February 17, 1937

To: Secretary Morgenthau
✓ Mr. Eccles
Mr. Landis

From: Mr. Magill

Subject: Conference on taxation of non-resident aliens

The attached summary of the draft legislation agreed upon by the three agencies was laid before the President. It was pointed out that the proposed rate of tax approximated that in effect with respect to our own citizens receiving dividends and also the British and French withholding rates applicable to non-residents of those countries.

The President raised the question of the effect of this proposal upon foreigners having more or less permanent investments in this country. He enquired whether it would be possible to arrange for some drawback or refund of the proposed additional tax if the foreigner could show that he had held his American investment for a year or more. It was suggested that the administrative machinery would be extremely difficult to arrange since American securities are frequently registered in the names of foreign brokerage concerns and endorsed by them in blank. The certificates then circulate in bearer form for five or more years. Hence the difficulties of an ascertainment of the beneficial owner by the Bureau of Internal Revenue are very great.

The President also pointed out that the flexible feature of the proposal would be difficult to justify on grounds of equity as between Americans and foreigners. Mr. Landis indicated the desirability of flexibility in any matter which affects our foreign relations.

The President asked that the three agencies consult with the Secretary of State in order to secure his approval, particularly in view of the Department's interest in reciprocal trade agreements. It was agreed that such a conference would be arranged at once and the President advised of the result.

The President in general approved of the proposal as a mild first step, but requested additional study on the drawback or refund point.

RM/cgh

## SUMMARY OF THE PROPOSED LEGISLATION

A - Changes in rates:

1. Change the rate upon the taxable income of non-resident alien individuals from United States sources from the present rate of 10 per cent to 20 per cent if the rate is to be fixed or between 10 and 30 per cent if the rate is to be variable upon Presidential proclamation.

2. The corresponding change in the case of non-resident corporations would be from the present rates of 10 per cent on dividends and 15 per cent on other taxable income to the rates of 20 and 25 per cent respectively if the rates are to be fixed and, if they are to be flexible, from 10 to 30 per cent on dividends and 15 to 35 per cent on other income.

B - If the foregoing tax rates are to be flexible, the standards for guiding executive action and rendering this delegation of power valid would consist of Presidential determination of the effect of these rates on:

1. Possible injury to the foreign commerce of the United States.

2. Adverse changes in foreign exchange rates as result of these taxes.

3. Adverse effects upon diplomatic relations including the performance or negotiation of treaties and other international understandings.

4. Movements of gold to and from the United States adversely affecting domestic credit conditions and the domestic price levels.

C - To prevent evasions, it is proposed to broaden the power of the Commissioner of Internal Revenue, with the approval of the Secretary, to require information returns from brokers, nominees, and others showing details as to purchase prices, profits, and losses on security transactions originating from abroad.

D - Obligations of the United States and its instrumentalities hereafter issued, which under the existing law are exempt from all taxes when owned by non-resident aliens or foreign corporations not engaged in trade or business in the United States, will be made taxable and fitted into the general plan of taxing foreign individuals and corporations on private obligations owned by them.