

These complexities will discourage foreign businessmen who are considering engaging in business here because it will make it more difficult for them to determine the extent to which they will be subject to United States tax. Moreover, we question the desirability of a legislative provision whose real purposes and effects are completely unclear without the extensive exegesis contained in the Committee Report.

Some of the ambiguities present can be seen if we examine the Bill's treatment of sales of personal property outside the United States—proposed section 864(c)(4)(B)(iii). Income “attributable” to an “office or fixed place of business” in the United States derived from the sale outside the United States of personal property will be subject to tax in the United States. The term “office or fixed place of business” has been the subject of litigation in the past. The Committee Report uses the terms “relatively sporadic and infrequent,” “merely,” “on occasion” and “absent other circumstances” (Report, p. 63) in explaining the intended meaning of the term. The term “attributable” is itself obviously vague and the Report does little to remedy this by stating that income will be attributable to the United States office if that office is the “primary place” (Report p. 19) of activity giving rise to the sale. An exception is made to this rule if the property is sold for “use, disposition or consumption outside the United States” and an office or other fixed place of business of the taxpayer outside the United States makes a “material” contribution to the sale. What is a “material” contribution? Each of the terms quoted in this paragraph will require interpretation over many years before its meaning is known. We submit that the creation of this much ambiguity and complexity is hardly calculated to encourage foreign persons to engage in business in the United States.

Many examples of undesirable results arising under proposed section 864(c)(4)(B) might be given. For present purposes, one example will be noted with respect to each of the three categories of foreign source income which H.R. 13103 would subject to the United States tax.

(i) Rental or royalty income.—Assume that a foreign-owned Dutch corporation develops know-how and patents in Holland and licenses rights thereto in Mexico. The Dutch corporation has a United States office which participates in the negotiation of licenses of such know-how and patent rights. Under H.R. 13103 the United States would claim tax upon all royalties paid from Mexico to the Dutch corporation. One alternative open to the Dutch corporation quite obviously would be to abandon its office within the United States and locate its licensing activities exclusively outside of the United States.

(ii) Dividends, interest, gains or losses.—Assume that a foreign underwriter has a New York office and participates in an underwriting of the securities of a United States corporation. Under proposed Section 864(c)(4)(B)(ii) it would seem that underwriter income arising from the sale of such securities by the foreign underwriter outside the United States would be fully subject to taxation in the United States.

(iii) Income from sales of personal property.—Assume that a foreign-owned Canadian corporation manufactures a chemical in Canada for sale to European markets. The company establishes a sales office in New York City from which point it solicits and negotiates sales of the chemical. The Canadian manufacturing plant is the sole supplier of the chemical, arranges for its shipment and if requested provides the European purchasers with certain services connected with the use of the chemical. The legislative history of H.R. 13103 suggests that if an office outside the United States performs “significant services incident to such sale which were necessary to its consummation and were not subject to a separate agreement between the seller and the buyer,” such office will be considered “to have participated materially” in the sale so as to exclude the income from capture under Category (iii). The only activities specifically referred to in the legislative history as constituting “material” participation in the sale are solicitation and negotiation of sales which, in the present example, would be taking place through the United States sales office. Certainly the risk of tax in the foregoing example would discourage establishment of a sales office in the United States.

It should be noted that under the Bill the general effect of a finding that income from without the United States falling in one of these specified classes is “effectively connected” with a United States trade or business, will be to impose United States tax upon all of such income. This would seem a com-