

view of the fact that it often results in a variation of tax treatment depending upon the particular authority that is interpreting the term in the particular case.

The expatriation proposals in sections 3, 8, and 9 of the bill are too harsh. They introduce many complexities not warranted by the problem of U.S. expatriates.

The bill provides that dividends and gains from the sale of stock are excluded from the category of business income. There should also be excluded interest (other than interest earned in the conduct of a banking business) and gains from the sale of other securities.

Consideration should be given to excluding from the definition of business income those capital gains which are not derived from sales or exchanges, such as distributions under section 301(c)(3)(A).

The proposed code section 871(b)(3) would exclude from "business income" gains from the sale or exchange of stock by securities dealers. The association urges a policy review of this provision to determine whether this exclusion is intended.

III. Taxation of foreign corporations (sec. 4 of the bill)

Under present law, a foreign corporation engaged in business in the United States is taxed on all its U.S. source income in the same manner as a domestic corporation and gets a dividends received deduction for dividends from domestic corporations (resulting in a maximum effective tax rate of 7.2 percent on such dividends). Under the bill, code section 882 would be amended to include dividends in "non-business income" of such a corporation, and would tax such income at a 30-percent rate or the lower applicable treaty rate.

Comments

Association of the Bar of the City of New York

Code section 542(c)(7) excludes from the definition of "personal holding company" certain foreign corporations whose stock is wholly owned by nonresident alien individuals, directly or through other foreign corporations. The indirect ownership provision should be expanded to include stock owned through foreign trusts, estates, and partnerships, all of the beneficiaries or partners of which are nonresident aliens.

The present requirement that a foreign corporation derive at least 50 percent of its gross income from sources within the United States in order to have that corporation's dividends be eligible for the dividends-received deduction, should be increased to 80 percent.

Section 4(b) of the bill, amending section 882 of the code, has the effect of denying to resident foreign corporations the dividends-received deduction presently allowed to them. This would seem to run counter to the purpose of the bill to encourage foreign investment in the United States.

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