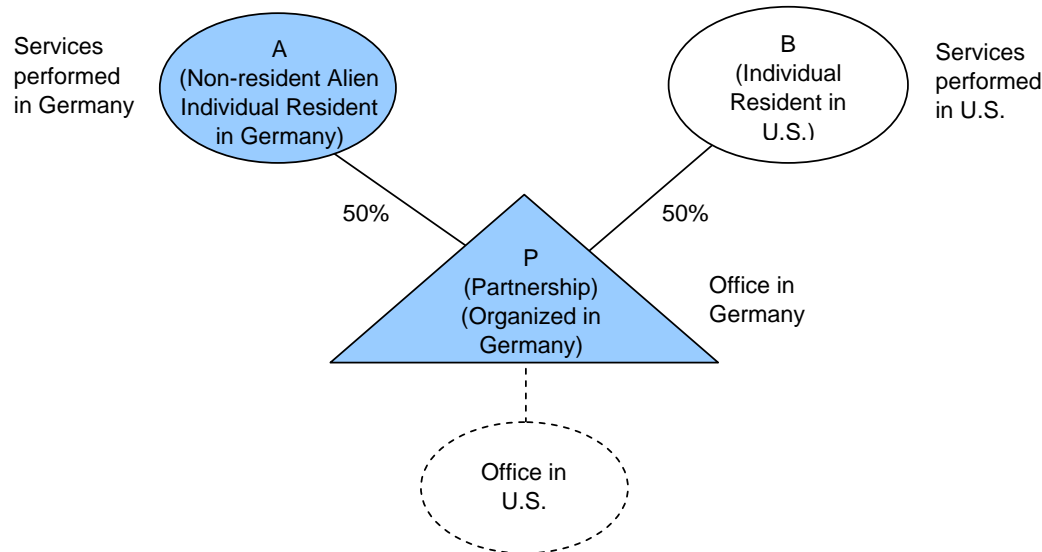


Revenue Ruling 2004-3

Foreign Partner Deemed to Have A Fixed Base in the U.S.

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P is a service partnership that is organized under the laws of Germany. P has offices in Germany and the United States. Its U.S. office is a fixed base under Article 14 of the Treaty. P is comprised of two partners: A, a nonresident alien individual who is a resident of Germany under Article 4 of the Treaty, and B, a U.S. resident. A performs services solely at P's office in Germany and B performs services solely at P's office in the United States. A and B agree to divide the profits of the partnership equally.

Under section 875(1), a nonresident alien individual who is a partner in a partnership that is engaged in a U.S. trade or business is himself considered to be so engaged. Section 871(b)(1) provides that a nonresident alien individual is taxable under Code sections 1 or 55 on his taxable income that is effectively connected with the conduct of a U.S. trade or business. Section 894(a)(1) states that the provisions of the Code shall be applied to any taxpayer with due regard to any U.S. treaty obligation that applies to such taxpayer. In *Donroy, Ltd. v. United States*, 301 F.2d 200 (9th Cir. 1962), the court held that the U.S. permanent establishment of a partnership was attributable to a foreign person that was a limited partner under the 1942 U.S.-Canada income tax treaty. In *Unger v. Commissioner*, 936 F.2d 1316,1319 (D.C. Cir. 1991), the court followed the holding in *Donroy*, noting that it stood for the proposition that the office or permanent establishment of a partnership is, as a matter of law, the office of each of the partners --whether general or limited. See also *Johnston v. Commissioner*, 24 T.C. 920 (1955) (holding that a partnership's permanent establishment is deemed to be a permanent establishment of its partners); Rev. Rul. 90-80 (same).

Article 14 of the Treaty provides that income derived by an individual who is a resident of a Contracting State from the performance of personal services in an independent capacity shall be taxable only in that State, unless such services are performed in the other Contracting State and the income is attributable to a fixed base regularly available to the individual in that other State for the purpose of performing his activities. The fixed base of a partnership is attributed to its partners for purposes of applying Article 14 of the Treaty. Accordingly, A is treated as having a fixed base regularly available to him in the U.S. A is subject to U.S. net income taxation on his allocable share of income from P to the extent that such income is attributable to the fixed base in the U.S. without regard to whether A performs services in the U.S.

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