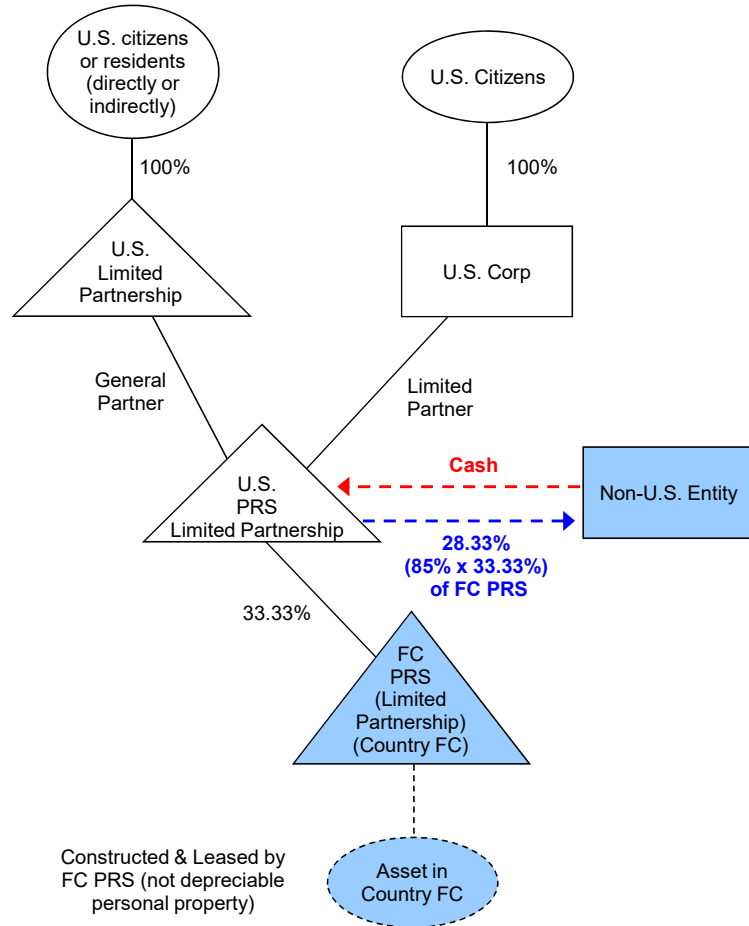


Gain on Sale of Foreign Partnership Was Attributed to a Foreign Office For 865 Sourcing Rule If 10% Foreign Tax Paid



US PRS sold 85 percent of its 1/3 limited partner interest in FC PRS to a non-U.S. entity in 1990. It is anticipated that US PRS will be subject to an FC income tax on the gain from the sale of its interest in FC PRS at a rate in excess of a 10 percent effective rate of tax computed by applying the principles of Reg. 1.954-1T(d)(2) on its gain from the sale of its interest in FC PRS.

Section 865 provides rules for determining the source of gain from the sale or disposition of personal property. A partnership interest is personal property. Section 865(i)(5) provides that section 865 will be applied at the partner level. Section 865(e)(1) provides that in the case of income not sourced under subsection (b), (c), (d)(1)(B) or (3), or (f), if a United States resident maintains an office or other fixed place of business in a foreign country, income from sales of personal property attributable to such office or other fixed place of business shall be sourced outside the United States. This rule, however, shall not apply unless an income tax equal to at least 10 percent of the income from the sale is actually paid to a foreign country with respect to such income. The principles of section 864(c)(5) are to be applied in determining whether a taxpayer has an office or other fixed place of business outside the United States and whether a sale is attributable to such office or other fixed place of business.

The office or other fixed place of business of a partnership is considered to be the office or fixed place of business of each of its partners. See *Donroy, Ltd. v. United States*, 301 F.2d 200 (9th Cir. 1962) and *Unger v. Commissioner*, 58 TCM 1157, 1159, aff'd, 1991 U.S. App. LEXIS 13247 (D.C. Cir. 1991). This rule applies to both general and limited partners. *Vitale v. Commissioner*, 72 T.C. 386 (1979). Therefore, US PRS is considered to have an office or other fixed place of business in FC through FC PRS.

The PLR held that: 1. under the principles of section 864(c)(5), the entire gain on the sale of the interest in FC PRS is attributable to that foreign office or other fixed place of business because Asset is the sole asset of FC PRS; 2. if US PRS actually pays to FC a ten percent effective rate of income tax on the gain from the sale from its interest in FC PRS (computed by applying the principles of Reg. 1.954-1T(d)(2)), the share of each U.S. partner of the gain recognized by US PRS from the sale of Asset will be from sources outside the United States under section 865(e)(1); and 3. the gain recognized by US PRS on the disposition of the interest in FC PRS will be treated as passive income for purposes of the section 904 limitation upon the foreign tax credit. See section 904(d)(1)(A), section 904(d)(2)(A)(i), and section 954(c)(1)(B)(ii).