



DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-109742-25]

RIN 1545-BR60

Domestically Controlled Qualified Investment Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that would modify existing regulations on the determination of whether a qualified investment entity is domestically controlled by removing a rule that looks to the shareholders of certain domestic corporations in determining whether foreign persons hold directly or indirectly stock in a qualified investment entity. The proposed regulations would 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: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG-109742-25) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any

comments submitted to the IRS's public docket. Send paper submissions to:
CC:PA:01:PR (REG-109742-25), Room 5503, Internal Revenue Service, P.O. Box
7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Andrew F. Gordon (or any other staff member in the Office of the Associate Chief Counsel (International)) at (202) 317-3800 (not a toll-free number); concerning submissions of comments, requests for a public hearing, and access to a public hearing, Publications and Regulations Section at (202) 317-6901 (not toll-free numbers) or by e-mail to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

Section 897(a)(1) of the Internal Revenue Code (Code) provides that gain or loss of a nonresident alien individual or foreign corporation from the disposition of a United States real property interest (USRPI) is taken into account under section 871(b)(1) or section 882(a)(1), as applicable, as if the nonresident alien individual or foreign corporation were engaged in a trade or business within the United States during the taxable year and such gain or loss were effectively connected with that trade or business.

Subject to certain exceptions, section 897(c)(1)(A) defines a USRPI as an interest in real property (including an interest in a mine, well, or other natural deposit) located in the United States or the Virgin Islands, and any interest (other than solely as a creditor) in any domestic corporation unless the taxpayer establishes that such corporation was at no time a United States real property holding corporation (USRPHC) during the period set forth in section 897(c)(1)(A)(ii) (generally, the five-year period ending on the date of the disposition of the interest). Under section 897(c)(2), a USRPHC is generally any corporation if the fair market value of its USRPIs equals or

exceeds 50 percent of the total fair market value of its USRPIs, its interests in real property located outside the United States, plus any other of its assets that are used or held for use in a trade or business.

Section 897(h)(1) provides that any distribution by a qualified investment entity (QIE) to a nonresident alien individual, a foreign corporation, or other QIE, to the extent attributable to gain from sales or exchanges by the QIE of USRPIs, is treated as gain recognized by such nonresident alien individual, foreign corporation, or other QIE from the sale or exchange of a USRPI, subject to certain exceptions. Section 897(h)(4)(A) defines a QIE as any (i) real estate investment trust (REIT), and (ii) any regulated investment company (RIC) which is a USRPHC or which would be a USRPHC if the exceptions in section 897(c)(3) and (h)(2) did not apply to interests in any REIT or RIC.

Section 897(h)(2) provides that a USRPI does not include an interest in a domestically controlled QIE (DC-QIE exception). Accordingly, gain or loss on the disposition of stock in a domestically controlled QIE is not subject to section 897(a). Section 897(h)(4)(B) provides that a QIE is domestically controlled if less than 50 percent of the value of its stock is held directly or indirectly by foreign persons at all times during the testing period prescribed in section 897(h)(4)(D) (generally, the five-year period ending on the date of the disposition).

On December 29, 2022, the Treasury Department and the IRS published proposed regulations (REG-100442-22) in the **Federal Register** (87 FR 80097) that set forth 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) (2022 proposed regulations). The 2022 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. Under that approach, only a “non-look-through person” is treated as holding directly or

indirectly stock of a QIE, and stock of a QIE held by or through one or more intervening “look-through persons” is treated as held proportionately by the look-through person’s ultimate owners that are non-look-through persons.

The 2022 proposed regulations generally treated a “domestic C corporation,” defined as any domestic corporation other than a RIC, REIT, or an S corporation, as a non-look-through person. However, the 2022 proposed regulations treated certain “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 (domestic corporation look-through rule).

On April 24, 2024, the Treasury Department and the IRS published TD 9992 in the **Federal Register** (89 FR 31618) (2024 final regulations), which finalized the 2022 proposed regulations. The 2024 final regulations retained the general approach and structure of the 2022 proposed regulations with certain revisions. In particular, under the 2024 final regulations the domestic corporation look-through rule applies if foreign persons hold a more than 50 percent interest (by value) in the stock of the corporation. See § 1.897-1(c)(3)(iii)(B) and (c)(3)(v)(B). The 2024 final regulations also include a transition rule that exempts existing QIEs from the application of the domestic corporation look-through rule for a 10-year period, provided that there is not a significant change in the USRPIs held by the QIE or in the QIE’s ownership. See § 1.897-1(c)(3)(vi).

Explanation of Provisions

I. Removal of Domestic Corporation Look-Through Rule

Following the publication of the 2024 final regulations, the Treasury Department and the IRS received feedback from taxpayers recommending the withdrawal of the domestic corporation look-through rule, focusing on the practical difficulty of tracing upstream ownership, often without access to reliable data, resulting in legal uncertainty,

operational complexity, and potentially chilling effects on investment in U.S. real estate.

The Treasury Department and the IRS share these concerns.

In addition, taxpayers argued that the domestic corporation look-through rule is inconsistent with the statute and conflicts with congressional intent. They noted that within the domestically controlled QIE provisions, section 897(h)(4)(B) does not contain explicit corporate look-through rules and that Congress enacted rules in 2015 providing for look-through treatment for certain corporate owners of QIEs, but only in the specific circumstances described in section 897(h)(4)(E). They argued that the presence of the look-through rules in section 897(h)(4)(E) (and in other areas under section 897) indicates that the absence of a similar rule in section 897(h)(4)(B) was intentional, and that interpreting section 897(h)(4)(B) to include corporate look-through rules would render the section 897(h)(4)(E) look-through rules surplus. The recommendations emphasized that the term “indirectly” can have meanings in the Code other than look-through treatment of domestic corporations. They further argued that the interests held by a domestic corporation are subject to U.S. corporate income tax and therefore the objective of section 897 is satisfied without looking through a domestic corporation.

In response to the feedback received, the Treasury Department and the IRS have further considered whether the interpretation of “indirectly” reflected in the domestic corporation look-through rule is consistent with the statutory text and purpose of the DC-QIE exception, which Congress intended to be available for QIEs that are controlled by United States persons. In light of this further consideration, the Treasury Department and the IRS are of the view that imposing look-through treatment under the domestic corporation look-through rule with respect to an entity that is subject to U.S. taxation based on a strict 50-percent foreign ownership threshold is not the construction that should be given to the text of section 897(h)(4)(B), as informed by the traditional tools of statutory construction, including evaluation of the provision’s purpose.

Accordingly, the proposed regulations would remove the domestic corporation look-through rule and treat all domestic C corporations as non-look-through persons in determining whether a QIE is domestically controlled. The proposed regulations would also provide for various conforming revisions to § 1.897-1(c)(3) that are necessary because of the removal of the domestic corporation look-through rule.

II. Applicability Date

The proposed regulations, upon finalization, would apply to transactions occurring on or after **[INSERT DATE OF FILING IN THE FEDERAL REGISTER]**. However, taxpayers may choose to apply the final regulations, once published in the **Federal Register**, to transactions occurring on or after April 25, 2024 (and to 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). Taxpayers may rely on the proposed regulations for transactions occurring before the date the proposed regulations are finalized.

Special Analyses

I. Regulatory Planning and Review -- Economic Analysis

The proposed regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (July 4, 2025) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations.

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. An agency may not conduct or

sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the OMB.

The existing collection of information requirement 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) also provides that the same procedure may 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 requirements in § 1.897-2(h).

The proposed regulations do not modify any existing information collection requirements or create new or additional information collection requirements. For purposes of the PRA, the reporting burden associated with the collections of information in § 1.1445-2(c)(3) is reflected in the PRA submissions associated with the section 1445 regulations (OMB control number 1545-0902).

III. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA) requires the agency to prepare and make available for public comment an initial regulatory flexibility analysis that will describe the impact of the proposed rule on small entities. See 5 U.S.C. 603(a). Section 605 of the RFA provides an exception to this requirement if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. A small entity is defined as a small business, small nonprofit organization, or small governmental jurisdiction. See 5 U.S.C. 601(3) through (6).

The proposed regulations would remove the domestic corporation look-through rule and, therefore, a domestic C corporation would be treated as a non-look-through person in determining whether a QIE is domestically controlled. Data on the number of

small entities potentially affected by the proposed regulations is not readily available. Even if a substantial number of small entities would be affected, the economic impact is not expected to be significant. The Treasury Department and the IRS are of the view that the proposed regulations will reduce the economic impact on small entities by reducing compliance burdens. Accordingly, a regulatory flexibility analysis is not required.

Notwithstanding this certification, the Treasury Department and the IRS welcome comments about the impacts of these regulations on small entities.

IV. Section 7805(f)

Pursuant to section 7805(f) of the Code, the proposed regulations (REG-109742-25) have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

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 proposed 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 proposed 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.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any comments submitted will be made available at <http://www.regulations.gov> or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of the proposed regulations is the Office of the 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.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

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

Par. 2. Section 1.897-1 is amended by:

1. Revising paragraphs (a)(2) and (c)(3)(iii)(A);
2. Removing paragraph (c)(3)(iii)(B) and redesignating paragraph (c)(3)(iii)(C) as paragraph (c)(3)(iii)(B);
3. Revising the last sentence of newly redesignated paragraph (c)(3)(iii)(B);
4. Removing the language “see paragraph (c)(3)(vii)(A)” in the second sentence of paragraph (c)(3)(iv)(A) and adding “see paragraph (c)(3)(vi)(A)” in its place;
5. Revising paragraph (c)(3)(v)(B);
6. Removing the last sentence in paragraph (c)(3)(v)(C);
7. Revising paragraph (c)(3)(v)(D);
8. Removing paragraph (c)(3)(v)(E) and redesignating paragraph (c)(3)(v)(F) as paragraph (c)(3)(v)(E);
9. Removing paragraph (c)(3)(v)(G) and redesignating paragraphs (c)(3)(v)(H) through (J) as paragraphs (c)(3)(v)(F) through (H);
10. Revising the last sentence of newly redesignated paragraphs (c)(3)(v)(G) and (H);
11. Redesignating paragraphs (c)(3)(v)(K) through (O) as paragraphs (c)(3)(v)(I) through (M);
12. Removing paragraph (c)(3)(vi) and redesignating paragraph (c)(3)(vii) as paragraph (c)(3)(vi);
13. Revising the newly redesignated paragraph (c)(3)(vi); and
14. Removing the language “paragraph (c)(3)(ii) through (vii)” in paragraph (c)(4) and adding “paragraph (c)(3)(ii) through (vi)” in its place.

The revisions 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. Paragraphs (c)(3) and (4) of this section apply to transactions occurring on or after **[INSERT DATE OF FILING IN THE FEDERAL REGISTER]**. For transactions occurring before **[INSERT DATE OF FILING IN THE FEDERAL REGISTER]**, see paragraphs (c)(3) and (4) of this section contained in 26 CFR part 1, as revised April 1, 2025. With respect to transactions occurring before **[INSERT DATE OF FILING IN THE FEDERAL REGISTER]**, taxpayers may apply paragraphs (c)(3) and (4) of this section for 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. Paragraphs (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) * * *

(iii) * * *

(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 a look-through person that is a foreign-controlled entity. For an example illustrating the application of this paragraph (c)(3)(iii)(A), see paragraph (c)(3)(vi)(B) of this section (*Example 2*).

(B) * * * For an example illustrating the application of this paragraph (c)(3)(iii)(B), see paragraph (c)(3)(vi)(B) of this section (*Example 2*).

* * * * *

(v) * * *

(B) A *foreign-controlled entity* is any entity in which foreign persons hold directly or indirectly more than 50 percent of the fair market value of the entity's outstanding interests. For purposes of determining whether an entity is a foreign-controlled entity, the rules of paragraphs (c)(3)(ii)(A) through (C), (c)(3)(iii)(A) and (B), and (c)(3)(iv) of this section apply (treating the entity as if it were a QIE for this purpose).

* * * * *

(D) A *non-look-through person* is an individual, a domestic C 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 (B) of this section.

* * * * *

(G) * * * 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 a foreign-controlled entity.

(H) * * * 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 a foreign-controlled entity.

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(vi) *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)(F) of this section.

(A) *Example 1: QIE stock held by domestic C corporation--(1) Facts.* USR is a REIT, 51 percent of the stock of which is held by X, a domestic C corporation as defined in paragraph (c)(3)(v)(A) 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)(K) of this section, USR is a QIE.

Because X is a domestic C corporation it 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)(vi)(A)(1) of this section (*Example 1*), except that, instead of being a domestic C corporation, X is a domestic partnership that is not a publicly traded partnership as defined in paragraph (c)(3)(v)(H) 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)(vi)(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)(vi)(A)(3) of this section, 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)(vi)(A)(3) of this section 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)(vi)(A)(3) of this section, 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 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)(F) of this section. The remaining 49 percent of the stock of USR2 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)(M) 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 (USR1 less than five-percent public shareholders) and with respect to which USR1 has no actual knowledge that such person is not a United States person or is a look-through person that is a foreign-controlled entity (as determined under paragraph (c)(3)(v)(B) of this section by treating any entity as if it were a QIE for this purpose).

(2) *Analysis.* Under paragraph (c)(3)(v)(K) 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)(B) 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)(vi)(B)(1) of this section (*Example 2*), 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)(B) 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.

(C) Example 3: 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)(F) 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 domestic C

corporation as defined in paragraph (c)(3)(v)(A) of this section, and 50 percent of the interests in which are held by nonresident alien individuals.

(2) *Analysis.* Under paragraph (c)(3)(v)(K) of this section, USR2 and USR1 are QIEs. USR1 is not treated as a non-look-through person under paragraph (c)(3)(iii)(B) of this section because USR1 is not a public QIE as defined in paragraph (c)(3)(v)(F) 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 ($50\% \times 51\%$) 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 as defined in paragraph (c)(3)(v)(D) of this section, 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 ($50\% \times 50\% \times 51\%$) 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 ($50\% \times 50\% \times 51\%$). 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) of this section, 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.

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Jarod J. Koopman,

Acting Chief Tax Compliance Officer.

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