

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 code section 301(c)(3)(A).

The proposed code section 882(a)(3) would exclude from "business income" gains from the sale or exchange of stock by securities dealers. A policy review should be made to determine whether this exclusion is intended.

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Foreign corporations that are actively engaged in business in the United States and that have made substantial, permanent type investments in domestic corporations (at least a 10-percent equity interest) should be permitted to elect either—

(1) The treatment provided under existing law for resident foreign corporations (the availability of the intercorporate dividends received deduction, but a tax on capital gains realized in connection with U.S. stock investments); or

(2) The tax treatment provided in the proposed amendment (no intercorporate dividends received deduction, but exemption from tax on capital gains on U.S. stock investments).

*Frederick M. Eaton, representing the Fowler Task Force*

Under the proposed definitions of business and nonbusiness income, capital gains realized by a foreign corporation would be excluded from business and nonbusiness income, and therefore totally exempt from U.S. tax. This would make it possible for U.S. persons to finance and operate a securities dealer business in the United States through the medium of a resident foreign corporation, thereby accumulating profits from trading in corporate stock substantially free of tax at the corporate level. To prevent this unintended result, he would amend the definition of business income to provide that this term is to include net gains from the sale or exchange of stock in corporations if such stock is held by the taxpayer primarily for sale to customers ordinarily in the course of its trade or business.

*American Institute of Certified Public Accountants, Committee on Federal Taxation*

There should be a reduction in the present 30-percent tax rate on investment income of foreign corporations not engaged in business in the United States.

Present law and the proposed section 882(c)(1) should be amended to soften the provision disallowing all deductions in the event of unexcused failure to file returns.

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The accumulated earnings tax should not apply to corporations controlled by nonresident aliens, since such application encourages transmission of U.S. dollars abroad.

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Under present law, a foreign corporation engaged in trade or business in the United States pays the full 48 percent U.S. cor-