

to file. There could be no confusion as to the applicability of our tax laws to them. This would be highly desirable.

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*Recommendation No. 31:*

Eliminate the provision for taxation of capital gains realized by a nonresident alien individual when he is physically present in the United States; extend from 90 to 180 days during a taxable year the time that a nonresident alien individual may spend in the United States before becoming subject to tax on all capital gains realized by him during such year.

Many foreign countries do not tax capital gains, and the threat of such taxation in the United States, therefore, deters investment in the United States by foreigners. In principle, the United States already exempts from taxation capital gains realized by nonresident alien individuals and foreign corporations not engaged in trade or business in the United States. But this exemption is limited by the imposition of a tax on capital gains realized when a foreign individual is present in the United States and by the imposition of tax on all capital gains realized by a foreigner in any year during which he is present in the United States for 90 days or more. These limitations are sufficiently stringent and, in the case of the physical presence test, sufficiently illogical that they impair the basic concept that capital gains of nonresident alien investors are exempt from U.S. taxation. It is our understanding that the revenues stemming from capital gains taxation imposed as a result of these limitations are small.

The physical presence test would appear to have no practical justification and, although easily avoided, it poses a potential trap for the unwary, unsophisticated or uninformed investor. As such, it contributes to the feeling among foreign investors that investment in the United States is complicated and potentially hazardous from a tax standpoint. The 90-day test is, in our opinion, too short a period.

Eliminating the physical presence test entirely and extending the 90-day period to 180 days would, we believe, remove most of the present unfavorable impact of potential capital gains taxation.