

Generally, the fixed or determinable income referred to here, as under prior law, includes such income as interest, dividends, rents, salaries, annuities, and certain income accorded capital gain treatment. The act adds two items not included in the list contained in prior law and has slightly modified the language of prior law so as to clarify this provision as it relates to certain amounts received from pensions or annuity plans, and certain timber, iron ore, and coal royalties. The two new items added to the list by the act are (1) certain gains with respect to the sale of a patent or other intangible property and (2) amounts received on retirement or exchange of bonds and other evidences of indebtedness issued after September 28, 1965, which are treated as gains from the sale of property which is not a capital asset. The reference in the act to section 1232 refers only to original issue discount on evidences of indebtedness held by a taxpayer for more than 6 months. Also, income constituting original issue discount received on the retirement or sale or exchange of bonds is to be considered as having the same source as interest paid by the corporation issuing the bonds.

The provision of the act regarding gains realized on the sale of a patent or other intangible property provides that gains realized on the sale of a patent or other intangible property, where the income from the sale is derived as a result of the use of such property in the United States, is not to be subject to U.S. tax as "fixed and determinable income" (taxed at 30 percent or lower treaty rate) unless a part of the income derived from the sale is contingent. If part of the profits from such sale are contingent, the amount subject to U.S. tax in any year would be the contingent amount, or if this contingent amount exceeds 50 percent of the total amount paid in any 1 year, the total amount will be taxed to the extent this amount represented gain realized on the sale of the property. For purposes of determining the source of this income the source rule for rentals, royalties, or other intangible property is to be used. This provision is to apply to gains derived from sales made after October 4, 1966. The provisions of prior law will continue to apply to transfers of patents made before that date.

In the case of a nonresident alien's net U.S. source capital gains (other than those specifically included in the list as taxable at the 30-percent rate) which are not effectively connected with the conduct of a trade or business within the United States, the act provides that no U.S. tax is to be imposed unless the nonresident alien has been present in the United States for at least 183 days during the taxable year. Prior law provided a 90-day test. For purposes of applying the 183-day test an alien will be treated as being on a calendar year basis unless he has previously established a different taxable year. The requirement of prior law which taxed capital gains when the alien was physically present in the United States at the time of realization was dropped entirely.

(B) *Income effectively connected with the conduct of U.S. business.*—Income of a nonresident alien individual that is effectively connected with the conduct of a trade or business in the United States, is taxable at the regular U.S. graduated rates applicable to individuals. Thus, this income is taxed the same as under prior law although the category itself is more limited since it only applies to income which is effectively connected to a U.S. trade or business instead of including all U.S. source income of an alien with such a trade or business. For