if such branch is engaged in the commercial banking business."

(3) Section 861 (relating to income from sources within the United States) is amended by adding after subsection (c) (as added by paragraph (1)(B)) the following new subsection:

"(d) SPECIAL RULES FOR APPLICATION OF PARAGRAPHS (1)(B), (1)(C), (1)(D), AND (2)(B) OF SUBSECTION (a).—

"(1) NEW ENTITIES.—For purposes of paragraphs (1)(B), (1)(C), (1)(D), and (2)(B) of subsection (a), if the resident alien individual, domestic corporation, or foreign corporation, as the case may be, has no gross income from any source for the 3-year period (or part thereof) specified, the 20 percent test or the 50 percent test, as the case may be, shall be applied with respect to the taxable year of the payor in which payment of the interest or dividends, as the case may be, is made.

"(2) TRANSITION RULE.—For purposes of paragraphs (1)(C), (1)(D), and (2)(B) of subsection (a), the gross income of the foreign corporation for any period before the first taxable year beginning after