

drawn from a general pool of assets. Each deposit contract is made with a particular branch in a particular country, subject to the laws and exchange controls of that country. It is payable at that branch only, and only in the currency that was deposited. A foreign corporation cannot make a French franc deposit in France and expect to draw against it in dollars in New York. In order to use in the United States the deposits which it has in a foreign branch, the depositor would have to transfer funds out of that branch, and, if a different currency is involved, would have to make a sale of his funds in exchange for the dollars that he would want. Thus, foreign branches of U.S. banks operate, as a matter of economics and banking law, in basically the same way as banks incorporated locally in the countries where they do business; and the interest which these branches pay is not attributable to earning assets of the depositor in the United States.

*The futility of trying to tax foreign source interest income*

The present law attempts to tax income generated wholly outside the United States, payable to recipients who are not U.S. persons. It does not attempt to tax these payments in all cases, however, but only where the payor happens to be incorporated in the United States and then only when it operates through foreign branches rather than locally incorporated foreign subsidiaries. In view of this peculiar twist in the law, any foreign person or corporation suspecting that it may be found to do business in the United States, has merely to withdraw its money from the foreign branch of an American bank and place it on deposit with a local bank across the street. The issue presented by the proposed amendment is not whether these foreign interest payments will be taxed—they are not taxed under present law, except in a few cases where the corporate treasurer is unenlightened. The real issue is whether the strained language of the present Internal Revenue Code, section 861, will continue to keep these interest-bearing deposits out of the foreign branches of American banks.

*The corporate treasurer's decision*

As the law now stands, before the treasurer of a foreign corporation will put an interest-bearing deposit with the foreign branch of an American bank he must satisfy himself that his corporation is not doing business in the United States. In making this decision he must bear in mind that his conclusion does not control but rather that the findings of an Internal Revenue Service agent, perhaps several years later, will determine whether his interest is taxed under the terms of section 861. If his conclusion differs from that of the agent, he is faced with expensive legal proceedings, or payment of the tax, or both. His decision is obvious: The money must be put with the foreign bank regardless of what his opinion may be on this question. The American bank therefore loses not only those deposits which are taxable under section 861 but other deposits which are frightened away through the corporate treasurer's understandable caution. Many of these corporations are American owned or controlled and, other factors being equal, would prefer to do business with an American bank if they could. The possibility of an ultimately favorable decision on the question of doing business will not, and should not, satisfy the prudent corporate treasurer. The legal terms are too hard