4. *Gains from the alienation of shares of the capital stock of a company, or of an interest in a partnership, trust or estate, the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State. In particular:*
   (a) Nothing contained in this paragraph shall apply to a company, partnership, trust or estate, other than a company, partnership, trust or estate engaged in the business of management of immovable properties, the property of which consists directly or indirectly principally of immovable property used by such company, partnership, trust or estate in its business activities.
   (b) For the purpose of this paragraph, "principally" in relation to ownership of immovable property means the value of such immovable property exceeding 50 per cent of the aggregate value of all assets owned by the company, partnership, trust or estate.

5. *Gains, other than those pertaining to which paragraph 4 applies, derived by a resident of a Contracting State from the alienation of shares of a company which is a resident of the other Contracting State, may be taxed in that other State if the alienator, at any time duringrshi(t)-2(it(or)-(t)-5TT3 Tw T* [(15.56 [(G)2(av)4(anh)-10(e)4(r r*
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- in some countries capital gains are not deemed to be taxable income;
- in some other countries capital gains accrued to an enterprise are taxed, but capital gains made by an individual outside the course of his trade or business are not taxed;
- in some other countries capital gains made by an individual outside the course of his trade or business are taxed, but in such cases taxation often applies only in specified cases, e.g. profits from the sale of immovable property or speculative gains (where an asset was bought to be resold).

6. The taxes on capital gains vary from country to country. In some countries capital gains are taxed as ordinary income while in other countries capital gains are taxed at concessional rates. Most States taxing capital gains do so when an alienation of capital assets takes place. Some of them, however, tax only so-called realised capitaTtic0(g l)0(gw)d9-15( )]TJ 0 T274

on Article 13 (4) of the United Nations Model Double Taxation Convention. Personal property is treated as real property as in the case of US, when (i) the personal property is used in mining, farming and forestry; (ii) the personal property is used in the improvement of real property (e.g., construction equipment); (iii) the personal property is used in the operation of a lodging facility; or (iv) the personal property is used by a lessor in the leasing of furnished office or other work space to lessees.

16. The next issue for tax administrators is the determination of the date reckoned for

25. Non-

Annex-1

respective entity. General practice is to examine the latest audited financial statements of concerned entity to ascertain its asset and to discern if immovable property (ies) are major/

THE RUSSIAN FEDERATION

Such portion of immovable property can be calculated based on company's book value of assets and book value of immovable property. Purchase of shares as capital investments with a purpose of capital gains assumes company that alienates shares has to disclose some obligatory information. Otherwise information can be received from all reliable legal sources.

Article 309 of Tax Code of the Russian Federation (further – Tax Code) regulates taxation of

CHINA

In the domestic law of China, it is stipulated that if the balance sheet of an entity shows that more than 50% of its property is composed of immovable property during any time in three years before the alienation, China will have the taxation right. Therefore, the issue above does not concern us.

Mr. Nilesh Kapadia (on India)

The taxpayer will know this only in case he / his family / associates were in charge of the management of the company, partnership, trust, etc.

In other words, the information is not available directly in public domain.

Mr. T.P. Ostwal (on India)

There is no specific statutory prescribed mechanism under the law dealing with this aspect. However, in practice, in case where the shares of an entity are proposed to be sold on a date falling between two balance sheet dates, reference is made to the broken period balance sheet of the entity whose shares are proposed to be sold to determine whether the assets of entity consists principally of 'immovable property' as on the date of sale. In absence thereof, latest audited financial statements of the entity are relied on. A valuation report based on unaudited financial statement can be a pointer to examine the state of its affairs as compared to last available financial statements.

JAPAN

A shareholder should usually be able to obtain necessary information, including financials and etc., in order to fulfil his obligation to comply with relevant tax laws.

JAPAN (MIYATAKE & FUJITA)

In Japan, the percentage of the immovable property ratio is judged on the date of alienation of shares.

It is very difficult to find it unless the company is a subsidiary of the taxpayer.

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When a taxpayer cannot get access to information, or the taxpayer does not have sufficient

JAPAN (MIYATAKE & FUJITA)

This information is not available in the public domain, and the taxpayer has to ask the company for the information.

MALAYSIA

Gains from disposal of shares in a controlled company (as defined under Income Tax Act, 1967) which holds real properly directly or indirectly as a major asset (at least 75% of total tangible assets) will be subject to Real Property Gains Tax (RPGT). Since the company is a

THE UNITED STATES

A publicly traded U.S. corporation typically discloses its balance sheet with its annual SEC public filing (*i.e.*, a 10-K). Depending on the corporation, the location of immovable properties may or may not be disclosed. For example, if the corporation is in the oil and gas industry, it may identify whether it acquired or disposed of any exploration rights to drill for oil. In the absence of such information in the public documents and in the case of a non-publicly traded company, the foreign person would need to specifically request information from the U.S. corporation. See Q1(a) for the procedures to accomplish this.

Dr. Stephen R. Crow (on the US)
Sometimes, but not on a consistent basis. I go back to the rule that says the capital gains are taxed at the source which, for US purposes, is defined as the residence of the seller. Under those circumstances, the location of the property, for these purposes, is not that important.

ZAMBIA

It is not available.

d) How does the taxpayer determine the relevant tax obligation in the situation when he or she transacts in shares based on price movement of scrip in a stock exchange and makes no analysis of the financials of the concerned entity?

AUSTRALIA

If the taxpayer is trading in shares, gains would likely constitute income according to ordinary concepts for Australian income tax purposes and be taxed on revenue account. However, whether or not the gains and losses have Australian tax consequences will depend on the application of any relevant tax treaty (and in particular articles allocating taxing rights over business profits and the alienation of real property).
If the gains/losses were held to be on capital account, they would often be disregarded for CGT purposes by a foreign resident by virtue of the operation of the 10% non-portfolio interest test.

AZERBAIJAN

In most cases taxation is postfactum here, as a result of tax audit.

BRAZIL

As regards the percentage of an immovable property of the value of the alienated shares this case is irrelevant for tax purposes under Brazilian Law (see item 1(a) and 4).

The taxation of transactions of shares in a stock exchange is calculated when the tax return is filed. There is also a withholding income tax on each transaction (0.005%) to be offset the income tax due when the tax return is filled.
B

CHINA

If the taxpayer transacts in a stock exchange, he is investing in listed companies whose information is publicly available. The taxpayer is able to get information of the company he invests in and decides his tax obligation accordingly.

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Mr. T.P. Ostwal (on India)

In India, there are no specific statutory guidelines to determine the tax obligation when a taxpayer transacts in shares based on price movement of scrip in a stock exchange and makes no analysis of the financials of the concerned entity. (ie a case where valuation reports of the shares of entities are not available based on analysis of financial statement of the entity concerned). In such cases, the taxpayer typically treats the transaction as share sale transaction without evaluating implications of Article 13(4), unless contrary information is available with the taxpayer.

JAPAN

[Not addressed]

JAPAN (MIYATAKE & FUJITA)

It is almost impossible to determine the relevant tax obligation in such situation.

MALAYSIA

Only gains from disposal of shares in a controlled company which holds real property or shares in another Real Property Company (RPC) as a major asset will be subject to RPGT in Malaysia. Gains from disposal of shares in public listed companies are not subject to RPGT.

MEXICO

In the case of listed shares, the brokers are responsible for providing the market information

Explanation.—For the purposes of this sub-clause, "land, building, part of a building, machinery, plant, furniture, fittings and other things" include any rights therein ;

(*ii*) any rights in or with respect to any land or any building or a part of a building (whether or not including any machinery, plant, furniture, fittings or other things therein) which has been constructed or which is to be constructed, accruing or arising from any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement of whatever nature), not being a transaction by way of sale, exchange or lease of such land, building or part of a building

Mr. T.P. Ostwal (on India)

1. Under the domestic income tax law Income-tax Act, 1961 ('Act'), 'immovable property' has different meanings for the purpose of different sections. Immovable property has been defined in section 269UA(d) of the Act as follows:

" "immovable property" means—

(i) any land or any building or part of a building, and includes, where any land or any building or part of a building is to be transferred together with any machinery, plant, furniture, fittings or other things, such machinery, plant, furniture, fittings or other things also.

Explanation.—For the purposes of this sub-clause, "land, building, part of a building, machinery, plant, furniture, fittings and other things" include any rights therein ;

(ii) any rights in or with respect to any land or any building or a part of a building (whether or not including any machinery, plant, furniture, fittings or other things therein) which has been constructed or which is to be constructed, accruing or arising from any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement of whatever nature), not being a transaction by way of sale, exchange or lease of such land, building or part of a building ;"

2. For the purpose of determining the forms and modes of investment by a charitable or religious organisation 'immovable property' is defined in negative manner as under:

" Immovable property does not include any machinery or plant (other than machinery or plant installed in a building for the convenient occupation of the building) even though attached to, or permanently fastened to, anything attached to the earth;"

3. Where any transferee transfers an immovable property (for a consideration of INR 5 Millions or more) to an Indian resident, the Indian residents are required to deduct tax at source at the rate of 1% at the time of payment or credit to the transferees account, whichever is earlier as per section 194-IA of the Act. For the purpose of the said section 'immovable property is defined as under:

"immovable property means any land (other than agricultural land) or any building or part of a building"

Similar definition of 'immovable property' is also given in section 194-LA of the Act requiring deduction of tax at source on payment (exceeding INR 200,000) made by any

JAPAN

There are various laws each of which contains each own definition of "immovable property." In the context of taxation concerning the alienation of shares of a company, partnership, trust etc. whose property consists principally of "immovable property," the following definition of "immovable property", which is stipulated in the Order for Enforcement of the Corporation Tax Act, applies.

(i) Land, etc. located in Japan (meaning land or the right on land, buildings and facilities attached thereto, or structures);
(ii) Shares of a corporation for which the rate of the sum of the values of land, etc. located in Japan accounts for 50 percent or more of the total amount of its gross assets;
(iii) Shares (excluding those falling under shares listed in the preceding item) of a corporation which owns shares listed in the preceding item or the following item (limited to a corporation for which the rate of the sum of the values of land, etc. located in Japan and shares listed in the preceding item, this item, and the following item among the total amount of its gross assets is 50 percent or more);
(iv) Shares (excluding those falling under shares listed in the preceding two items) of a corporation which owns shares listed in the preceding item (limited to a corporation for which the rate of the sum of the values of land, etc. located in Japan and shares listed in the preceding two items and this item among the total amount of its gross assets is 50 percent or more).

JAPAN (MIYATAKE & FUJITA)

The "immovable property" is well defined in Japanese internal law, which definition is used for Japanese tax law. Therefore, Japan does not have this problem.

MALAYSIA

Under the Laws of Malaysia – Interpretation Acts 1948 and 1967, "Immovable property" means land and any interest in, right over or benefit arising or to arise out of land.

MEXICO

There is no definition in our tax legislation. Then, based on the provisions of article 5 of our Tax Code regarding rules of supplementary application, we apply the definition referred to in the article 750 of our Federal Civil Code.

I. The soil and the buildings adhered to it;

II. The plants and trees, while in the land and their pending fruits, until they are separated from them by regular harvesting or cuts;

III. Everything united to a building in a fixed manner, so that it cannot be separated without damaging it or damaging the object adhered to it;

IV. The statues, reliefs, paintings or other objects of ornamentation, placed in buildings o inherited by the owner of the building in such a way that reveals the purpose of unite them to it in a permanent way;

V. The lofts, beehives, fish ponds or similar breeding, when the owner retains them in order to keep them united to the property and forming part of it in a permanent way;

VI. The machines, vessels, instruments or implements intended by the owner of the property, directly and exclusively to the industry or exploitation of that property;

VII. Fertilizers for the cultivation of an inheritance which are in the land where they are going to be used and the seeds necessary to the cultivation of the farm;

VIII. The electric devices and accessories attached to the soil or buildings by the owner thereof, unless otherwise agreed;

IX. The springs, ponds, wells and streams, as well as aqueducts and pipes of any kind that serve to drive liquids o gases to a property or to take them out of it;

X. The animals that are the breeding herd in rural land which are intended wholly or partly to livestock breeding; as well as the working beasts to the cultivation of a farm, while they are intended for that purpose;

XI. The dams and structures, even the floating ones, intended to stay in a fixed point of rivers, lakes or shores;

XII. Rights on rem ever properties;

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THE RUSSIAN FEDERATION

It is determined based on Civil Code of the Russian Federation (further – Civil Code), where Article 130 keeps a definition for Immovables and Movables.
Article 130 of Civil Code says:

1. To the immovables (the immovable property, realty) shall be referred the land plots, the land plots with mineral deposits, the set-apart water objects and everything else, which is closely connected with the land, i.e., such objects cannot be shifted without causing an enormous damage to their purpose, including the forests, the perennial green plantations, the buildings and all kind of structures. To the immovables shall also be referred the air-borne and sea-going vessels, the inland navigation ships and the space objects. The law may also refer to the immovables certain other property.

2. The things, which have not been referred to the immovable, including money and securities, shall be regarded as the movables. The registration of the rights to the movables shall not be required, with the exception of the cases, pointed out in the law.

SOUTH AFRICA

property includes not only direct interests but also fee ownership and co-ownership of land or improvements thereon, leaseholds of land or improvements thereon, options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon.

Improvements on the land generally include buildings or any inherently permanent structure, or the structural component of either. The term "building" encompasses factories, office buildings, warehouses, garages, and stores. The term "inherently permanent structure" refers

b)

JAPAN (MIYATAKE & FUJITA)

The date of the alienation of the shares.

MALAYSIA

The market value of immovable property as at the date of acquisition of shares in the relevant controlled company, if the market value of shares in a RPC and/or the acquisition price of shares in a RPC is at least 75% of the value of its total tangible assets, the company is a RPC. If as at the date of acquisition of shares, the relevant company is not an RPC, the determination of the company status (whether it is an RPC or not) need to be done when the company acquire additional real property/immovable property. In such cases, the market value at date of acquisition of the real property is required

MEXICO

The date of the alienation that triggers the tax and therefore the obligation to pay it.

NETHERLANDS

The date of the sale of the shares.

NORWAY

It would be the date of the transaction.

THE RUSSIAN FEDERATION

In order to determine such value tax administration uses the value on the last reporting date.

SOUTH AFRICA

The date is the time of disposal which would be the date on which the suspensive conditions in the agreement have been fulfilled or the date of the agreement in the case of an unconditional agreement.

THE UNITED STATES

The value of the assets is determined on each Determination Date as defined in 1(b) during the Testing Period (five-year lookback rule) and on the date of disposition by the foreign taxpayer.

Dr. Stephen R. Crow (on the US)

In most cases, the financial information used in tax calculations is the date of sale, however, there are other provisions in the tax law where average values for a defined period are used.

ZAMBIA
[Not Answered]

ii. Is the value taken by your tax administration the book value, cost or fair market value?

AUSTRALIA

Fair Market value is the value to be taken for CGT purposes (Explanatory Memorandum to the Tax Laws Amendment (2006 Measures No.4) Bill at paragraph 4.79).

AZERBAIJAN

It is book value, b

JAPAN (MIYATAKE & FUJITA)

corporation that it may not rely upon the presumption. The term "book value" refers to the amount at which an asset is carried on financial accounting records kept consistently with generally accepted accounting principles as applied in the United States.

ZAMBIA

[Not Answered]

iii. Which are the assets to be reckoned, i.e. whether all assets as per books or even the assets not in the books such as goodwill and other intangible property etc.?

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JAPAN (MIYATAKE & FUJITA)

All assets are of fair market value.
The assets not in the financial statements would not be taken into consideration.

MALAYSIA

The value of total tangible assets (TTA) is taken into consideration in determining the RPC status of the company.

Under Para 34A (6) section 2 of the Real Property Gains Tax Act 1976, value of TTA means the aggregate of the defined value of real property or RPC shares or both and the value of other tangible assets. 'Defined Value' means market value of real property or the acquisition price of RPC shares as determined.

MEXICO

In this regard, article 161 of the Mexican income tax law and its precedents, the articles 190 and 151 of the income tax law in force until 2012 and 2001, respectively, as well as other provisions embedded in the current income tax law title named "Foreign residents with income arising from source located in national territory", were established by the legislator in accordance with the trends that have governed the international concert in which Mexico belongs from several years ago, especially since the Mexico's accession to the OECD.

So, it should be highlighted the great similarity between the Article 13, paragraph 4 of the Model Tax Convention on Income and on Capital issued by the OECD and the article 161, first paragraph, of the Mexican income tax law.

On this basis and taking into account the Supreme Court recognition about the Commentaries to the Model Tax Convention as a source to interpret the Model itself, as well as an explanation of its text, the paragraph 28.4 of the Commentary to Article 13 of the Model Tax Convention says:

28.4 Paragraph 4 allows the taxation of the entire gain attributable to the shares to which it applies even where part of the value of the share is derived from property other than immovable property located in the source State. The determination of whether shares of a company derive more than 50 per cent of their value directly or indirectly from immovable property situated in a Contracting State will normally be done by comparing the value of such immovable property to the value of all the property owned by the company without taking into account debts or other liabilities of the company (whether or not secured by mortgages on the relevant immovable property).

According to this Comments, the value of all the assets of the company will be compared

NETHERLANDS

All assets that influence the value of the shares. That would include goodwill and other intangible assets.

NORWAY

All assets, including off balance ones.

THE RUSSIAN FEDERATION

In accordance with Russian legislation such intangible assets as goodwill are not reckoned.

SOUTH AFRICA

The assets will be all those taken into account in determining the market value of the interest which will be all assets whether or not they have been included for accounting purposes (i.e. goodwill and other intangible property are included).

THE UNITED STATES

This generally depends on whether the company is performing a FMV Test or a Book Value Test. If the company is using the Book Value Test, it generally would only consider the assets on its balance sheet. However, since the Book Value Test is a rebuttable presumption, if there is an asset that is not reflected on the balance sheet that could impact whether the company is a USRPHC, such asset should be taken into account.

ZAMBIA
[Not answered]

c) In a case where the 'immovable property' is situated in your country and the company is a resident of the other country and the share transaction takes place between the residents of the other country, your tax administration may not have access to information regarding such transactions to assert the taxation right, because the company whose shares are alienated is not in your territory. How does your tax administration tackle such a situation?

AUSTRALIA

Primarily we become aware of such transactions via media reports, the stock exchange and other (t)-2(e)n4(t)-2(i)-2(a)4(l)-2h trans4-6(c)4(t)-2(i)-2(ons)-16(w)h3(i)-2(c)h (dm)-2(i)-0(g)1hnot41qui tr

AZERBAIJAN

NETHERLANDS

The Netherlands does not have domestic regulation that includes the transfer of shares in land-rich companies in the taxable base.
The issue does not arise in the Netherlands.

NORWAY

They probably don't know of the facts and would not consider the tax issues.

THE RUSSIAN FEDERATION

Tax administration tackles such a situation through the collaboration between foreign countries' competent authorities.

SOUTH AFRICA

It mainly relies on disclosure by the seller, who is required to file an income tax return.

THE UNITED STATES

The United States does not impose tax on indirect transfers of USRPIs where the USRPI is held by a foreign company. The USRPI will not be subject to tax until it is disposed of by the foreign company that owns the USRPI.

ZAMBIA

Currently we are studying how to handle such

28.4 Paragraph 4 allows the taxation of the entire gain attributable to the shares to which it applies even where part of the value of the share is derived from property other than immovable property located in the source State. The determination of whether shares of a company derive more than 50 per cent of their value directly or indirectly from immovable property situated in a Contracting State will normally be done by comparing the value of such immovable property to the value of all the property owned by the company without taking into account debts or other liabilities of the company (whether or not secured by mortgages on the relevant immovable property).

According to this Comments, the value of shares shall be determined from a comparison between the value of the immovable property located in the source State and the total value of the assets of the Company, with no consideration of debts or passives.

Then, taking into consideration the similarity between the texts of the Mexican income tax law and the Model Tax Convention, by interpreting the article 161 of the mentioned law, debts and other passives are not taking into consideration, regardless whether or not secured by mortgages on real property.

NETHERLANDS

Refer to answer to Q 1(b).

NORWAY

The GAAR.

THE RUSSIAN FEDERATION

In order to tackle such an abusive situation tax administration in frames of pre-audit analysis performs monitoring and other tax control activities.

SOUTH AFRICA

The risk is real from a tax treaty perspective because cash in the bank derived from borrowing would increase the gross assets. South Africa does not have a specific counter to this, except possibly the general anti-avoidance rules which may be difficult to apply to such a situation.

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the value of a USRPI held by the company. The FMV of a USRPI can only be reduced by debt to the extent that the debt is a mortgage or other valid security interest in the property that is valid and enforceable where the property is located. The debts must be (1) incurred to acquire the property (including long-term financing obtained to replace construction loans or other short-term debt), or (2) otherwise incurred in direct connection with the property (such as property tax liens or debts incurred to maintain or improve the property).

2. The regulations also contain an anti-abuse rule providing that the gross value of assets in the denominator of the testing fraction (*i.e.*, trade or business assets and non-US real property interests) shall be reduced by the outstanding balance of any debt that was entered into for the principal purpose of avoiding USRPHC status.

3. The fact that the fraction must be met multiple times (*i.e.,* on each Determination Date over the Testing Period described in response to Q. 1,) also reduces the opportunity for abusive transaction.

ZAMBIA

[Not answered]

3. Interests covered

Does your country's legislation and treaty provisions cover alienations of shares in companies only, or do they extend to other interests such as in partnerships or trusts?

AUSTRALIA

The legislation and treaty provisions extend to other interests such as in partnerships and trusts.

Note: The domestic legislation covering trusts applies to fixed trusts only (ATO ID 2007/60).

AZERBAIJAN

In legal persons only.

BRAZIL

Brazilian legislation and treaty provisions cover alienations of any kind of interest including shares and other rights.

CHINA

Our legislation and treaty provisions cover alienations of shares in companies only.

Mr. Nilesh Kapadia (on India)

Generally restricted to companies only.

with basis on shareholding trust authorized under the applicable legislation in matters of foreign investment.

NETHERLANDS

The Netherlands does not have domestic regulation that includes the transfer of shares in land-rich companies in the taxable base.
The issue does not arise in the Netherlands.

NORWAY

There is no such tax liability for non-resident shareholders under domestic law, unless the assets are connected to a business activity carried on within the country – in which case also interests in partnerships would be covered. Treaty provisions would normally adopt the OECD Model provision being limited to share transactions, but could in other cases adopt the UN Model including interests in partnerships.

THE RUSSIAN FEDERATION

There are no exceptions for companies only or exceptions for partnerships or trusts.

SOUTH AFRICA

Legislation covers vested interests in trusts and ownership or the right to ownership in any entity other than a company.

THE UNITED STATES

There are a separate set of rules that apply to partnerships, trusts, and estates to the extent these entities own any USRPIs. If a foreign person sells an interest in a partnership, trust, or estate, the foreign person must determine what portion of the gain is attributable to any USRPI held by the partnership, trust, or estate. We note however that there is limited guidance with respect to these entities and there are many interpretive issues when determining how to best to comply with FIRPTA. For example, there is currently no guidance for determining what portion of the gain is attributable to a USRPI.

No withholding is required on the disposition of an interest in a partnership holding USRPIs unless: (1) fifty percent or more of the value of the gross value of the gross assets of the partnership consist of USRPIs and (2) ninety percent or more of the value of the gross assets of the partnership consist of USRPIs plus any cash or cash equivalent. This is a safe harbor for withholding purposes only; a partner disposing of an interest in a partnership holding USRPIs remains liable for the substantive tax on any gain attributable to the USRPIs held by the partnership without regard for the safe harbour.

ZAMBIA

Our legislation covers alienation of shares in companies only.

Mr. T.P. Ostwal (on India)

In India, there is not much guidance on the interpretation of the terms used in Article 13(4). However, wherever required India relies on the UN Model Convention and UN Model Commentary.

JAPAN

[Not addressed]

JAPAN (MIYATAKE & FUJITA)

See the short memo (which follows) for general information on capital gains from the alienation of shares in the real property rich entities.

MALAYSIA

No further comments.

MEXICO

[Not addressed]

NETHERLANDS

In order to respect the principle of resident state taxation on capital gains, it is in our view essential to restrict the application of article 13(4) to abusive situations. In that light treaty partners must be realistic in accepting exceptions to the 13(4) rule for cases where (abusive) influence by shareholders is unlikely, such as

- Regularly trade on stock exchanges;
- Mergers
- Less than 50% shareholding
- Business
- Pension funds

NORWAY

[Not addressed]

THE RUSSIAN FEDERATION

There are no comments.

SOUTH AFRICA

[Not Addressed]

THE UNITED STATES

1. FIRPTA was enacted as an exception to the general rule that the United States does not subject a foreign person to tax on gain derived from the sale of assets unless that gain is with respect to an asset used by the taxpayer in a U.S. trade or business. The goal of FIRPTA is to assure that a foreign investor in U.S. real estate is subject to tax, either directly or indirectly, on any gain realized on the disposition of that U.S. real estate interest. The concept of treating shares of a company predominately holding U.S. real estate was included because, at the time of enactment of FIRPTA, it would have otherwise been possible for a foreign investor to avoid the FIRPTA tax by placing the U.S. real estate in a U.S. company. Under the law applicable at that

made to treat shares as real estate interests, we suggest the circumstances when it is appropriate to do so be carefully circumscribed. For example, there might be an exception where most of the company's income is from non-real estate activities or the percentage threshold be increased from 50 percent to, for example, 80 percent.

ZAMBIA

We do not administer the capital gains tax under our tax legislation.

However, some of our tax treaties have Articles on capital gains. This is mainly done in anticipation of future enactment of legislation on capital gains.

Under the Share Option Schemes, the gain realised from the sale or exercise of a share is taxable.