

to the flat 30-percent (or lower treaty) rate if it is not effectively connected with the conduct of a trade or business within the United States. The regular individual or corporate rates apply to income which is effectively connected to the conduct of a U.S. trade or business. A foreigner may elect to treat real property income as if it were income effectively connected with a U.S. business so that the deductions attributable to this real property income can be deducted from it. The application of the effectively connected concept to different types of income is set forth below.

(i) *Income from U.S. sources treated as "effectively connected."*—In determining whether periodical income such as interest, dividends, rents and wages, and capital gains is effectively connected with the conduct of a trade or business within the United States two principal factors are to be taken into account. First, is the income derived from assets used or held for use in the conduct of the trade or business in the United States? Thus, for example, are the assets being held for future, or remittant, use in the business? In this regard, particular attention will be given to the relationship between the asset and the needs of the business. Second, were the activities of the trade or business a material factor in the realization of the income? Thus, in the case of this second factor, is there an immediate relationship between the income in question and the U.S. business activities of the foreign corporation? Also to be taken into account in weighing the relationship of the investment income to the trade or business, but not to be a controlling factor by itself, is whether or not the assets or income are accounted for through the U.S. trade or business.

All other income from sources within the United States (that is, other than the periodical income and capital gains described above) is to be treated as "effectively connected."

(ii) *Income from sources without the United States.*—(A) *General Rules.*—Income from sources without the United States is not to be treated as "effectively connected" with the conduct of a trade or business within the United States unless the nonresident alien or foreign corporation has a fixed place of business in the United States and the income, gain or loss is attributable to that place of business. Also, this provision applies to only three types of income from sources without the United States.

A foreign corporation which to a minimal extent, or occasionally, uses the U.S. office of a related corporation will not be treated as having a fixed place of business here. Moreover, the fact that top management decisions are made in the United States will not of itself mean that the foreign corporation has an office or fixed place of business here. For example, a foreign sales 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.