

make it clear that the administrative or judicial interpretation placed upon the term by the officials or courts of these other countries should be ignored in determining the meaning of our statute.

It seems questionable whether the uncertainties inherent in the "effectively connected" concept should be injected into the law at this time when every effort should be made to encourage foreign investment in the United States.

B. TECHNICAL PROBLEMS

1. Elections to treat real property income as effectively connected with U.S. business

Under sections 3(d) and 4(d) nonresident alien individuals and foreign corporations are given an election to treat investment real property as effectively connected with the conduct of a trade or business in the United States so as to pay tax upon the net income rather than upon the gross. This provision is similar to provisions in many income-tax conventions except that the election is irrevocable (unless the Secretary consents to its revocation) whereas the treaties permit the election to be made annually.

It would appear desirable to grant the election annually or to at least put some limit upon the applicability of the election. Otherwise the election may continue to be binding for years after the disposition of property which originally occasioned the election with unanticipated tax results flowing from an isolated sale of real property or the receipt of natural resource royalties.

This situation also will make it necessary for those aliens who have the right to make annual elections under treaties to be careful to specify that their election is being made under the treaty rather than under the statute.

2. Withholding

Under section 3(g) of the bill, withholding is required with respect to fixed or determinable annual or periodical income (as well as certain items which do not fit that description) from sources within the United States, as determined under normal source rules, unless the income is effectively connected with the conduct of a trade or business in the United States.

In view of the uncertainty which inevitably will arise as to whether certain items of income are effectively connected with the conduct of a business in the United States, withholding agents will act at their peril. If they reach the wrong answer as to whether the income is effectively connected with the U.S. business, they will be liable to the United States for failing to withhold or to the alien payee for withholding when they should not have. Withholding agents should be required to withhold only where the applicable rules are easily determinable.

Similar considerations apply to the requirement that the tax be withheld (unless the gain is effectively connected with the business) from gains realized in "collapsible" transactions and upon the redemption of bonds issued at a discount. Foreigners will not be encouraged to invest here if they are required to consider provisions as complex as these nor should withholding agents (who receive no