



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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Via Regular Mail

Reference: U.S. Taxation of Gains Realized by Nonresident Alien
Individuals

Dear :

Generally, gain on the sale of stock by nonresident alien individuals is not subject to tax by the United States, either under the Internal Revenue Code or under the terms of an income tax treaty to which the United States is a party. However, some stock gains may be subject to U.S. tax under section 897 (treating gain or loss of a nonresident alien individual or a foreign corporation from the disposition of a United States real property interest, including stock of a domestic corporation that is a United States real property holding corporation, as gain or loss effectively connected with a trade or business within the United States). In addition, nonresident alien individuals may be subject to U.S. tax on stock gains in certain unusual factual situations described below.

Under section 865(a) of the Code, a United States resident's gain from the sale of personal property is U.S. source income, unless an exception applies. For these purposes, a United States resident means a U.S. citizen or resident alien who does not have a tax home in a foreign country or a nonresident alien who has a tax home in the United States. Section 865(g)(1)(A)(i)(II).

Certain individuals who would otherwise be resident aliens under the substantial presence test of section 7701(b)(3) and Treas. Reg. § 301.7701(b)-1(c) may be treated as nonresident aliens if the individuals are "exempt individuals" whose days of presence are not counted for purposes of the test under section 7701(b)(5) and Treas. Reg. § 301.7701(b)-3. Such an individual may nevertheless be a United States resident for purposes of section 865(g)(1)(A)(i)(II) if the individual's "tax home" is in the United States. Tax home for this purpose is defined in section 911(d)(3) and Treas. Reg. §

1.911-2(b) as the individual's regular or principal place of business, or his or her place of abode if he or she has no regular or principal place of business. A "foreign government-related individual" is an "exempt individual" whose days of physical presence are not counted under Treas. Reg. § 301.7701(b)-3(b) in determining residency would generally have a tax home in the United States, because his or her regular or principal place of business or place of abode is in the United States. Similarly, exempt individuals who are teachers, trainees, and students or foreign professional athletes may have a tax home in the United States and be treated as U.S. residents for purposes of section 865(a), even though their days of presence are not counted for purposes of the substantial presence residency test. See <https://www.irs.gov/Individuals/International-Taxpayers/Nonresident-Alien-Students-and-the-Tax-Home-Concept>. The source of a nonresident alien individual's gain from personal property sales (including sales of stock of any company, irrespective of whether that company is a U.S. or non-U.S. resident company) would be the United States under the general rule of section 865(a) if the individual's tax home is in the United States. Similarly, Treas. Reg. § 1.865-2(a)(1) provides generally that a loss recognized with respect to stock is allocated to the class of gross income with respect to which gain from the sale of such stock would give rise in the hands of the seller. Those nonresident alien individuals who both have a tax home in the United States and are present in the United States for 183 days or more are taxable on the excess of U.S.-source capital gain over U.S.-source capital loss at a rate of 30 percent under section 871(a)(2). However, that tax is not subject to withholding under section 1441, see Treas. Reg. § 1.1441-2(b)(2)(i). As noted above, such gains may be exempt from tax under the provisions of an applicable income tax treaty.

This information letter calls attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2016-1, §2.04, 2016-1 I.R.B. 1 (Jan. 4, 2016).

If you have any additional questions, please contact _____ at _____.

Sincerely,

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