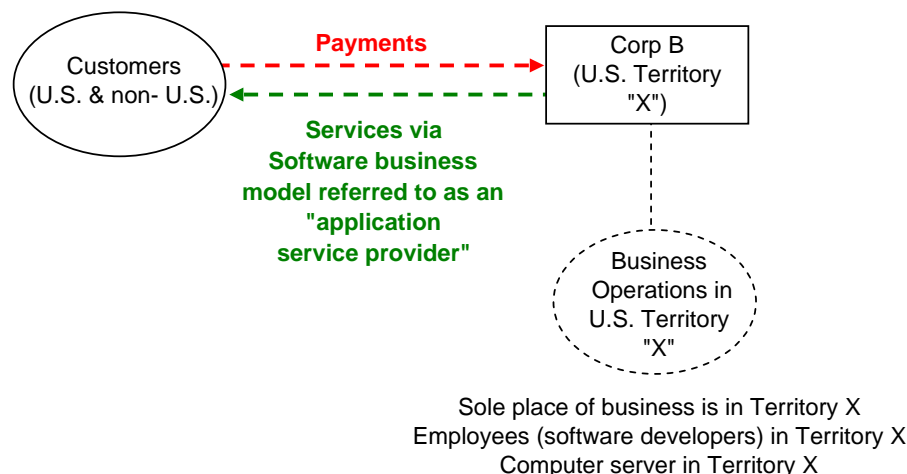


Notice 2006-76, Example 2

Software as a Service ("SaaS") Income Was Foreign Source Income

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Corporation B, a corporation organized in Territory X, has its sole place of business in Territory X. Assume for purposes of this example that Corporation B is not engaged in the conduct of a trade or business in the United States. Corporation B employs a software business model generally referred to as an "application service provider." Employees of Corporation B in Territory X develop software and maintain it on Corporation B's server in Territory X. Corporation B's customers in the United States and around the world transmit detailed data about their own customers to Corporation B's server and electronic storage facility in Territory X. The customers pay a monthly fee to Corporation B under a "Subscription Agreement," and they can use the software to generate reports analyzing the data at any time but do not receive a copy of the software. Corporation B's software allows its customers to generate the reports from their location and to keep track of their relationships with their own customers. Assume for purposes of this example that Corporation B's income from these transactions is derived from the provision of services.

Under the principles of section 861(a)(3) and Reg. 1.861-4(a), as applied pursuant to Temp. Reg. 1.937-2T(b), because Corporation B performs personal services wholly within Territory X, the compensation Corporation B receives for services is sourced to Territory X. Corporation B's services income is also effectively connected with the conduct of a trade or business in Territory X, under the principles of section 864(c)(3) as applied pursuant to Temp. Reg. 1.937-3T(b). Corporation B's income is not from sources within the United States, nor is it effectively connected with the conduct of a trade or business in the United States. Accordingly, the U.S. income rule of section 937(b)(2) and Temp. Reg. 1.937-2T(c)(1) and 1.937-3T(c)(1) does not operate to prevent Corporation B's services income from being Territory X source or Territory X effectively connected income within the meaning of section 937(b)(1).

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