

connected with the conduct of a trade or business within the United States, except in the case of income from real property derived from sources within the United States during a taxable year for which the election provided by amended section 871(d) or 882(d) is in effect.

*Periodical, etc., income from sources within United States—Factors*

Paragraph (2) of new subsection (c) contains rules for determining whether certain income, gain, or loss from sources within the United States is effectively connected with the conduct of a trade or business within the United States. Under these rules in making the determination as to whether income or gains from sources within the United States which are of the type described in amended section 871(a) (1) or 881(a), or gain or loss from sources within the United States derived from the sale or exchange of property which is a capital asset (as defined in sec. 1221 of the code), will be considered effectively connected with the conduct of a trade or business within the United States, factors such as those specified in subparagraphs (A) and (B) of such paragraph (2) are to be taken into account.

The factors specified in subparagraphs (A) and (B) of paragraph (2) are whether first, the income, gain, or loss is derived from assets used in, or held for use in, the conduct of the trade or business within the United States; and second, the activities of such trade or business within the United States were a material factor in the realization of the income, gain, or loss. In applying these factors, due regard is to be given to whether or not such asset or such income, gain, or loss was accounted for through such trade or business. Thus, in determining the income which is effectively connected with the conduct of a trade or business in the United States, consideration will be given to the fact that the asset giving rise to the income, gain, or loss described in paragraph (2), or such income, gain, or loss itself, is carried on books of account separately kept for the trade or business conducted in the United States.

In determining whether income, gain, or loss of the types described in paragraph (2), of new subsection (c), is effectively connected with the conduct of a trade or business within the United States, particular attention will be given to the first factor; i.e., whether the asset giving rise to such income, gain, or loss is used in, or held for use in, such trade or business. This factor is especially important in the case of income of a passive type where business activities are not likely to be a direct or material contributor to the realization of this income. However, even in this case, the contribution of activities in carrying on a trade or business to the realization of the income, gain, or loss will also be taken into account if such activities are an important factor in contributing to the realization of the income. This business activity factor will be of primary significance in the case of income described in paragraph (2), whether generally passive or not, where the operation is a financial, banking, or similar business or is a licensing business and the income arises from these activities. In the case of a corporation, activity relating to management of investments will not be treated as related to the conduct of a trade or business within the United States unless the maintenance of such investments constitutes the principal activity of such corporation.