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## Tax Committee Comments and Recommendations, No. 1: Comments on Proposed Regulations Under Section 1248 of the Internal Revenue Code Relating to Gain on Stock of Certain Foreign Corporations, Submitted to the IRS - Sept. 17, 1964

American Institute of Certified Public Accountants. Committee on Federal Taxation

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TAX COMMITTEE COMMENTS AND RECOMMENDATIONS

Comments on Proposed Regulations  
Under Section 1248 of the Internal Revenue Code  
Relating to Gain on Stock of Certain Foreign Corporations

Submitted to the IRS - Sept. 17, 1964

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COMMITTEE ON FEDERAL TAXATION

of the

AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

COMMENTS ON PROPOSED REGULATIONS  
UNDER SECTION 1248 OF THE INTERNAL REVENUE CODE  
RELATING TO GAIN ON STOCK OF CERTAIN FOREIGN CORPORATIONS

SECTION  
1.1248-1(d)

1.

Domestic corporations are provided with the benefits of the foreign tax credit provisions (Sections 901-905) with respect to the portion of their profit on sale or exchange of foreign corporation stock which is taxed as a dividend under Section 1248. Example 3 of paragraph (a) of the Senate Committee Report (page 225) indicates that the gross-up requirements of Section 78 will apply in computing such foreign tax credit. No reference, however, is made to Section 78 in Proposed Regulations Section 1.1248-1(d). The gross-up situation should be clarified in the text and in the illustrations.

1.1248-2(d)(2)(i)

2.

Section 1248(d)(4) excludes from earnings and profits, for the purpose of that section, "any item includible in gross income of the foreign corporation under this chapter as income derived from sources within the United States of a foreign corporation engaged in trade or business in the United States." (Emphasis added.) Proposed Regulations Section 1.1248-2(d)(2)(i) withholds the exception, with respect to treaty income, not only from items excluded from gross income under the treaty (which is proper) but also from items taxed at a reduced rate under the treaty. This appears to be inconsistent with the statutory provision. Such reduced rate items are includible in gross income, and should, therefore, be excluded from Section 1248 earnings and profits.

1.1248-4(e)

3.

This provision deals with the computation of the excess of United States taxes which would have been paid over taxes actually paid for the purpose of the limitation in Section 1248(b). Proposed Regulations Section 1.1248-4(e)(1)(i) defines the assumed United States tax as that which would have

been paid under Chapter One of the Code with certain exceptions. It is not clear whether, and to what extent, the provisions of Chapter Six, primarily Sections 1551 and 1561, (dealing with surtax exemptions in certain controlled corporation situations) will apply. This should be clarified in the proposed regulations, and we recommend that the tax computation provided for should be made without reference to Chapter Six.

1.1248-7

4.

In order to limit the Section 1248 dividend to earnings and profits or to receive credit for foreign taxes paid in the Section 1248(b)(1)(B) computation, certain information must be filed with the return. Otherwise the benefits of the limitation or tax will not apply, unless the taxpayer can demonstrate "that such omission or error was inadvertent, or due to reasonable cause and not due to willful neglect, and that he has substantially complied with the requirements of this section." This provision can produce harsh and unfair results. The discretion provided in the escape clause will necessarily be applied differently within the Internal Revenue Service, with the substantial possibility of unequal and unfair treatment. The taxpayer should be protected if he files the information at any time within the applicable Statute of Limitations period. Similarly, the requirement for the production of books and records under Proposed Regulations Section 1.1248-7(d) should not be limited by any arbitrary period but should include a production within the applicable Statute of Limitations.