OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
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[redacted]

Dear [redacted]:

This letter responds to your request for general information about whether the gain from selling your U.S. stocks is subject to U.S. taxation. You are neither a citizen, nor resident, of the United States. You hold a G-1 visa and reside in the U.S. based on your diplomatic status.

Section 871(a)(2) of the Internal Revenue Code ("Code") imposes a 30 percent tax on the U.S. source capital gains of a nonresident alien individual who has been present in the United States for 183 days or more during the taxable year, to the extent that the amounts received are not effectively connected to a U.S. trade or business.

Under the sourcing rules of section 865, in general, income from the sale of personal property by a U.S. resident is U.S. source income and income from the sale of personal property by a nonresident is foreign source income. Further, section 865(g) provides that a U.S. resident is any individual who is a U.S. citizen or a resident alien and who does not have a tax home as defined in section 911(d)(3) in a foreign country; or who is a nonresident alien and has a tax home in the United States. Generally, under the definition of tax home, a person who is away or intends to be away from his prior tax home for longer than one year has shifted his tax home to his new location upon his arrival in that new location. Therefore, almost all alien employees of foreign governments and of international organizations have shifted their tax homes to the U.S. on the day of their arrival in the United States, unless the employment/assignment clearly terminates in less than one year and they have no intention to remain in the United States after the termination of such employment/assignment. Thus, it is possible that you would be considered a U.S. resident for our sourcing rules and accordingly, the gain from the sale of your stock would be U.S. source income. If so, the gains from your sales would be subject to a 30 percent rate of tax. The 30 percent rate may be reduced if you are a resident of a country with whom the U.S. has a tax treaty.

If you have any questions, please call [redacted] at (202) 622-3840.

Sincerely,

Phyllis E. Marcus
Branch Chief, Branch 2
Office of the Associate Chief Counsel
(International)