

nician assigned to a U.S. office participates in the negotiations or the drafting of the license agreement, and (3) the negotiations or other activities performed by personnel assigned to a U.S. office are performed entirely outside the United States.

As discussed above (Sales to Foreign Customers) in the case of income from sales the approach of the Ways and Means Committee is to attribute foreign source income to a U.S. office only when the U.S. office is the primary place of the activity giving rise to the income. To effectuate this purpose, the proposed statute would exempt from U.S. tax the entire profit from sales arranged through a U.S. office if the property is sold for use, consumption or disposition abroad and an office or other place of business of the taxpayer outside the United States participated materially in the sale. This approach should be equally applicable to income from the leasing or licensing of intangible property for use outside the United States. Thus no U.S. tax should be imposed where an office or other place of business of the taxpayer outside the United States has "participated materially" with respect to the lease or license, either through solicitation, negotiation or other activities related to the making of the lease or license, or through productive or purchasing activities directed toward the creation or acquisition of the intangible property by the taxpayer.

Section 245

H.R. 13103 would amend section 245 to provide an 85% deduction for dividends received from a foreign corporation engaged in trade or business within the United States and having 50% or more of its gross income "effectively connected" with the U.S. trade or business. The deduction would be in proportion to the "effectively connected" income of the paying corporation.

The Council wishes to point out potential double taxation which can occur under the bill where a U.S. corporate shareholder receives a dividend from a foreign subsidiary which has been subject to U.S. tax on its "effectively connected" income.

The following situation should be considered:

Assume a situation where a wholly-owned foreign subsidiary of a U.S. corporation has only foreign source income but is subject to U.S. income tax on 100% of its income as being "effectively connected" with a U.S. trade or business. Assume also that it pays foreign income tax at a rate greater than the U.S. income tax rate and that the foreign income tax is creditable under proposed section 906 against the subsidiary's U.S. tax.

Under the bill, 15% of every dollar of dividends from the foreign subsidiary would be subject to U.S. income tax. Such taxation is generally referred to as an "upstream dividend tax." No foreign tax credit would be permitted to the U.S. parent under the revised provisions of section