

Proposed section 882(d)(1)(A) permits a foreign corporation to treat gains described in present Code section 631 (b) or (c) as income connected with a United States business. For reasons stated in the discussion of section 3, in respect of the similar election granted to non-resident aliens, it is believed that this election in respect of section 631 (b) or (c) income is not desirable.

Proposed section 882(e) would seem to prohibit a direct filing of a return by a foreign corporation in the circumstances there described. It is recommended that, in order to assure that the foreign corporation may itself file the return, the words "unless such return is made by such foreign corporation" be added at the end of the sentence.

The withholding rules are amended to eliminate withholding on any item of income (other than compensation for personal services) which is effectively connected with the conduct of a trade or business in the United States. As stated in respect of section 3 of the bill it is believed that withholding should continue to be governed by the source of income rules.

Section 4(b)(3) of the bill, containing proposed changes in the table of sections for subpart B of part II of subchapter N of chapter 1, should be changed to reflect the above-recommended changes in the titles to sections 881 and 882. Thus, the words "Tax on" should be inserted at the beginning of the titles given for sections 881 and 882.

Section 4(d). Dividends received from certain foreign corporations

It is recommended that the amendment of section 245(a) of the Code, as proposed in section 4(d)(1) of the bill, be changed by adding "total" before "gross income." Compare present Code section 542(c)(7)(A). The addition of "total" would seem to negate any argument that the various statutory exclusions applicable to gross income of foreign corporations, see, for example, present Code section 883, should be taken into account in determining gross income for this purpose.

Section 4(f). Corporations subject to personal holding company tax

The proposed section 542(c) would change the present rule for excluding certain foreign corporations from classification as a personal holding company. Under the proposed rule indirect ownership by non-resident alien individuals through foreign estates, foreign trusts, foreign partnerships as well as through other foreign corporations would be taken into account. It is unclear why attribution through partnerships is limited to foreign partnerships. It is recommended that the word "foreign" immediately preceding "partnerships" be deleted.

Section 4(g). Foreign corporations carrying on insurance business in the United States

It is recommended that the title to proposed section 842 be changed by adding at the beginning thereof the words "Tax on". A corresponding change would be required in paragraph (2) of section 4(g) of the bill, which would amend the table of sections for Part IV of subchapter L of chapter 1 of the Code.

Estate and gift taxes

The Task Force recommended the elimination of the federal estate tax on intangible property of nonresident alien decedents. It is widely believed that the estate tax is a significant deterrent to foreign investment in United States securities. Nonetheless, the Treasury decision in presenting H.R. 5916 to retain an estate tax with relatively large exemption (\$30,000) and with relatively low rates (a maximum of 15% and only 5% on the first taxable \$100,000) was probably warranted. The Committee takes no position regarding the desirability, from the standpoint of encouraging United States investments, of the proposed maximum 25% rate instead of the 15% maximum rate proposed in H.R. 5916.

Section 8(b) would provide a new technical limitation on the credit for state death taxes. Though arguments can be made as to a limitation keyed to the kind of limitation that a domiciliary of the United States might have, in the context of a bill designed to reassure foreigners with respect to the low impact of death duties in this country, the introduction of any such limitation seems undesirable. In addition, the limitation may operate somewhat unevenly depending upon how many intangible assets the decedent had which were not assignable to any state of the United States.

Section 8(c) would amend Section 2104 to make it clear that where a debt obligation of a United States obligor is owned by a non-resident alien, the obligation shall be treated as property within the United States no matter where it is