

ADDITIONAL RECOMMENDATIONS

(1) Interest income of nonresident aliens

Many domestic corporations wishing to invest in foreign countries are forced to borrow U.S. funds for this purpose because foreign lenders are unwilling to allow interest payments to be reduced by U.S. withholding taxes. The most practical approach to this problem would be to exempt interest completely from gross income of nonresident aliens. If this approach were considered to be too radical, an amendment to section 861(a)(1) pursuant to which interest paid on loans, the proceeds of which are used exclusively outside the United States, would be considered to be income from sources outside the United States could remedy this situation.

(2) Tax base

The tax base used for nonresident aliens not engaged in trade or business here (sec. 871(a)) and nonresident foreign corporations (sec. 881(a)) should be broadened. The term "fixed or determinable annual or periodical income" was first incorporated into the code in 1936. It has undergone little change since that time. As a result, such loophole closing sections as 341 (collapsible corporations), 1245 and 1250 (depreciation recapture) and 306 (preferred stock bail outs) create loopholes for nonresident aliens since gain from the sale of noncapital assets is not taxable to nonresident aliens. It would perhaps be preferable to broaden the tax base of nonresident aliens not engaged in business here and nonresident foreign corporations to include all U.S. source income with the exception of interest as stated above, certain capital gains and income from the sale of property which is includable in inventory or which is used in the taxpayer's trade or business.

(3) Capital gains

While the liberalization of the taxation of capital gains of nonresident alien individuals is endorsed, there appears to be no reason to exempt from taxation proceeds from the sale of patents (not qualifying under IRC sec. 1235), copyrights, trademarks or other similar rights. These should be excluded from the liberalized capital gains rules.

In the event that a nonresident alien is subjected to taxation on capital gains by virtue of his presence in the United States for 183 days or more, the tax rate thereon should not exceed the 25 percent applicable to U.S. citizens. Moreover, such persons should be allowed to take advantage of the 5 year capital loss carryover.

(4) Certificates of compliance

An unreasonable administrative requirement is set forth in IRC section 6851(d) under which nonresident aliens, subject to certain exceptions, must secure certificates of compliance with the income tax laws prior to departure from the United States. In practice, this rule is not strictly enforced. Nevertheless, the fact that it is on the books presents an annoyance and a form of discrimination against foreigners which should be abolished.