

by foreign corporations engaged in banking, financing or similar business would exempt dividends and interest received by such corporations from corporations in which they have a stock ownership of more than 50%. A 10% ownership requirement would be consistent with the stock ownership requirement for qualified investments in less developed countries and with the realities of present-day foreign investment. Many countries do not permit 50% foreign ownership, and such a high percentage of foreign ownership would tend to discourage participation by local investors in necessary industries.

It is noted that the bill does not define what is meant by "banking, financing, or similar business." Presumably this provision is intended to be correlated with the provision in section 954 (c) (3) (B).

Sales to Foreign Customers

If the foreign corporation maintains an office in the United States and a second office outside the United States, the proposed statute would exempt from U.S. tax the entire profit from the sale of goods arranged through the U.S. office "if the property is sold for use, consumption or disposition outside the United States and an office or other place of business of the taxpayer outside the United States participated materially in such sale."

The Report of the Ways and Means Committee indicates (at P. 16) that the purpose of the phrase "participated materially in such sale" is to assure that "foreign source sales income will be attributed to the U.S. trade or business only when the U.S. office is the primary place of the activity giving rise to the income."

The Council is concerned that the proposed statute will not be interpreted to effectuate this purpose. This concern stems primarily from the ambiguity of the word "sale" as it is used in the phrase "office or other fixed place of business of the taxpayer outside the United States participated materially in such sale."

One possible interpretation is that the term "sale" refers solely to selling activities. Under this interpretation, a foreign office or other place of business would be considered to have "participated materially in such sale" only if its activities were selling activities as contrasted with the performance of other economic activities essential to earn the ultimate profit, such as the manufacture, extraction, or production of the goods or their procurement by purchasing activities.

The practical effect of this restrictive interpretation can be illustrated by the case of a Philippine corporation engaged in the business of purchasing hand-embroidered household linens, blouses, etc., for export to overseas customers. The Philippine corporation maintains its principal office in Manila, where a staff of employees places orders with numerous small Philippine factories to which the corporation furnishes technical