

A Foreign Partner In a U.S. Investing Partnership Was Not Engaged In a U.S. Trade or Business

FC is a foreign corporation established under the laws of country Z. None of FC's shareholders are citizens of the United States. FC owns a x% limited partnership interest in USP, a U.S. limited partnership which primarily invests in stocks. FC does not directly engage in trade or business within the United States.

USP maintains all its offices in the United States (including its principal office), and conducts all its management activities in the United States. USP's objective is to invest its committed capital in a diversified portfolio of leveraged equity investments that are expected to generate superior long term capital gains. USP expects to hold its investments for a period of two to six years. In Year Y FC recognized interest, dividends, and capital gains.

FC's distributive share of USP's dividends and interest was subject to withholding at the applicable rate.

FC's distributive share of USP's capital gain was sourced to the United States since, under section 865(e), FC maintained an office in the United States and the income from the sale of the personal property was attributable to the U.S. office. However, FC's distributive share of the long term capital gains were not taxable in the United States since FC was not, directly or through USP, engaged in a trade or business within the United States.

