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Income from Sources within the United States and Effectively Connected Income

Presented by: ACCI Branch 7



Front Matter Items

- ❖ [The IRS Mission Statement](#)
- ❖ [14 General Principles of Ethical Conduct for Federal Employees](#)
- ❖ [Your Rights as a Taxpayer](#)



Course Objectives

- ❖ At the end of this course, you will be able to:
 - Identify sourcing rules and exceptions applicable to different types of income
 - Identify factors considered in evaluating whether an activity is a U.S. trade or business
 - Discuss relevant sourcing rules and exceptions to different sets of facts
 - Calculate income from sources within the United States and income effectively connected with a U.S. trade or business



Acronyms

- ❖ ECI – effectively connected income
- ❖ FDAP – fixed, determinable, annual, periodical



U.S. Source Rules - Interest

❖ General Rule

- Interest from the United States or the District of Columbia, and interest on bonds, notes, or other interest-bearing obligations of noncorporate residents or domestic corporations is treated as income from sources within the United States
- The place of payment, the place the debt is located, the recipient's location, and the currency used to make the payment all are irrelevant factors

References: I.R.C. §§ 861(a)(1), 862(a)(1)



U.S. Source Rules – Interest (cont'd)

❖ Resident includes:

- An individual, who at the time the interest is paid, is a resident of the United States
- A domestic corporation
- A domestic partnership engaged in a U.S. trade or business
- A foreign corporation or foreign partnership engaged in a U.S. trade or business

References: Treas. Reg. §1.861-2(a)(2)



❖ Exceptions

- Interest on deposits paid by a foreign branch of a commercial banking business or savings institutions is treated as foreign source income even though the payor is a U.S. corporation
- Interest paid by foreign partnership under certain circumstances

References: I.R.C. § 861(a)(1)(A) & (B)



U.S. Source Rules - Dividends

❖ General Rule

- Dividends are sourced where the payor corporation is incorporated
- Generally, dividends received from a domestic corporation are U.S. source income and dividends received from a foreign corporation are foreign source income

References: I.R.C. §§ 861(a)(2), 862(a)(2)



❖ “Dividend”

- Any distribution of property made by a corporation to its shareholders out of accumulated earnings and profits or current year earnings and profits
- Distributions not out of earnings and profits are not dividends, and thus are not sourced as dividends

References: I.R.C. §§ 316(a), 301(c)



❖ Exception

- Dividends from a foreign corporation will be treated in part as U.S. source income if, during the preceding three taxable years, 25 percent or more of the corporation's gross income from all sources was effectively connected with the conduct of a U.S. trade or business
- If applicable, the amount of the dividend deemed to be from U.S. sources will be a percentage determined by the ratio between the gross income effectively connected with the U.S. trade or business and the total gross income of the corporation

References: I.R.C. § 861(a)(2)(B)



❖ General Rule

- Compensation for labor or personal services performed in the United States
- Includes fees, commissions, fringe benefits, and similar items
- Irrespective of the residence of the payor, the place in which the contract for service was made, or the place or time of payment

References: I.R.C. §§ 861(a)(3), 862(a)(3); Treas. Reg. §1.861-4(a)(1)



❖ De Minimis Exception

- Services performed in the United States are not considered U.S. source income if:
 - Perform by nonresident alien temporarily present in the United States;
 - The individual is not present the United States for more than 90 days during the taxable year,
 - The compensation does not exceed \$3,000, and
 - The payments are from a foreign employer not engaged in a U.S. trade or business in the United States or the foreign office or place of business of a U.S. employer

References: I.R.C. §§ 861(a)(3)(A)-(C), 864(b)(1)



U.S. Source Rules – Personal Services (cont'd-2)

❖ Exception

- Services performed partly within and partly without the United States:
 - Derived partly from sources within and partly from sources without
 - Determined on the basis that most correctly reflects the proper source of the income under the facts and circumstances of the particular case
 - Oftentimes the time basis is used

References: I.R.C. § 863(b)(1); Treas. Reg. §1.861-4(b)



U.S. Source Rules – Rents and Royalties

❖ General Rule

- Rents and royalties from property located in the United States
- Rents and royalties for the use of or for the privilege of using in the United States intangible property, such as patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property

References: I.R.C. §§ 861(a)(4), 862(a)(4); Treas. Reg. §1.861-5



U.S. Source Rules – U.S. Real Property Interest

❖ General Rule

- Gains, profits, and income from the disposition of a United States real property interest:
 - an interest in real property (including an interest in a mine, well, or other natural deposit) located in the United States, and
 - any interest (other than an interest solely as a creditor) in any domestic corporation unless the taxpayer establishes (at such time and in such manner as the Secretary by regulations prescribes) that such corporation was at no time a United States real property holding corporation (as defined)

References: I.R.C. §§ 861(a)(5), 862(a)(5) & (8), 897



❖ Underwriting income

- Amounts received as underwriting income derived from the issuing (or reinsuring) of certain insurance or annuity contracts
- References: I.R.C. §§ 861(a)(7), 832(b)(3)

❖ Social Security benefits

- Any Social Security benefit, as defined in I.R.C. § 86(d)
- Reference: I.R.C. §§ 861(a)(8)



❖ Guarantees

- Amounts received, directly or indirectly, from:
 - a noncorporate resident or domestic corporation for the provision of a guarantee of any indebtedness of such resident or corporation, or
 - any foreign person for the provision of a guarantee of any indebtedness of such person, if such amount is connected with income which is effectively connected with a U.S. trade or business

- References: I.R.C. §§ 861(a)(5), 862(a)(9)



U.S. Source Rules – Sale of Personal Property (Non-Inventory)

❖ General Rule

- Income from the sale of personal property:
 - by a United States resident shall be sourced in the United States
 - by a nonresident shall be sourced outside the United States
- Special meaning of resident:
 - United States citizen or a resident alien who does not have a tax home in a foreign country
 - nonresident alien who has a tax home in the United States
 - any corporation, trust, or estate which is a United States person (as defined in section 7701(a)(3))

❖ References: I.R.C. §§ 865(a) & (g)(1), 7701(a)(30)



U.S. Source Rules – Sale of Personal Property (Non-Inventory) (cont'd)

❖ Exception

- a United States citizen or resident alien shall not be treated as a nonresident with respect to any sale of personal property unless an income tax equal to at least 10 percent of the gain derived from such sale is actually paid to a foreign country with respect to that gain

❖ Reference: I.R.C. § 865(g)(2)



U.S. Source Rules – Sale of Personal Property (Non-Inventory) (cont'd-2)

- ❖ Exception to the exception (i.e., 10% rule not applicable)
 - If the sale is by an individual who was a bona fide resident of Puerto Rico (during the entire taxable year) and it relates to stock in a corporation, provided that: the corporation is engaged in the active conduct of a trade or business in Puerto Rico and more than 50 percent of its gross income for the 3-year period ending with the close of such corporation's taxable year immediately preceding the year in which such sale occurred was derived from the active conduct of a trade or business in Puerto Rico
 - U.S. citizen or resident treated as nonresident

- ❖ Reference: I.R.C. § 865(g)(3)



U.S. Source Rules – Sale of Personal Property (Non-Inventory) (cont'd-3)

❖ Depreciable personal property

- Gain (not in excess of the depreciation adjustments) allocated based on proportion of U.S. depreciation to total depreciation
- Remaining portion sourced outside the United States
- Gain (in excess of the depreciation adjustments) from the sourced as if such property were inventory property
- For property predominantly used either in or outside the United States, all depreciation deductions treated as attributable to location of predominant use

❖ Reference: I.R.C. § 865(c)



U.S. Source Rules – Sale of Personal Property (Non-Inventory) (cont'd-4)

❖ Sale of Intangibles

- If payments in consideration of the sale are contingent on the productivity, use, or disposition of the intangible, payments are sourced under the rules for royalties
- If payments in consideration of the sale are not so contingent, then amounts are generally sourced based on the residence of the seller. However, for gain property, the gain is first allocated based on, and to the extent of, prior amortization, i.e., allocated based on prior U.S. and non-U.S. amortization
- Exception:
 - Goodwill sourced based on the country in which generated

❖ Reference: I.R.C. § 865(d)



U.S. Source Rules – Sale of Personal Property (Non-Inventory) (cont'd-5)

- ❖ Sale through offices or fixed places of business by U.S. resident
 - If not sourced under 865(b) (inventory), (c) (depreciable personal property), (d) (intangibles), or (f) (stock of an affiliate) and
 - A U.S. resident maintains an office or other fixed place of business in a foreign country, income attributable to the office or other fixed place of business is sourced outside the U.S.
 - Exception: does not apply unless an income tax equal to at least 10 percent of the income from the sale is actually paid to a foreign country with respect to such income

- ❖ Reference: I.R.C. § 865(e)(1)



U.S. Source Rules – Sale of Personal Property (Non-Inventory) (cont'd-6)

- ❖ Sale through offices or fixed places of business by nonresident
 - If a nonresident maintains an office or other fixed place of business in the U.S., income from sale of personal property (including inventory) attributable to the office or other fixed place of business is sourced in the U.S.
 - Exception: does not apply to sale of inventory sold for use, disposition, or consumption outside the United States if an office or other fixed place of business of the taxpayer in a foreign country materially participated in the sale

- ❖ Reference: I.R.C. § 865(e)(2)



U.S. Source Rules – Sale of Personal Property (Non-Inventory) (cont'd-7)

❖ Stock of affiliates

- Any gain from such sale is sourced outside the United States sale if:
 - a United States resident sells stock in an affiliate which is a foreign corporation,
 - such sale occurs in a foreign country in which such affiliate is engaged in the active conduct of a trade or business, and
 - more than 50 percent of the gross income of such affiliate for the 3-year period ending with the close of such affiliate's taxable year immediately preceding the year in which the sale occurred was derived from the active conduct of a trade or business in such foreign country

❖ Reference: I.R.C. § 865(f)



U.S. Source Rules – Sale of Inventory

❖ General Rule

- Inventory is stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of the trade or business
- Generally, income from the purchase and sale of inventory is sourced entirely to the country in which the property is sold
- Sale is consummated at the time when, and the place where, the rights, title, and interest of the seller in the property are transferred to the buyer, i.e., passage to the buyer of beneficial ownership and the risk of loss.

❖ Reference: I.R.C. §§ 1221(a)(1), 861(a)(6), 862(a)(6);
Treas. Reg. § 1.861-7



U.S. Source Rules – Sale of Inventory (cont'd)

❖ Exception

- In any case in which the sales transaction is arranged in a particular manner for the primary purpose of tax avoidance, all factors of the transaction, such as negotiations, the execution of the agreement, the location of the property, and the place of payment, will be considered, and the sale will be treated as having been consummated at the place where the substance of the sale occurred

❖ Reference: Treas. Reg. § 1.861-7(c)



U.S. Source Rules – Sale of Inventory (cont'd-2)

❖ Production and Sale

- Gains, profits, and income from the sale or exchange of inventory property produced (in whole or in part) by the taxpayer within and sold or exchanged without the United States, or produced (in whole or in part) by the taxpayer without and sold or exchanged within the United States are treated as derived partly from sources within and without the United States

❖ Reference: I.R.C. § 863(b); Treas. Reg. § 1.863-3



U.S. Source Rules – Sale of Inventory (cont'd-3)

❖ Production and Sale cont.

- Tax Years Beginning Before January 1, 2018*
 - The first step is to divide the income between the manufacturing activity and the sale activity.
 - The income generally is apportioned 50 percent to manufacturing activities and 50 percent to sales activities (the “50/50 method”)
 - The taxpayer may elect to apportion using an independent factory price (IFP) if such price is fairly established (the “IFP method”)
 - If permission is obtained from the IRS, the taxpayer may allocate based on the “books and records” method
 - The second step is to source the income from the manufacturing and sales activities.
 - The portion of the income attributable to manufacturing is treated as U.S. or foreign source income, or some combination of the two, based on the location of the taxpayer’s production assets.
 - The portion of the income attributable to sales is treated as U.S. or foreign source based on the specific source rules.
- *Applicability: This pre-TCJA regulation 1.863-3 applies to taxable years ending before December 23, 2019, unless election is made to apply post-TCJA regulation 1.863-3 to all post-2017 tax years.
- Reference: Treas. Reg. § 1.863-3(b) (T.D. 9305 and T.D. 9921)



U.S. Source Rules – Sale of Inventory (cont'd-4)

❖ Production and Sale cont.

- Tax Years Beginning After December 31, 2017*
 - Allocated and apportioned solely on the basis of the production activities with respect to the property
 - Production activity means an activity that creates, fabricates, manufactures, extracts, processes, cures, or ages inventory
 - Production assets include only tangible and intangible assets owned directly by the taxpayer that are directly used by the taxpayer to produce inventory
 - A tangible production asset will be considered located where the asset is physically located. An intangible production asset will be considered located where the tangible production assets owned by the taxpayer to which it relates are located

❖ *Applicability: Taxpayers may elect to apply this post-TCJA regulation 1.863-3 to all post-2017 tax years. Absent an election, it only applies to taxable years ending on or after December 23, 2019

❖ Reference: I.R.C. § 863(b); Treas. Reg. § 1.863-3(c)(1) (T.D. 9921)



U.S. Source Rules – Sale of Inventory (cont'd-5)

❖ Production and Sale cont.

- Tax Years Beginning After December 31, 2017*
 - Where the taxpayer's production assets are located both within and without the United States, income from sources without the United States will be determined by multiplying the gross income by a fraction, the numerator of which is the average adjusted basis of production assets that are located outside the United States and the denominator of which is the average adjusted basis of all production assets within and without the United States
 - The remaining income is treated as from sources within the United States
- *Applicability: Taxpayers may elect to apply this post-TCJA regulation 1.863-3 to all post-2017 tax years. Absent an election, it only applies to taxable years ending on or after December 23, 2019
- Reference: Treas. Reg. § 1.863-3(c)(2)



U.S. Source Rules – Sale of Inventory (cont'd-6)

❖ Production and Sale cont.

- Exception: Anti-abuse rule
- Tax Years Beginning After December 31, 2017
 - If the taxpayer has entered into or structured one or more transactions with a principal purpose of reducing its U.S. tax liability in a manner inconsistent with the purpose of allocation and apportionment rules, the Commissioner may make appropriate adjustments so that the source of the taxpayer's gross income more clearly reflects the location of production activity
- Reference: Treas. Reg. § 1.863-3(c)(3) (eff. Dec. 11, 2020)



U.S. Source Rules - Summary

Item of Income	Factor in Determining Source
Interest	Residence of payor
Dividends	Whether a U.S. or foreign corporation
Personal services	Location services performed
Rent and certain royalties	Location of property
Other royalties	Location of use
Sale of real property	Location of property
Sale of personal property	Location of seller's tax home
Purchase and sale of inventory	Location of sale
Production and sale of inventory	Location of production activities and assets



❖ General Rule

- The term “trade or business within the United States” includes the performance of personal services within the United States at any time within the taxable year

❖ Exception – de minimus

- The performance of personal services for a foreign employer, not engaged in trade or business within the United States, or for a foreign office of a U.S. employer,
- by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year, and
- whose compensation for such services does not exceed in the aggregate \$3,000

❖ Reference: I.R.C. § 864(b)(1)



U.S. Trade or Business – Personal Services (cont'd)

❖ Exception – Trading

- Trading in stocks or securities or commodities through a resident broker, commission agent, custodian, or other independent agent,
- if, at no time during the taxable year, the taxpayer has an office or other fixed place of business in the United States through which or by the direction of which the transactions in stocks or securities, or in commodities, as the case may be, are effected
- Trading for own account
 - Not a U.S. trade or business regardless of resident broker, commission agent, custodian, or other agent, and regardless of discretionary authority,
 - If taxpayer is not a dealer

❖ Reference: I.R.C. § 864(e)(2)



U.S. Trade or Business – Definition

- ❖ U.S. trade or business not otherwise defined by statute
- ❖ Case law and rulings outline the parameters
 - To be engaged in a trade or business, a taxpayer (either directly or through a dependent agent) must be involved in an activity that is considerable, continuous, and regular, and the taxpayer's primary purpose for engaging in the activity must be for income or profit
 - A single event or transaction may qualify
 - Generally occasional, isolated, or incidental activity will not
- ❖ Generally lower standard than treaty standard (permanent establishment)
- ❖ References: Treas. Reg. § 1.864-2(e); *Adams Challenge v. Comm'r*, 154 T.C. 37 (2020); *Lewenhaupt v. Comm'r*, 20 T.C. 151, 162 (1953) aff'd, 221 F.2d 227 (9th Cir. 1955); *De Amodio v. Comm'r*, 34 T.C. 894, 906 (1960) aff'd, 299 F.2d 623 (3rd Cir. 1962)



U.S. Trade or Business – Definition (cont'd)

- ❖ Requirement that the activity be active
 - Net leases where taxpayer merely collects rents not active
 - Mere investment activities not active
- ❖ Requirement that activities occur in the United States
 - Exercise of judgment and decision-making
 - Not mere clerical or ministerial tasks
- ❖ References: Rev. Rul. 73-522; **Continental Trading Inc. v. Commissioner**, 265 F.2d 40 (9th Cir. 1959); **Commissioner v. Spermacet Whaling & Shipping Co.**, 281 F.2d 646 (6th Cir. 1960)



U.S. Trade or Business – Definition (cont'd-2)

- ❖ Activities of certain persons may or may not give rise to a U.S. trade or business
 - Resident agent/exclusive distributor
 - Resident agent/exclusive sales agent
 - Resident agent/property manager
 - Partnership trade or business attributed to partners
 - Partner's activities may be attributed to partnership.

- ❖ References: **Handfield v. Commissioner**, 23 T.C. 633 (1955); Rev. Rul. 70-424; **Pinchot v. Commissioner**, 113 F.2d 718 (2d Cir. 1940); **Lewenhaupt v. Commissioner**, 20 T.C. 151 (1953); **United States v. Balanovski**, 236 F.2d 298 (2d Cir. 1956); I.R.C. § 875



U.S. Trade or Business – Summary

- ❖ Considerable, continuous, and regular, active activities conducted in and requiring business judgment in the United States
- ❖ Conducted directly by the taxpayer, or on the taxpayer's behalf through an agent or by a partnership in which the taxpayer is a partner
- ❖ Performance of services in the U.S. except for statutorily defined de minimis services



Effectively Connected Income

❖ Categories:

- Certain FDAP income from sources within the U.S.
- Other U.S.-source income
- Certain foreign-source income

❖ Reference: I.R.C. § 864(c)



❖ Types of Income

- Interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income
- Gains on sales patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property, contingent on the productivity, use, or disposition
- Gain or loss from sources within the United States from the sale or exchange of capital assets

❖ References: I.R.C. §§ 864(c)(2), 871(a)(1) & (h), 881(a) & (c)



❖ Tests to determine whether ECI

- Asset Use Test

- the income, gain, or loss is derived from assets used in or held for use in the conduct of such trade or business, or

- Business Activities Test

- the activities of such trade or business were a material factor in the realization of the income, gain, or loss.

❖ References: I.R.C. § 864(c)(2)



❖ Asset Use Test

- (a) Held for the principal purpose of promoting the present conduct of the trade or business in the United States; or
- (b) Acquired and held in the ordinary course of the trade or business conducted in the United States, as, for example, in the case of an account or note receivable arising from that trade or business; or
- (c) Otherwise held in a direct relationship to the trade or business conducted in the United States, as determined under paragraph (c)(2)(iv) of this section

❖ References: Treas. Reg. § 1.864-4(c)(2)(ii)



❖ Asset Use Test (cont'd)

- In determining whether an asset is held in a direct relationship, principal consideration shall be given to whether the asset is needed in that trade or business presently, and not for anticipated future needs
- Generally, an asset will be treated as held in a direct relationship to the trade or business if (1) the asset was acquired with funds generated by that trade or business, (2) the income from the asset is retained or reinvested in that trade or business, and (3) personnel who are present in the United States and actively involved in the conduct of that trade or business exercise significant management and control over the investment of such asset

❖ Reference: Treas. Reg. § 1.864-4(c)(2)(iv)



❖ Business Activities Test (cont'd)

- Ordinarily applies in making a determination with respect to income, gain, or loss which, even though generally of the passive type, arises directly from the active conduct of the taxpayer's trade or business in the United States
- The business-activities test is of primary significance, for example, where: (a) dividends or interest are derived by a dealer in stocks or securities, (b) gain or loss is derived from the sale or exchange of capital assets in the active conduct of a trade or business by an investment company, (c) royalties are derived in the active conduct of a business consisting of the licensing of patents or similar intangible property, or (d) service fees are derived in the active conduct of a servicing business

❖ Reference: Treas. Reg. § 1.864-4(c)(3)(i)



❖ Business Activities Test

- Activities relating to the management of investment portfolios shall not be treated as activities of the trade or business conducted in the United States unless the maintenance of the investments constitutes the principal activity of that trade or business

❖ Reference: Treas. Reg. § 1.864-4(c)(3)(i)



ECI – Other Income from U.S. Sources

- ❖ All other income, gain, or loss from sources within the United States shall be treated as effectively connected with the conduct of a trade or business within the United States
 - Applies whether or not the income is directly related to the U.S. trade or business
 - Referred to as the “force of attraction principle”

- ❖ Reference: I.R.C. § 864(c)(3)



ECI – Certain Income from Foreign Sources

❖ General Rules

- No income, gain, or loss from sources without the United States shall be treated as effectively connected with the conduct of a trade or business within the United States
- Income from sources without the United States is not treated as effectively connected income if it consists of dividends, interest, or royalties that is (1) paid by a foreign corporation in which the taxpayer owns more than 50 percent or (2) Subpart F income

❖ Reference: I.R.C. § 864(c)(4)



ECI – Certain Income from Foreign Sources (cont'd)

❖ Exceptions

- Certain income attributable to an office or other fixed place of business in the U.S. of a nonresident alien individual or foreign corporation
- Any income of a foreign insurance company attributable to its United States business shall be treated as effectively connected with the conduct of a trade or business within the United States

❖ Reference: I.R.C. § 864(c)(4)



ECI – Certain Income from Foreign Sources (cont'd-2)

❖ Certain income:

- (i) consists of rents or royalties for the use of or for the privilege of using intangible property derived in the active conduct of such trade or business;
- (ii) consists of dividends, interest, or amounts received for the provision of guarantees of indebtedness, and either is derived in the active conduct of a banking, financing, or similar business within the United States or is received by a corporation the principal business of which is trading in stocks or securities for its own account; or
- (iii) is derived from the sale or exchange through such office or other fixed place of business of inventory, except if the property is sold or exchanged for use, consumption, or disposition outside the United States and an office or other fixed place of business of the taxpayer in a foreign country participated materially in such sale
- Any income or gain which is equivalent to these items of income or gain

❖ Reference: I.R.C. § 864(c)(4)(B)



ECI – Certain Income from Foreign Sources (cont'd-3)

❖ Office or Fixed Place of Business Rules

- an office or other fixed place of business of an agent shall be disregarded unless such agent:
 - (i) has the authority to negotiate and conclude contracts in the name of the nonresident alien individual or foreign corporation and regularly exercises that authority or has a stock of merchandise from which he regularly fills orders on behalf of such individual or foreign corporation, and
 - (ii) is not a general commission agent, broker, or other agent of independent status acting in the ordinary course of his business

❖ Reference: I.R.C. § 864(c)(5)(A)



ECI – Certain Income from Foreign Sources (cont'd-4)

- ❖ Office or Fixed Place of Business Rules cont.
 - Income, gain, or loss shall not be considered as attributable to an office or other fixed place of business within the United States unless:
 - such office or fixed place of business is a material factor in the production of such income, gain, or loss and
 - such office or fixed place of business regularly carries on activities of the type from which such income, gain, or loss is derived, and

- ❖ Reference: I.R.C. § 864(c)(5)(B)



ECI – Certain Income from Foreign Sources (cont'd-5)

- ❖ Office or Fixed Place of Business Rules cont.
 - in the case of a sale or exchange of inventory outside the United States, the income which shall be treated as attributable to an office or other fixed place of business within the United States shall not exceed the income which would be derived from sources within the United States if the sale or exchange were made in the United States

- ❖ Reference: I.R.C. § 864(c)(5)(C)



❖ Timing Differences

- in the case of any income or gain which--
 - is taken into account for any taxable year, but
 - is attributable to a sale or exchange of property or the performance of services (or any other transaction) in any other taxable year,
- the determination shall be made as if such income or gain were taken into account in such other taxable year and without regard to the requirement that the taxpayer be engaged in a trade or business within the United States

❖ Reference: I.R.C. § 864(c)(6)



❖ Disposition after change in use

- If any property ceases to be used or held for use in connection with the conduct of a trade or business within the United States, and
- such property is disposed of within 10 years after such cessation, then
- the determination shall be made as if such sale or exchange occurred immediately before such cessation and without regard to the requirement that the taxpayer be engaged in a trade or business within the United States during the taxable year for which such income or gain is taken into account

❖ Reference: I.R.C. § 864(c)(7)



ECI – Special Rules (cont'd-2)

- ❖ Sale of a Partnership interest engaged in a U.S. trade or business
 - TCJA provides that a nonresident alien individual or foreign corporation's gain or loss from the sale of a partnership interest is effectively connected with a US trade or business to the extent that the sale of the underlying assets at fair market value on the date of the exchange would have resulted in effectively connected income for the foreign partner
 - Effective for sales, exchanges, or other dispositions occurring on or after Nov. 27, 2017
 - TCJA also provides for a 10% withholding tax on the amount realized, effective dispositions occurring after Dec. 31, 2017
- ❖ Reference: I.R.C. §§ 864(c)(8); 1446(f)



Course Summary

❖ You are now able to:

- Identify sourcing rules and exceptions applicable to different types of income
- Identify factors considered in evaluating whether an activity is a U.S. trade or business
- Discuss relevant sourcing rules and exceptions to different sets of facts
- Calculate income from sources within the United States and income effectively connected with a U.S. trade or business



Questions?





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