

Mr. KALISH. Oh, yes; I would like each of the statements, if possible, to be inserted.

Senator ANDERSON. I have not seen the Shanghai one.

Mr. KALISH. The Hongkong statement is also there, too. I believe it should have been submitted.

There will be one on Barclay's Bank, which you may not have received yet. We had a little difficulty in typing, and that should be coming down either today or tomorrow, I would say, if it has not arrived yet.

Senator ANDERSON. Thank you very much.

(The documents previously referred to follow:)

STATEMENT OF BANCO DE PONCE, SUBMITTED BY ROBERTO DE JESUS TORO

Impact of Proposed "Foreign Investors Tax Act of 1966" (H.R. 13103) on Puerto Rican Banking Corporations having Branches in the United States

INTRODUCTION

This memorandum is addressed specifically to the impact on Banco de Ponce of certain provisions of H.R. 13103, the proposed Foreign Investors Tax Act of 1966, (hereinafter sometimes referred to as "the Bill"), as recently passed by the House of Representatives. Banco de Ponce is a Puerto Rican banking corporation having its head office in the City of Ponce and operating branches throughout the Island of Puerto Rico and in the continental United States, where it has three branches in the City of New York. Inasmuch, however, as neither the Internal Revenue Code nor the Bill differentiates between corporations incorporated in Puerto Rico and those incorporated in foreign countries, the defects in the Bill here considered and the remedies proposed below are not restricted in their application to this one bank nor to Puerto Rican banks generally, and although, as will be shown below, there are special considerations applicable to Puerto Rican banks which do not apply to others, the following discussion nevertheless illustrates problems of widespread application.

I. EXISTING LAW

1. For income tax purposes, corporations organized under the laws of Puerto Rico are deemed "foreign" and are dealt with in the Internal Revenue Code in the same manner as corporations organized under the laws of any foreign country. See Code Secs. 7701(a) (4), (5) and (9) and 7701(e).

2. Foreign corporations *not* engaged in trade or business within the United States are taxed under and only to the extent provided in Sec. 881 of the Internal Revenue Code, which imposes a tax at a flat rate of 30% on income received from U.S. sources as interest, dividends and other types of "fixed or determinable annual or periodical" income. This tax is in lieu of the tax imposed on domestic corporations under Sec. 11 of the Code. It reaches only these types of income and is based on the gross amount of such income, without the allowance of any deductions or credits.

3. Foreign corporations which *are* engaged in trade or business within the United States, on the other hand, are taxed under Sec. 882 of the Code, which provides that such corporations shall be taxable in the same manner as domestic corporations, i.e., on their *net* income at the rates prescribed by Sec. 11 (current maximum, 48%), with the exception that their gross income includes only gross income from sources within the United States and deductions are allowed, in general, only to the extent that they are connected with such income.

4. Sections 881 and 882 are thus mutually exclusive, a foreign corporation being taxable under one or the other depending solely on whether or not it is engaged in the conduct of a trade or business in the United States, but never under both of these sections at the same time. Banco de Ponce, being deemed a foreign corporation as stated in ¶ 1 and being engaged in business within the United States through its New York City branches, is taxable under Sec. 882.

5. The application of Sec. 882 may be illustrated by the example set forth in the annexed Schedule I, based on figures which, while not actual, closely approximate in essential particulars the magnitude and nature of the Bank's income and