

corporation which is a wholly owned subsidiary of a domestic corporation will not be considered to have a U.S. office because of the presence here of the officers of its domestic parent who are generally responsible only for its policy decisions, provided the foreign sales corporation has a managing director that conducts its day-to-day business from a foreign office. This person may or may not be an officer of the U.S. corporation. Also, in such a case, the managing director could regularly confer with the officers of the domestic parent and if necessary occasionally visit the U.S. offices of the domestic parent and, during such visits, temporarily conduct the business of the foreign subsidiary out of the domestic parent's office without thereby establishing a U.S. office.

As indicated above, this provision applies only to three specific types of income from without the United States and in no event applies with respect to income which is "subpart F" income or to dividend, interest or royalty income derived from a foreign corporation more than 50 percent owned by a nonresident alien or foreign corporation receiving the income. Of course, the subpart F income exception extends to income which is subpart F income but is excepted from its taxing provisions by the minimum distribution and export trade exceptions. The three types of income with respect to which this provision applies are:

- (i) Rents and royalties derived from the active conduct of a licensing business;
- (ii) Dividends, interest, or gain from stock or bond or debt obligations derived in the active conduct of a banking, financing or similar business; and
- (iii) Certain sales income attributable to a U.S. sales office.

The sales income referred to above is not to be considered as "effectively connected" to a U.S. trade or business if the property is sold for use outside the United States and an office of the foreign person outside the United States contributes materially to the sale. In the case of foreign source income where the products are destined for the United States, the income will be treated as effectively connected with a U.S. business to the extent the sales activity is carried on by the U.S. office.

*(B) Determining Factors.*—Although your committee agrees with the general rules of the House bill, it has added certain clarifying amendments regarding what is to be considered a sufficient nexus for assertion of U.S. tax jurisdiction as well as the foreign source income to be subject to U.S. tax. In general, for purposes of determining whether a foreign corporation or nonresident alien has an office, the office or other fixed place of business of an agent is to be disregarded unless the agent is other than an independent agent operating in the ordinary course of his trade or business and either has authority (regularly exercised) to negotiate binding contracts or has a stock of merchandise from which he regularly fills orders. This agency concept regarding the degree of economic activities which will subject a foreign corporation or nonresident alien to U.S. taxation on foreign source income is substantially similar to the permanent establishment concept present in many of our existing income tax treaties. However, the interpretation of this provision is, of course, not to be limited by the judicial decisions of foreign governments regarding treaty provisions. With respect to the determination of the income to be sub-