019 through 2024 by a QDD in its equity derivatives dealer capacity are excluded.

2. Gains described in section 631(b) or (c), relating to disposal of timber, coal, or domestic iron ore with a retained economic interest.
3. On a sale or exchange of an OID obligation, the amount of the OID accruing while the obligation was held by the foreign corporation, unless this amount was taken into account on a payment.
4. On a payment received on an OID obligation, the amount of the OID accruing while the obligation was held by the foreign corporation, if such OID was not previously taken into account and if the tax imposed on the OID does not exceed the payment received less the tax imposed on any interest included in the payment received. This

rule applies to payments received for OID obligations issued after March 31, 1972.

Certain OID is not taxable for OID obligations issued after July 18, 1984. See section 881(c) for more details.

For rules that apply to other OID obligations, see Pub. 515.

5. Gains from the sale or exchange of patents, copyrights, and other intangible property if the gains are from payments that are contingent on the productivity, use, or disposition of the property or interest sold or exchanged.

For more information, see section 881(a) and Regulations section 1.881-2.

**Note.** For purposes of determining whether its income is taxable under section 881(a), a corporation created or organized in Guam, American Samoa, the Northern Mariana

Islands, or the U.S. Virgin Islands will not be treated as a foreign corporation if it meets the rules of section 881(b). For dividends paid after October 22, 2004, a corporation created or organized in Puerto Rico will be taxed under section 881(a) at a rate of 10% with respect to such dividends received during the tax year in the circumstances outlined in section 881(b)(2).

## **Line 9. Gross Transportation Income**

A 4% tax is imposed on a foreign corporation's U.S. source gross transportation income for the tax year. U.S. source gross transportation income is generally any gross income that is transportation income if such income is treated as from U.S. sources.

Transportation income is any income from or connected with:

- The use (or hiring or leasing for use) of a vessel or aircraft, or



- The performance of services directly related to the use of a vessel or aircraft. For this purpose, the term “vessel or aircraft” includes any container used in connection with a vessel or aircraft.

Generally, 50% of all transportation income that is attributable to transportation that either begins **or** ends in the United States is treated as from U.S. sources. See section 863(c)(2)(B) for a special rule for personal service income.

**Exceptions.** U.S. source gross transportation income does **not** include income that is:

- Effectively connected with the conduct of a U.S. trade or business, or
- Taxable in a territory of the United States under the provisions of the Internal Revenue Code as applied to that territory.

Transportation income of the corporation will not be treated as ECI unless:

- The corporation has a fixed place of business in the United States involved in the earning of transportation income, and
- Substantially all of the corporation's U.S. source gross transportation income (determined without regard to the rule that such income does not include ECI) is attributable to regularly scheduled transportation (or, in the case of income from the leasing of a vessel or aircraft, is attributable to a fixed place of business in the United States).

For more information, see section 887.

Enter the foreign corporation's U.S. source gross transportation income on line 9, column (b). Also, attach Schedule V (Form 1120-F).

See Exclusion from gross income for certain income from ships and aircraft, later.

## **Line 10. Other Items of Income**

Include on line 10 all other income not reportable on lines 1 through 9. For any amounts received by a QDD in its equity derivatives dealer capacity, include a statement detailing each type of income. In addition, if the foreign corporation received a specified federal procurement payment (as defined in section 5000C(b)) that was not fully withheld upon at source, enter the payment in Section I, line 10, column (b); enter a 2% rate of tax in column (c); enter the tax liability in column (d); and enter any withholding in column (e).

**Increase or decrease in tax attributable to partner's additional reporting year tax.** If the taxpayer is a foreign corporate partner and received a Form 8986 from a partnership that has elected to have each reviewed partner take into account the partner's share of the adjustments, as finally determined, instead of paying the imputed

underpayment, the foreign corporate partner (taxpayer) will have to complete Form 8978 to report adjustments shown on the Form 8986 they received from the partnership. The foreign corporate partner (taxpayer) must complete a separate Form 8978 to report adjustments pertaining to income that is effectively connected with the conduct of a trade or business in the United States under section 882 (an "ECI Form 8978") and a separate Form 8978 to report adjustments pertaining to income from U.S. sources not effectively connected with the conduct of a trade or business in the United States under section 881 (an "FDAP Form 8978"). Include any increase or decrease in taxes due from the FDAP Form 8978, line 14, that was not fully withheld upon at source, on a separate line on Form 1120-F, Section I, line 10. Enter "From Form 8978" in column (a) and skip (leave blank) columns (b) and (c). Enter in column (d) the amount of the increase or decrease from the FDAP Form 8978, line 14.

Enter any withholding in column (e). Attach the FDAP Form 8978 to Form 1120-F.

**Note.** The taxpayer will generally skip lines 3a, 3b, 4, 7, 9a, 9b, and 10 of the FDAP Form 8978.

### **Line 13**

Check the "Yes" box if you received an item of income during the tax year with respect to which you are treated as fiscally transparent under the laws where you are organized. In such a case, you may not claim a reduced rate of tax under a treaty with respect to that item. See Regulations section 1.894-1(d)(1).

If the item of income has been withheld upon, your interest holders may, however, be able to claim treaty benefits, but only if the tax jurisdiction in which your interest holders qualify for treaty benefits treats you as fiscally transparent and the interest holders are not fiscally transparent with respect to that item of income. An interest holder

claiming a benefit should file a separate Form 1120-F, if appropriate. See Regulations section 1.894-1(d)(3) for the definition of “fiscally transparent” and Regulations section 1.894-1(d)(5) for examples.

## **Section II—Income Effectively Connected With the Conduct of a Trade or Business in the United States**

### **Foreign Corporations Engaged in a U.S. Trade or Business**

These corporations are taxed on their ECI at the same 21% tax rate that applies to domestic corporations. ECI can be U.S. source or foreign source income as explained below.

### **U.S. Source Effectively Connected Income**

U.S. source income derived by a foreign corporation engaged in a U.S. trade or

business other than FDAP and capital gains is ECI. See Regulations section 1.864-4(b).

**Note.** For purposes of the preceding paragraph, U.S. source income includes income with respect to activities related to the exploration and exploitation of natural resources in continental shelf areas (see section 638).

FDAP items are generally ECI (and are therefore includible in Section II) if the asset-use test, the business-activities test, or both tests (explained below) are met.

If neither test is met, FDAP items are generally not ECI (and are therefore includible in Section I instead of Section II). For more information, see section 864(c)(2) and Regulations section 1.864-4(c).

**Finance business.** See Regulations section 1.864-4(c)(5) for special rules relating to banking, financing, or similar business activities. Such rules apply to certain stocks

and securities of a banking, financing, or similar business in lieu of the asset-use and business-activities tests.

**Asset-use test.** The FDAP items are from assets used in, or held for use in, the conduct of U.S. trade or business. For example, the following items are ECI.

- Income earned on a trade or note receivable acquired in the conduct of the U.S. trade or business.
- Interest income earned from the temporary investment of funds needed in the foreign corporation's U.S. trade or business.

**Business-activities test.** The activities of the U.S. trade or business were a material factor in the realization of the FDAP items.



## **Foreign Source Effectively Connected Income**

Foreign source income is generally not ECI. However, if the foreign corporation has an office or other fixed place of business in the United States, the following types of foreign source income it receives from that U.S. office are ECI.

- Rents or royalties received for the use outside the United States of intangible personal property described in section 862(a)(4) if derived from the active conduct of a U.S. trade or business.
- Gains or losses on the sale or exchange of intangible personal property located outside the United States or from any interest in such property, if such gains or losses are derived in the active conduct of the trade or business in the United States.
- Dividends, interest, amounts received for the provision of a guarantee of

indebtedness, issued after September 27, 2010, if derived from the active conduct of a U.S. banking, financing, or similar business **or** if the principal business of the foreign corporation is trading in stocks or securities for its own account.

- Income from the sale or exchange of inventory outside the United States through the U.S. office, unless the property is sold or exchanged for use, consumption, or disposition outside the United States and an office of the foreign corporation in a foreign country materially participated in the sale.
- Any income or gain that is equivalent to any item of income or gain listed above must be treated in the same manner as such item for purposes of determining whether that income is foreign source ECI.

See section 864(c)(5)(A) and Regulations section 1.864-7 for the definition of “office” or other fixed place of business in the United

States. See sections 864(c)(5)(B) and (C) and Regulations section 1.864-6 for special rules for determining when foreign source income received by a foreign corporation is from an office or other fixed place of business in the United States.

**Foreign insurance companies.** Foreign source income of a foreign insurance company that is attributable to its U.S. trade or business is ECI. See section 864(c)(4)(C) and Regulations section 1.864-5(c).

**Excluded foreign source income.** Foreign source income that would otherwise be ECI under any of the above rules for foreign source income is excluded if:

- It is foreign source dividends, interest, or royalties paid by a foreign corporation in which the taxpayer owns or is considered to own (within the meaning of section 958) more than 50% of the total combined voting power of all classes of stock entitled to vote; or

- The taxpayer is a CFC (as defined in section 957) and the foreign source income is subpart F income (as defined in section 952).

For more information, see section 864(c)(4)(D) and Regulations section 1.864-5(d).

### **Foreign Corporations Not Engaged in a U.S. Trade or Business**

If a foreign corporation is not engaged in a U.S. trade or business during the tax year, it will complete Section II only if such corporation:

- Had current year income or gain from a sale or exchange of property or from performing services (or any other transaction) in any other tax year that would have been ECI in that other tax year (see section 864(c)(6));
- Had current year income or gain from a disposition of property that is no longer

used or held for use in conducting a U.S. trade or business within the 10-year period before the disposition that would have been ECI immediately before such cessation (see section 864(c)(7));

- Elected to treat real property income as ECI (see below);
- Was created or organized and was conducting a banking business in a U.S. territory, and received interest on U.S. obligations that is not portfolio interest (see section 882(e)); or
- Had gain or loss from disposing of a U.S. real property interest (see *Disposition of U.S. Real Property Interest by a Foreign Corporation*, later).

## **Election To Treat Real Property Income as Effectively Connected Income**

A foreign corporation that derives, during the tax year, any income from real property located in the United States, or from any

interest in such real property, may elect, for the tax year, to treat all such income as ECI. See section 871(d). Income to which this election applies includes:

- Gains from the sale or exchange of real property or an interest therein;
- Rents or royalties from mines, wells, or other natural deposits; and
- Gains described in section 631(b) or (c).

The election may be made whether or not the corporation is engaged in a U.S. trade or business during the tax year for which the election is made or whether or not the corporation has income from real property that, for the tax year, is effectively connected with the conduct of a U.S. trade or business.

To make the election, attach a statement that includes the information required in Regulations section 1.871-10(d)(1)(ii) to Form 1120-F for the first tax year for which

the election is to apply. Use Section II to figure the tax on this income.

## **Disposition of U.S. Real Property Interest by a Foreign Corporation**

A foreign corporation that disposes of a U.S. real property interest (as defined in section 897(c)) must treat the gain or loss from the disposition as ECI, even if the corporation is not engaged in a U.S. trade or business.

Figure this gain or loss on Schedule D (Form 1120), Capital Gains and Losses. Carry the result to Section II, line 8, on page 5 of Form 1120-F.

A foreign corporation may elect to be treated as a domestic corporation for purposes of sections 897 and 1445. See section 897(i).

See Temporary Regulations section 1.897-5T for the applicability of section 897 to reorganizations and liquidations.

If the corporation had income tax withheld on Form 8288-A, include the amount withheld on line 5i, page 1.

## **Income**

### **Line 1. Gross Receipts or Sales**

**Line 1a.** Enter gross income effectively connected with the conduct of a U.S. trade or business (except for those income items that must be reported on lines 4 through 10).

Include on line 1a effectively connected gross receipts or sales. If an accrual method corporation has an applicable financial statement (as defined in section 451(b)(3)), then the revenue recognition rules in Regulations section 1.451-3 may apply.

Special rules apply to certain income, as discussed below.