reason to know of the existence of a conduit financing arrangement.

### C. Status of Revenue Rulings

The proposed regulations did not address the status of the existing revenue rulings relating to conduit arrangements. Commentators have asked for guidance regarding their status.

Concurrent with the publication of these regulations, the IRS is issuing a revenue ruling modifying the existing rulings. The revenue ruling limits the application of the old revenue rulings in the context of withholding tax to payments made before the effective date of the final regulations and to other provisions not covered by the conduit regulations.

### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based on the information that follows. These regulations affect entities engaged in cross-border multiple-party financing arrangements. It is assumed that a substantial number of small entities will not engage in such financing arrangements. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small businesses.

Drafting Information: The principal author of these regulations is Elissa J. Shendalman, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

### List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

# Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

### **PART 1—INCOME TAXES**

**Paragraph 1.** The authority citation for part 1 is amended by removing the

entry for "Sections 1.6038A-1 through 1.6038A-7" and adding entries in numerical order to read as follows:

**Authority:** 26 U.S.C. 7805 \* \* \* Section 1.871–1 also issued under 26 U.S.C. 7701(l). \* \* \*

Section 1.881–3 also issued under 26 U.S.C. 7701(l).

Section 1.881–4 also issued under 26 U.S.C. 7701(l). \* \* \*

Section 1.1441–3 also issued under 26 U.S.C. 7701(l). \* \* \*

Section 1.1441–7 also issued under 26 U.S.C. 7701(l). \* \* \*

Section 1.6038A-1 also issued under 26 U.S.C. 6038A.

Section 1.6038A–2 also issued under 26 U.S.C. 6038A.

Section 1.6038A-3 also issued under 26 U.S.C. 6038A and 7701(l).

Section 1.6038A-4 also issued under 26 U.S.C. 6038A.

Section 1.6038A-5 also issued under 26 U.S.C. 6038A.

Section 1.6038A-6 also issued under 26 U.S.C. 6038A.

Section 1.6038A-7 also issued under 26 U.S.C. 6038A. \* \* \*

Section 1.7701(l)-1 also issued under 26 U.S.C. 7701(l). \* \* \*

**Par. 2.** In § 1.871–1, paragraph (b)(7) is added to read as follows:

## §1.871–1 Classification and manner of taxing alien individuals.

\* \* \* \* (b) \* \* \*

(7) Conduit financing arrangements. For rules regarding conduit financing arrangements, see §§ 1.881–3 and 1.881–4.

**Par. 3.** Sections 1.881–0, 1.881–3 and 1.881–4 are added to read as follows:

### §1.881-0 Table of contents.

This section lists the major headings for §§ 1.881–1 through 1.881–4.

### § 1.881–1 Manner of Taxing Foreign Corporations

- (a) Classes of foreign corporations.
- (b) Manner of taxing.
- (1) Foreign corporations not engaged in U.S. business.
- (2) Foreign corporations engaged in U.S. business.
  - (c) Meaning of terms.
- (d) Rules applicable to foreign insurance companies.
- (1) Corporations qualifying under subchapter L.
- (2) Corporations not qualifying under subchapter L.
- (e) Other provisions applicable to foreign corporations.
  - (1) Accumulated earnings tax.
- (2) Personal holding company tax.
- (3) Foreign personal holding companies.
- (4) Controlled foreign corporations.
- (i) Subpart F income and increase of earnings invested in U.S. property.
- (ii) Certain accumulations of earnings and profits.

- (5) Changes in tax rate.
- (6) Consolidated returns.
- (7) Adjustment of tax of certain foreign corporations.
  - (f) Effective date.

### § 1.881–2 Taxation of Foreign Corporations Not Engaged in U.S. Business

- (a) Imposition of tax.
- (b) Fixed or determinable annual or periodical income.
  - (c) Other income and gains.
  - (1) Items subject to tax.
  - (2) Determination of amount of gain.
  - (d) Credits against tax.
  - (e) Effective date.

#### § 1.881-3 Conduit Financing Arrangements

- (a) General rules and definitions.
- (1) Purpose and scope.
- (2) Definitions.
- (i) Financing arrangement.
- (A) In general.
- (B) Special rule for related parties.
- (ii) Financing transaction.
- (A) In general.
- (B) Limitation on inclusion of stock or similar interests.
  - (iii) Conduit entity.
  - (iv) Conduit financing arrangement.
  - (v) Related.
- (3) Disregard of participation of conduit entity.
  - (i) Authority of district director.
  - (ii) Effect of disregarding conduit entity.
  - (A) In general.
- (B) Character of payments made by the financed entity.
  - (C) Effect of income tax treaties.
  - (D) Effect on withholding tax.
- (E) Special rule for a financing entity that is unrelated to both intermediate entity and financed entity.
- (iii) Limitation on taxpayers's use of this section.
- (4) Standard for treatment as a conduit entity.
  - (i) In general.
- (ii) Multiple intermediate entities.
- (A) In general.
- (B) Special rule for related persons.
- (b) Determination of whether participation of intermediate entity is pursuant to a tax avoidance plan.
  - (1) In general.
- (2) Factors taken into account in determining the presence or absence of a tax avoidance purpose.
  - (i) Significant reduction in tax.
  - (ii) Ability to make the advance.
- (iii) Time period between financing transactions.
- (iv) Financing transactions in the ordinary course of business.
- (3) Presumption if significant financing activities performed by a related intermediate entity.
  - (i) General rule.
  - (ii) Significant financing activities.
  - (A) Active rents or royalties.
  - (B) Active risk management.
- (c) Determination of whether an unrelated intermediate entity would not have participated in financing arrangement on substantially same terms.
  - (1) In general.