[JOINT COMMITTEE PRINT]

EXPLANATION OF PROPOSED ESTATE AND GIFT TAX TREATY BETWEEN THE UNITED STATES AND SWEDEN

SCHEDULED FOR A HEARING

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INTRODUCTION

This pamphlet provides an explanation of the proposed estate and gift tax treaty between the United States and Sweden ("The Convention Between the Government of the United States of America and the Government of Sweden for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Estates, Inheritances, and Gifts"). The proposed treaty was signed in Stockholm on June 13, 1983, and the President has submitted it to the Senate for advice and consent to its ratification. The Senate Committee on Foreign Relations has scheduled a public hearing on the proposed treaty on April 26, 1984.

The proposed treaty is the first estate and gift tax treaty between the United States and Sweden. It is similar to recent U.S. estate and gift tax treaties, and the U.S. model estate and gift tax treaty. In the case of the United States, the treaty applies to the Federal estate tax, the Federal gift tax, and the Federal tax on generation-skipping transfers. In the case of Sweden, it applies to the inheritance tax and the gift tax.

The first part of the pamphlet is a summary of the principal provisions of the proposed treaty. The second part provides an overview of U.S. tax rules relating to international gratuitous transfers and U.S. estate and gift tax treaties in general. This is followed in part three by a detailed, article-by-article explanation of the proposed treaty.

I. SUMMARY

In this proposed treaty, the United States and Sweden have sought to alleviate double imposition of tax on the estates, gifts, and generation-skipping transfers of their citizens and domiciliaries and to prevent evasion of those taxes. To alleviate double taxation, the treaty requires each country to relinquish power to tax in two cases.

First, the treaty generally assigns to the country of domicile primary tax jurisdiction in the case of the estates, gifts, and deemed transfers of its domiciliaries (Article 7). However, real property and business property located in the other country ("situs country") are subject to primary tax jurisdiction in the situs country (Articles 5 and 6). In each case, the country without primary tax jurisdiction retains a residual right to tax property covered by Article 5 or Article 6.

The second relinquishment of taxing power occurs in situations where both countries under their own domestic laws consider an individual to be a domiciliary. In those situations, the individual will be treated as having only one country of domicile for purposes of the taxes covered by the treaty. The treaty sets forth several criteria to determine which country is the country of domicile (Article 4).

In situations where both countries retain the right to tax transfers, the treaty generally provides for relief from double taxation by the country of domicile or citizenship (Article 9). In these situations, the country of domicile or citizenship grants relief through a foreign tax credit for taxes imposed by the other country on a situs basis.

The treaty contains the standard provision (the "saving clause") contained in U.S. tax treaties that each country retains the right to tax its citizens and domiciliaries as if the treaty had not come into effect (Article 1). In addition, it contains the standard provision that the treaty will not deny any taxpayer any benefits he or she would be entitled to under the domestic law of either country or under any other agreement between the two countries (Article 1); that is, the treaty will only benefit taxpayers.

The treaty also contains standard non-discrimination provisions and provides for exchanges of information and administrative cooperation between the tax authorities of the two countries to avoid double taxation and prevent fiscal evasion.

II. OVERVIEW OF UNITED STATES TAXATION OF INTERNATIONAL GRATUITOUS TRANSFERS AND ESTATE AND GIFT TAX TREATIES

A. United States Estate and Gift Tax Rules

Taxation of U.S. Citizens and Residents

The United States imposes its estate tax on the transfers of the worldwide assets of estates of individuals who were citizens or domiciliaries of the United States at death. The United States imposes its gift tax on all gifts made by U.S. citizens and domiciliaries.

The U.S. tax on generation-skipping transfers was enacted in 1976 to prevent the transfer of the use of property from one generation of a transferor's descendants to a younger generation without the payment of estate or gift taxes. In general, the tax on generation-skipping transfers is imposed when property passes through a trust from persons of one generation to persons of another generation and the transfer is not otherwise subject to estate or gift tax. This generation-skipping transfer tax applies to any property deemed transferred by a U.S. citizen or domiciliary and to certain U.S. situs property deemed transferred by certain nondomiciliary aliens.

A unified tax rate schedule applies to transfers at death, to gifts, and to generation-skipping transfers by U.S. citizens or domiciliaries. The highest marginal rate of tax is 55 percent in 1984, phasing down to 50 percent in 1985 and thereafter. A unified credit against the estate and gift taxes allows the cumulative tax-free transfer of up to $325,000 in 1984, increasing to $600,000 in 1987. In general, transfers to the spouse of the transferor are not subject to tax.

Because the United States taxes U.S. citizens (even if they are not domiciled in the United States) and domiciliaries on gratuitous transfers of property wherever located, double taxation of such transfers can arise when foreign countries subject to tax all transfers of property located within their boundaries. The United States seeks to mitigate this double taxation by allowing the estates of U.S. citizens and domiciliaries to credit foreign death taxes against the U.S. tax imposed on property located abroad. The credit cannot exceed the amount of foreign tax attributable to the property subject to double taxation. In addition, the credit for foreign death taxes cannot offset U.S. tax on property located in the United States. Therefore, the credit cannot exceed the amount of U.S. tax attributable to the property subject to double taxation.

No credit is available for foreign gift taxes or other transfer taxes other than death taxes.

Taxation of Nonresidents Not Citizens of the United States

Estate tax

The United States imposes its estate tax on the transfer of any property belonging to any nonresident not a citizen of the United States (hereinafter "nondomiciliary alien" of the United States) that is located in the United States at the time of his death.[1] Special situs rules assign locations or deemed locations to certain property.

Whether tangible property is taxable generally depends on whether it was actually located in the United States on the date of death. Thus, all U.S. real property owned directly by a nondomiciliary alien is taxable. Generally, tangible personal property located in the United States on the date of death is taxable. The only statutory exception to this rule is that certain works of art on loan for U.S. exhibition are deemed located outside the United States and are thus not taxable.

The physical location of intangible property is generally irrelevant for estate tax purposes. Stock of any U.S. corporation is deemed to be located in the United States. Stock of foreign corporations, even those whose assets are mainly or solely property located in the United States, is not located in the United States for this purpose, so it is not subject to U.S. estate tax. In general, debt obligations of U.S. citizens, residents, or entities are deemed located in the United States. Certain bank deposits and certain other debt obligations whose interest is treated for income tax purposes as foreign source income, however, are deemed located outside the United States. The proceeds of insurance on the life of a nondomiciliary alien of the United States are deemed located outside the United States.

The estate of a nondomiciliary alien is allowed certain deductions. If U.S. property is subject to nonrecourse indebtedness, that indebtedness directly reduces the value of the property for estate tax purposes.

Generally, however, expenses and other liabilities—including any personal liability of the decedent that is secured by U.S. or foreign property—are apportioned among the estate's worldwide assets and are deductible only on a pro rata basis. The amount deductible is limited to worldwide expenses and personal liabilities multiplied by a fraction the numerator of which is the U.S. gross estate and the denominator of which is the worldwide gross estate. Nonrecourse debt on non-U.S. property is not apportioned and is not deductible for purposes of determining U.S. estate tax liability.

A charitable deduction is available to the estate of a nondomiciliary alien only if the recipient of the charitable transfer is the United States, a political subdivision of the United States, or a U.S. charitable corporation, or if the recipient is a trust or other association that will use the bequest within the United States.

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[1] Although the Internal Revenue Code refers to individuals not "residents," Treasury regulations interpret this term to mean individuals who do not have a U.S. domicile (Treas. Reg. sec. 20.0-1(b)(1)). In general, it is easier for an alien to satisfy the requirements for U.S. residence for income tax purposes than to satisfy the requirements for U.S. domicile for purposes of the U.S. tax on gratuitous transfers.

Unless the estate shows the value of its worldwide assets, no pro rata deduction or charitable deduction is available. No marital deduction is available to the estate of a nondomiciliary alien.

The highest marginal tax rate applied to the estates of nondomiciliary aliens is 30 percent. A credit allows the tax-free transfer at death of up to $60,000. A limited credit for state death taxes is also available, but there is no credit for death taxes paid to foreign governments.

Gift tax

Nondomiciliary aliens are subject to U.S. gift tax only on lifetime transfers of U.S. real property or tangible personal property located in the United States at the time of the gift. Gifts by nondomiciliary aliens of any intangible property (including stock in U.S. companies or obligations of U.S. debtors) are not subject to U.S. gift tax.

Nondomiciliary alien donors obtain no marital deduction; they are entitled to a charitable deduction like that available to the estates of nondomiciliaries. The tax rate on gifts by nondomiciliaries is not the estate tax rate for nondomiciliaries (with a 30-percent top marginal rate) but is rather the rate for gratuitous transfers by U.S. citizens and domiciliaries (with a 55-percent top marginal rate in 1984). No credit for state or foreign gift taxes is available.

Generation-skipping tax

If the deemed transferor of any generation-skipping transfer is a nondomiciliary alien of the United States, the generation-skipping transfer tax applies only to property to which an estate or gift tax would apply in similar circumstances in the case of an outright bequest or gift by the nondomiciliary alien. For example, the deemed transfer of real property located outside the United States by a nondomiciliary alien would not, were it outright, result in an estate or gift tax, so it would result in no generation-skipping transfer tax. The rate on all generation-skipping transfers deemed made by nondomiciliary aliens is the U.S. domestic transfer tax rate (with a 55-percent top marginal rate in 1984).

Determination of a Person's Tax Status

Under the estate and gift tax regulations (sections 20.0-1(b)(1) and 25.2501-1(b), respectively) a resident of the United States is defined as a person who had his domicile in the United States at the time of his death or at the time of the gift. The regulations go on to state that "a person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of later removing therefrom. Residence without the requisite intention to remain indefinitely will not suffice to constitute domicile, nor will intention to change domicile effect such a change unless accomplished by actual removal." Domicile for the U.S. estate and gift tax law is a matter of Federal law. It does not depend on state law and it does not incorporate any presumption that the domicile of one spouse controls the domicile of the other spouse. The definition of domicile for the purpose of U.S. estate and gift tax purposes does not coincide with the definition of residence for U.S. income tax purposes.

Taxation of Certain U.S. Expatriates

The United States generally taxes persons whose surrender of U.S. citizenship had a principal purpose of U.S. tax avoidance more heavily than other nondomiciliaries. The estates of such persons who die within ten years of loss of citizenship include stock in certain controlled foreign corporations owning U.S. property, and are subject to the higher tax rates applicable to U.S. citizens or domiciliaries. These estates (like the estates of other nondomiciliaries) obtain a credit equivalent to a $60,000 exemption from estate tax. Gifts of stock in a U.S. company or obligations of a U.S. entity by such persons are subject to U.S. gift tax, whereas similar gifts by other nondomiciliaries are tax exempt.

B. Causes of Double Taxation

Double taxation of gratuitous transfers can arise for a variety of reasons, including conflicts between the laws of the two countries regarding where a person has his domicile, conflicts as to criteria for imposing tax, differences in the basic system under which tax is imposed, and taxation of worldwide assets. Double taxation usually occurs in situations where a decedent either was domiciled in two countries or was domiciled in one country and owned property located in another country.

Since each country has its own definition of domicile, it is possible that a person could be considered a domiciliary of two countries. As such, his estate would be subject to worldwide taxation by both countries.

When the decedent is considered domiciled in only one country but owned property in another country at the time of his death, that property is subject to tax in the situs country regardless of the decedent's domicile. Thus, the country of domicile will tax the property, since it is included in the worldwide assets of the estate, and the situs country will tax the property because it was located within its boundaries at the time of the decedent's death.

In both of these situations, unless one of the two countries gives up its right to tax the property or allows a credit for the estate taxes paid to the other country, the estate will be subject to double taxation.

Furthermore, the United States imposes its taxes on its citizens wherever they reside. Accordingly, a transfer by a U.S. citizen domiciled in a foreign country that taxes the worldwide estates or gifts of its domiciliaries is likely to incur double tax, once by the United States and once by the country of domicile. While the United States would allow a credit for foreign duties imposed in such a case, the credit is available only for duties imposed on non-United States property.

A similar situation exists for gifts where the donor is a domiciliary of both countries or where the donor is a domiciliary of one country and the property which is the subject of the gift is situated in another country. As in the case of estates, the country of domicile will tax the gifts made by its domiciliaries on a worldwide basis and the situs country will tax those same gifts to the extent the property is located within its boundaries. Again, unless one of the countries gives up its right to tax the transfer or allows a credit for the taxes paid to the other country, the gift will be subject to double taxation. The United States does not give a credit against its gift tax.

Also, some countries will tax not only the estate of a decedent domiciled in that country but also inheritances received by persons domiciled in that country when the decedent is domiciled in another country. In this case both countries might tax the same property.

C. United States Estate and Gift Tax Treaties

The traditional objectives of U.S. tax treaties are the avoidance of international double taxation and the prevention of tax avoidance and evasion. To a large extent, the treaty provisions designed to carry out these objectives supplement Code provisions having the same objectives and modify the generally applicable statutory rules with provisions which take into account the particular tax system of the treaty country. Given the diversity of tax systems, it would be virtually impossible to develop in the Code rules which unilaterally would achieve these objectives for all countries.

Notwithstanding the unilateral relief measures of the United States and our treaty partners, double taxation might arise because of different jurisdictional standards, or because of dual domicile. Likewise, if both countries consider the same deduction allocable to foreign assets, double taxation can result.

Another related objective of U.S. tax treaties is the removal of a chilling effect on trade and capital flows caused by overlapping tax jurisdiction.

Early U.S. estate tax treaties attempted to relieve double taxation by providing rules for the determination of situs of assets. Under these treaties, the country of domicile would allow a credit for taxes paid to the situs country. These treaties did not attempt to assign a single domicile.

More recent estate and gift tax treaties eliminate double taxation by granting primary taxing jurisdiction to the country of domicile, and by providing rules to determine a single domicile. The country of domicile then generally allows a credit for taxes attributable to (or exempts from taxation) property taxed by the other country on the basis of situs. In addition, several of the more recent treaties expand coverage beyond death taxes to include gift taxes and the U.S. generation-skipping transfer tax. These treaties grant primary taxing jurisdiction on the basis of situs only for real property and business assets.

In its treaties the United States retains the right to tax its citizens and domiciliaries on their worldwide transfers as if the treaty had not come into effect. Double taxation can therefore still arise. This double taxation is generally mitigated by granting a credit for transfer taxes paid to the other country.

The treaties also provide for administrative cooperation between the countries. This cooperation includes a competent authority mechanism to resolve double taxation problems arising in individual cases, or more generally, by consultation between tax officials of the two governments.

Administrative cooperation also includes provision for exchange of tax-related information to help the United States and its treaty partners administer their tax laws. The treaties generally provide for the exchange of information between the tax authorities of the two countries when such information is necessary for carrying out the provisions of the treaty or of their domestic tax laws.

The Internal Revenue Service (and the treaty partner's tax authorities) can request specific tax information from a treaty partner. It can also provide information spontaneously. This can include information to be used in a criminal investigation or prosecution. The obligation to exchange information under the treaties typically does not require either country to carry out measures contrary to its laws or administrative practices or to supply information not obtainable under its laws or in the normal course of its administration, or to supply information which would disclose trade secrets or other information the disclosure of which would be contrary to public policy.

III. EXPLANATION OF PROPOSED TAX TREATY

A detailed, article-by-article explanation of the proposed estate and gift tax treaty between the United States and Sweden is presented below.

Article 1. Scope

This Article describes the persons who may claim the benefits of the proposed treaty, and it contains the saving clause that preserves the right of each country to tax its citizens wherever domiciled and its domiciliaries.

The proposed treaty will apply to the estate of any individual person who was a domiciliary of either or both countries at the time of his death. Similarly, the proposed treaty applies to all gifts made by donors who were domiciliaries of either or both countries at the time the gift was made. The treaty will also apply to generation-skipping transfers of deemed transferors who, at the time of the deemed transfer, were domiciliaries of either or both countries.

The proposed treaty will not in any way restrict any exclusion, exemption, deduction, credit, or other allowance granted by the internal law of either country or by any other agreement between them. Thus, the treaty cannot cause any person to pay tax at a higher rate than he would pay under the Internal Revenue Code.

The proposed treaty preserves the right of each country to tax its domiciliaries, and to tax its citizens no matter where they are domiciled. Consistent with the Code, the treaty also preserves the right of the United States (and Sweden) to tax former citizens whose loss of citizenship had as one of its principal purposes the avoidance of tax, including the avoidance of income tax, but only for a period of ten years following the loss (see secs. 2107 and 2501(a)(3)). Thus it preserves the general United States rule of worldwide taxation of citizens and residents. The benefits contained in the provision providing an exemption from tax for certain charitable gifts (Article 8(7)), the provisions providing relief from double taxation (Article 9), the non-discrimination provisions (Article 10), and the mutual agreement provisions (Article 11) are not subject to the saving clause. The benefits contained in the first of the diplomatic agent provisions (Article 13(1)) are also not subject to the saving clause when, in the case of the benefits conferred by the United States, an individual who is neither a citizen of, nor has immigrant status in, the United States is involved and when, in the case of the benefits conferred by Sweden, an individual who is not a citizen of Sweden is involved.

Article 2. Taxes Covered

The proposed treaty generally applies to taxes on gratuitous transfers imposed by the United States and Sweden. In the case of the United States, the proposed treaty applies to the Federal estate tax, gift tax, and the tax on generation-skipping transfers. In the case of Sweden, the proposed treaty applies generally to the inheritance and gift taxes.

Sweden imposes an inheritance tax on property transferred at death where the decedent is a Swedish citizen or Swedish resident. Sweden imposes a tax on gifts where the recipient is a Swedish citizen, Swedish resident, or Swedish legal entity. Otherwise Sweden will impose its inheritance or gift tax only with respect to certain property and investments located in Sweden.

The proposed treaty provides that it will apply to any identical or substantially similar taxes on transfers and deemed transfers that either country may impose after the date of signature of the treaty (June 13, 1983) in addition to, or in place of, the existing taxes. The competent authorities of the two countries must notify each other of any changes that occur in their respective tax laws and of any official published material of substantial significance concerning the application of the treaty, including explanations, regulations, rulings, and judicial decisions.

As is true of other U.S. estate tax treaties, the proposed treaty does not generally apply to death or gift taxes imposed by state or local governments. However, each country agrees to credit certain taxes of political subdivisions of the other country that the other country also credits (Article 9). Also, the non-discrimination Article (Article 10) applies to all taxes of every kind imposed by the United States, Sweden, and their political subdivisions. The provisions relating to exchange of information in Article 12 apply to gratuitous transfer taxes and to all other taxes (including income taxes) imposed by the United States and Sweden.

Article 3. General Definitions

The standard definitions found in most U.S. estate and gift tax treaties are contained in the proposed treaty.

The proposed treaty defines the term "United States" to include the States and the District of Columbia but to exclude Puerto Rico, the Virgin Islands, Guam, and the other U.S. possessions and territories. The term "United States" also includes the territorial sea of the United States and the seabed and subsoil of the submarine areas adjacent to the coast of the United States, but beyond the territorial sea, over which the United States exercises sovereign rights, in accordance with international law, for the purposes of exploration and exploitation of natural resources. Thus, the term includes the continental shelf.

The treaty defines the term "Sweden" to mean the Kingdom of Sweden. In addition, the term "Sweden" includes any area outside the territorial sea of Sweden within which Sweden's laws and rights under international law with respect to the exploration and exploitation of the natural resources on the seabed or in its subsoil may be exercised.

The terms "Contracting State" and "the other Contracting State" mean the United States or Sweden, as the context requires.

The term "international traffic" means any transport by a ship or aircraft, except when such transport is solely between places in one of the countries.

The U.S. competent authority is the Secretary of the Treasury or his delegate. In fact, the U.S. competent authority function has been delegated to the Commissioner of the Internal Revenue Service, who has redelegated the authority to the Associate Commissioner (Operations). The Assistant Commissioner (Examination) has been delegated the authority to administer programs for simultaneous, spontaneous, and industry-wide exchanges of information. The Director, Foreign Operations District (formerly called the Director of the Office of International Operations), has been delegated the authority to administer programs for routine and specific exchanges of information and mutual assistance in collection. The Swedish competent authority is the Minister or Finance or his authorized representative.

The proposed treaty also contains the standard provision that unless the context otherwise requires or the competent authorities of the two countries establish a common meaning, undefined terms are generally to have the meaning which they have under the applicable tax laws of the country applying the treaty.

Article 4. Fiscal Domicile

The concept of domicile is important because under the proposed treaty the country of domicile has the primary tax jurisdiction over all property transferred other than the property subject to situs taxation. The threshold test for determining the country of domicile is the domestic laws of each country. However, in those situations where both countries would treat an individual as a domiciliary, the treaty sets forth rules for establishing the country of domicile for purposes of the taxes covered by the treaty.

The proposed treaty provides that a person will be a domiciliary of the United States if he is a "resident" or a citizen of the United States. Article 3(2) of the treaty states that terms not defined in the treaty are defined by the estate and gift tax law of the country to which the term applies. Since the term "resident," as it applies to U.S persons, is not defined in the treaty, recourse to U.S. estate and gift tax law is necessary to determine whether a person is a U.S. resident. Under U.S. estate and gift tax law, a person is generally a "resident" of the United States if he had his domicile in the United States at the time of his death or at the time of the making of a gift. (Treas. Regs. sections 20.0-1(b)(1) and 25.2501-1(b).)

For purposes of the proposed treaty, a resident of a U.S. possession who is a U.S. citizen solely by reason of being a citizen of a possession or by reason of birth or residence in a possession is neither a U.S. citizen nor a U.S. domiciliary. Such persons are not subject to U.S. gratuitous transfer taxes as citizens or domiciliaries.

The treaty provides that a person will be a domiciliary of Sweden if, under Swedish law, he is a Swedish resident or Swedish citizen.

To provide relief from double taxation where the individual is considered domiciled in both countries, the proposed treaty provides a series of rules designed to establish a single country of domicile for the individual for purposes of the taxes covered by the treaty. The country so selected will then have the primary tax jurisdiction with respect to the worldwide estate of the decedent or with respect to his worldwide gifts, other than real property and assets of a permanent establishment or a fixed base situated in the other country. As described below, these rules reflect the concept that primary tax jurisdiction should be exercised either by the country of nationality, if the dual domicile individual has not been resident in the other country for a substantial period of time prior to his death or the making of the gift, or by the country in which he has his most significant contacts if the nationality test is not determinative.

Under the first of these rules, if the individual is a citizen of one country and not a citizen of the other country and has been domiciled in that other country for less than five years (including temporary absences) during the preceding seven-year period, then the individual will be considered a domiciliary only of the country of his citizenship. Under this rule, for example, Sweden may not tax the estate or gifts of a U.S. citizen who has been domiciled in Sweden for less than five years as if the U.S. citizen were a Swedish domiciliary. (This rule is reciprocal). If, however, the individual has been domiciled in the country of which he is not a citizen for five or more years out of the seven-year period, his domicile for purposes of the treaty will be determined under the tie-breaker rules described below. The five out of seven-year period is shorter than the seven out of ten-year period in the U.S. model treaty.

This five-year rule may resolve most dual domicile situations. However, if a dual domicile problem still remains after application of this rule, the proposed treaty provides four additional tie-breaker rules to determine domicile. The rules (applied in the order presented) provide that the individual will be considered domiciled in the country (1) in which he has a permanent home available to him, (2) in which his personal and economic relations are closer (center of vital interests), (3) in which he has a habitual abode, or (4) of which is a citizen. In cases where an individual's domicile cannot be determined by these tests, then the competent authorities of the countries are to settle the question by mutual agreement.

Article 5. Real Property

Under the proposed treaty, the transfer by an individual domiciled in a country of real property situated in the other country may be taxed by the situs country. A similar rule applies to assets of a permanent establishment or fixed base (Article 6). Not all transfers of real property are taxed on a situs basis; real property situated in the country of domicile or in a third country is taxable by the country of domicile.

The determination of whether an item is real property is to be made under the laws of the country in which the property is located. Real property is specifically defined to include:

1. Property accessory to real property;
2. Livestock and equipment used in agriculture and forestry;
3. Rights to which the provisions of general law respecting landed property apply;
4. Usufruct of real property; and
5. Rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources.

Real property does not include ships, boats, or aircraft.

Article 6. Business Property of a Permanent Establishment and Assets Pertaining to a Fixed Base Used for the Performance of Independent Personal Services

Under the proposed treaty, the second type of property owned by a nondomiciliary over which the situs country has primary tax jurisdiction is the business assets of such person's permanent establishment which is located in the situs country and the assets pertaining to a fixed base of such person which is situated in that country and is used for the performance of independent personal services. Primary jurisdiction to tax the real property of either type of enterprise remains in the country in which the real property is situated, as provided in Article 5, however. Also, primary jurisdiction to tax ships, aircraft, and certain related personal property used in international traffic by a permanent establishment remains in the country of the transferor's domicile.

The proposed treaty contains a definition of the term "permanent establishment" which is similar to the definition found in recent U.S. income tax treaties, the U.S. model and the O.E.C.D. model income tax treaties, recent U.S. estate and gift tax treaties, and the U.S. model estate and gift tax treaty.

Generally, any fixed place of business through which the business of an enterprise is wholly or partly carried on is considered a permanent establishment. A permanent establishment includes a place of management, a branch, office, factory, workship, mine, oil or gas well, quarry, or any other place of extraction of natural resources. A permanent establishment also includes any building site, construction or installation project, or installation or drilling rig or ship being used for the exploration or development of natural resources, but only if it has remained in the country for more than 12 months.

The proposed treaty modifies this general rule by providing that a fixed place of business which is used for certain activities specified in the treaty will not be considered a permanent establishment. These activities include, for example, the warehousing of goods for purposes of storage, display, or delivery, or for processing by another person. They also include maintenance of a fixed place of business for the purpose of purchasing merchandise or collecting information, or for carrying on activities of a preparatory or auxiliary character.

Article 7. Property Not Expressly Mentioned

This article sets forth the general treaty rule that the country of domicile, as determined under the treaty, has primary tax jurisdiction over the transfers of its domiciliaries, other than the property specifically reserved for situs taxation. The proposed treaty generally provides that property (other than real property (Article 5) and business assets (Article 6)) will be subject to tax only in the country of domicile of the decedent, donor, or deemed transferor. Thus, tangible personal property not connected with a business will be subject to tax only in the country of domicile, regardless of location at the time of transfer or deemed transfer. Similarly, stock, debt obligations, and other intangible personal property not connected with a business will be subject to tax only in the country of domicile, regardless of the identity of any issuer or the physical location of any instrument evidencing the intangible property.

However, this rule of exclusive jurisdiction to tax in the country of domicile does not apply if the domiciliary is a citizen of either Sweden or the United States or (in certain cases) expatriated himself to avoid Swedish tax or U.S. tax, respectively (see Article 1). Since both Sweden and the United States impose tax on the basis of citizenship as well as domicile, there is still the possibility of double taxation. The tax credit structure in Article 9 is intended to alleviate this double taxation.

If the laws of Sweden and the United States conflict as to whether a property right is property described in Article 5 (real property) or Article 6 (business assets), on the one hand, or is an interest in a partnership or trust governed by the general treaty rule, on the other, the law of the country in which the transferor or deemed transferor is not domiciled will govern that issue.

Article 8. Deductions and Exemptions

Having generally granted primary taxing jurisdiction to the situs country for real property (Article 5) and business assets (Article 6), and to the country of domicile for other property, the proposed treaty generally allocates deductions for debt on the basis of the relationship (or lack thereof) between the debt and specific property.

The proposed treaty provides that a deduction in the taxable value of property shall be allowed for debts incurred for the acquisition, conversion, repair or upkeep of real property subject to situs taxation under Article 5.

For business assets (Article 6), a deduction is allowed for debts pertaining to the permanent establishment or fixed base. These rules, allowing debts to reduce the value of property they secure or affect, differ from the rules of the Internal Revenue Code and the U.S. model treaty, which provide that only nonrecourse debts specifically reduce the value of a nondomiciliary's property, while other debts reduce worldwide assets proportionately.

To the extent that debt that is deducted from specific real property or business assets in the situs country exceeds the value of that property or those assets, it is deducted from the value of any other property taxable by that situs country. Debts not deductible under the treaty from the value of real property or business assets are deducted from the value of all other property (described in Article 7) which is taxable by the country of domicile.

Debts not deducted in any of the above ways from the value of property in the country of primary taxing jurisdiction are to be deducted from the value of property liable to tax in the other country.

If a taxpayer deducts any debt in accordance with the treaty method, he may not use other rules found in the internal law of the United States to compute other debt deductions. In effect, the nondomiciliary transferor may choose between the treaty rules and the Internal Revenue Code rules for deductions, but must choose one set of rules in its entirety.

Like the U.S. model treaty and other recent U.S. estate and gift tax treaties, the proposed treaty also provides special rules for the deduction of charitable gifts to foreign entities and for a marital deduction. The proposed treaty requires each country to exempt from tax contributions made to charitable organizations in the other country when the transfer is exempt from tax in the recipient's country and would be exempt from tax in the donor's country if made to a similar organization of the donor's country. Transfers to any recipient that is a private charitable organization qualify for this treatment only if the organization is operated exclusively for religious, charitable, scientific or educational purposes.

The proposed treaty obligates the United States to give a marital deduction for transfers of property (other than community property) by Swedish domiciliaries to their spouses. The treaty provides that such property is included in the U.S. taxable base only to the extent that the value of the property exceeds 50 percent of all of the property subject to U.S. tax. To ensure that this exclusion cannot result in a lower U.S. tax than would apply to a U.S. domiciliary, the proposed treaty provides that the U.S. tax is to be computed by applying the tax rates applicable to a U.S. domiciliary.

The proposed treaty allows spouses of deceased persons who were U.S. domiciliaries or U.S. nationals to elect to treat property which is subject to Swedish tax but which is not subject to the Swedish general law governing matrimonial property as being subject to the Swedish general matrimonial property law. Generally, this means that one-half of the value of common matrimonial property transferred upon the death of one spouse to the other will not be subject to Swedish tax. In addition, the Swedish tax rates applicable to transfers to spouses (and certain other close relatives) are lower than the rates applicable to transfers to other individuals.

Article 9. Relief from Double Taxation

In general, double taxation is avoided because each country allows a credit against its own taxes (imposed by reason of domicile or citizenship) for taxes paid to the other country when such taxes are paid on property subject to situs taxation in the other country, or when the transferor was domiciled in the other country.

The United States will allow a credit against its estate, gift, or generation-skipping transfer tax imposed on a U.S. citizen or domiciliary for taxes paid to Sweden on the transfer of property where, under the proposed treaty, the property is subject to situs taxation in Sweden (Articles 5 and 6). The credit is to be calculated according to U.S. law, and is not to exceed the U.S. tax attributable to the property.

The United States will also grant a credit for Swedish inheritance or gift taxes paid on account of a U.S. citizen's domicile in Sweden at the date of his death, gift, or deemed transfer. However, the credit is not available for Swedish taxes imposed on the transfer of U.S. situs real estate or business property taxable by the United States under Articles 5 or 6. Thus, the United States retains primary taxing jurisdiction over real property (Article 5) and business assets (Article 6) located in the United States. In any case, the credit cannot exceed the U.S. tax attributable to the property taxed by Sweden. The credit is generally not available in the case of a former U.S. citizen whose loss of citizenship had as one of its principal purposes the avoidance of U.S. tax.

Sweden will allow a credit against its inheritance or gift tax for taxes paid to the United States on the transfer of property where, under the proposed treaty, the property is subject to situs taxation in the United States (Articles 5 and 6). The credit is to be calculated according to Swedish law, and is not to exceed the Swedish tax attributable to the property.

Sweden will also grant a credit for U.S. estate, gift or generation-skipping transfer taxes paid on account of a Swedish citizen's domicile in the United States at the date of his death, gift, or deemed transfer. However, the credit is not available for U.S. taxes imposed on the transfer of Swedish situs real estate or business property taxable by Sweden under Article 5 or 6. In any case, the credit cannot exceed the Swedish tax attributable to the property taxed by the United States.

In order to avoid double taxation, each country will take into account in allowing credits against its tax on the transfer of estates any taxes imposed by the other on prior transfers or deemed transfers of property of a decedent where the property is included in the estate. However, the proposed treaty does not allow a country to reduce its death tax credit by any credit that the other country allowed for taxes paid on prior transfers or deemed transfers.

The proposed treaty requires each country to credit taxes imposed by political subdivisions of the other country as if they were imposed directly by the other country, but only to the extent that the other country allows those taxes as credits against its own tax.

Under the Internal Revenue Code, a claim for credit or refund of U.S. taxes by reason of the payment of foreign death taxes generally must be made within four years from the date the return was filed. The proposed treaty provides a period of limitation during which claims for credit or refund of taxes based on the provisions of the treaty may be made which, in some cases, may be longer than that allowed by the Internal Revenue Code. It is provided that a claim for a credit or refund of taxes based on the provisions of the treaty must be made within six years from the date of the event giving rise to the tax liability or, where later, within one year from the last date on which the taxes for which credit is given are due. The competent authorities may, in appropriate circumstances, extend this time limit where the final determination of the taxes which are the subject of the claim for credit is delayed.

Unlike other U.S. estate tax treaties, the proposed treaty does not provide that refunds based on the provisions of the treaty are to be without interest.

Article 10. Non-discrimination

The proposed treaty contains a comprehensive non-discrimination provision relating to all taxes of every kind imposed at the national, state, or local level. It is similar to provisions which have been embodied in other recent U.S. tax treaties. The purpose of the non-discrimination provision is to prohibit a country from using its tax system to discriminate against residents of the other country.

Under this provision, neither country can discriminate by imposing more burdensome taxes (or other requirements connected with taxes) on citizens of the other country than it imposes on its own citizens who are in the same circumstances. The provision applies to citizens regardless of where they are resident. For this purpose, a citizen of one of the countries not resident in that country is not in the same circumstances as a citizen of the other country not resident in the first country. This is because, for example, the worldwide transfers of a U.S. citizen who resides outside the United States are taxed by the United States while the worldwide transfers of a Swedish citizen who resides outside the United States are not generally taxed by the United States.

Similarly, neither country may impose more burdensome taxation on the transfer or deemed transfer of a permanent establishment of a resident of the other country than it would impose if its own resident were involved. This provision does not require either country to grant to nondomiciliaries any personal allowances, reliefs, or reductions on account of civil status or family responsibilities that it grants to its domiciliaries.

In addition, under the proposed treaty, neither country may impose more burdensome taxation on an entity, the capital of which is wholly or partly owned or controlled by residents of the other country, than it would impose on a similar entity, the capital of which is not owned or controlled by residents of the other country.

Article 11. Mutual Agreement Procedure

The proposed treaty contains a mutual agreement provision, similar to those found in other U.S. tax treaties, which authorizes the competent authorities of the United States and Sweden to consult together to attempt to alleviate individual cases of taxation not in accordance with the proposed treaty.

Under the proposed Article, a person who considers that the action of the countries or either of them will cause him to pay a tax not in accordance with the treaty may present his case to the competent authority of the country of which he is a citizen or resident. The presentation must be made within one year after a claim, under the proposed treaty, has been finally settled or rejected. The competent authority then makes a determination as to whether or not the claim has merit. If it is determined that the claim does have merit, and if the competent authority cannot unilaterally solve the problem, that competent authority endeavors to come to an agreement with the competent authority of the other country to eliminate taxation which is not in accordance with the provisions of the treaty.

The provision requires the waiver of the statute of limitations of either country so as to permit the issuance of a refund or credit notwithstanding the statute of limitations. The provision, however, does not authorize the imposition of additional taxes after the statute of limitations has run.

The competent authorities are also directed to resolve any difficulties or doubts arising as to the application of the convention. Under this authority, the Internal Revenue Service from time to time issues rulings defining terms in a treaty.

The treaty authorizes the competent authorities to communicate with each other directly for purposes of reaching an agreement in the sense of the mutual agreement provision. It also authorizes them to meet together for an oral exchange of opinions. These proisions make clear that it is not necessary to go through normal iplomatic channels to discuss problems arising in the application f the treaty.

ırticle 12. Exchange of Information

This article forms the basis for cooperation between the two ountries in their efforts to deal with avoidance or evasion of their espective taxes and to enable them to obtain information so that hey can properly administer the treaty.

The proposed treaty provides for the exchange between the counries of tax-related information and information necessary to carry ut the provisions of the proposed treaty or the tax laws of one of he countries, insofar as its taxation is not contrary to the proposed reaty. The information is not limited to information about the ransfer taxes covered in the proposed treaty; this exchange of inɔrmation provision applies to all taxes (including income taxes) mposed by the United States and Sweden. This provision does not pply to political subdivisions of the two countries, however.

Information exchanged is to be treated as secret in the same nanner as information obtained under the domestic laws of the reeiving country. Such information, however, may be disclosed to ersons involved in the administration, assessment, or collection of, he enforcement or prosecution in respect of, or the determination f appeals in relation to the taxes to which the Article applies. It is ınderstood by the countries that the appropriate committees of ;ongress and their agents, in the exercise of their oversight responibilities, could have access to information obtained under the reaty.

The proposed treaty contains narrow limitations on the obligaions of the countries to supply requested information. A country is ıot required to carry out administrative measures contrary to its aw or administrative practice or the law or administrative pracice of the other country, to supply particulars not obtainable ınder its law or in the normal course of administration, or to upply information that would disclose a trade secret or the discloure of which would be contrary to public policy.

The proposed treaty provides that a country receiving a request vill endeavor to obtain the information requested as if its own taxıtion were involved. Upon specific request of the competent authorty of the other country, a requested country is to produce deposiions of witnesses and authenticated copies of original documents o the extent obtainable to enforce its own tax laws.

ırticle 13. Diplomatic Agents and Consular Officials

The proposed treaty provides that its provisions are not to affect he fiscal privileges which diplomatic and consular officials enjoy ınder the general rules of international law or the provisions of pecial agreements. The proposed treaty is not to apply to officials f international organizations or to members of a diplomatic mision or consular post of a third country that is established in the Jnited States or Sweden but who are not considered domiciled in ither country for purposes of estate, inheritance, gift, or generaion-skipping transfer tax liability.

Article 14. Entry into Force

The proposed treaty is subject to the ratification procedures of each country and requires that the instruments of ratification be exchanged in Washington as soon as possible. The treaty will enter into force upon the exchange of instruments of ratification. The provisions of the treaty will apply in the United States to estates of persons dying, gifts made, and generation-skipping transfers deemed made on or after the date of the exchange of instruments of ratification. The provisions of the treaty will apply in Sweden, as regards inheritance tax, to persons dying on or after the date of the exchange of instruments of ratification, and, as regards gift tax, to gifts by reference to which there is a charge to tax which arises on or after the date of the exchange of instruments of ratification.

Article 15. Termination

The proposed treaty will continue in force indefinitely. However, either country may terminate the treaty after it has been in force for five years if at least six months prior notice has been given.

If terminated, the treaty will cease to have effect after the December 31 which either is or next follows the date of termination specified in the notice of termination. However, the treaty will continue to apply to any estates or gifts which come under its jurisdiction before the end of that period.