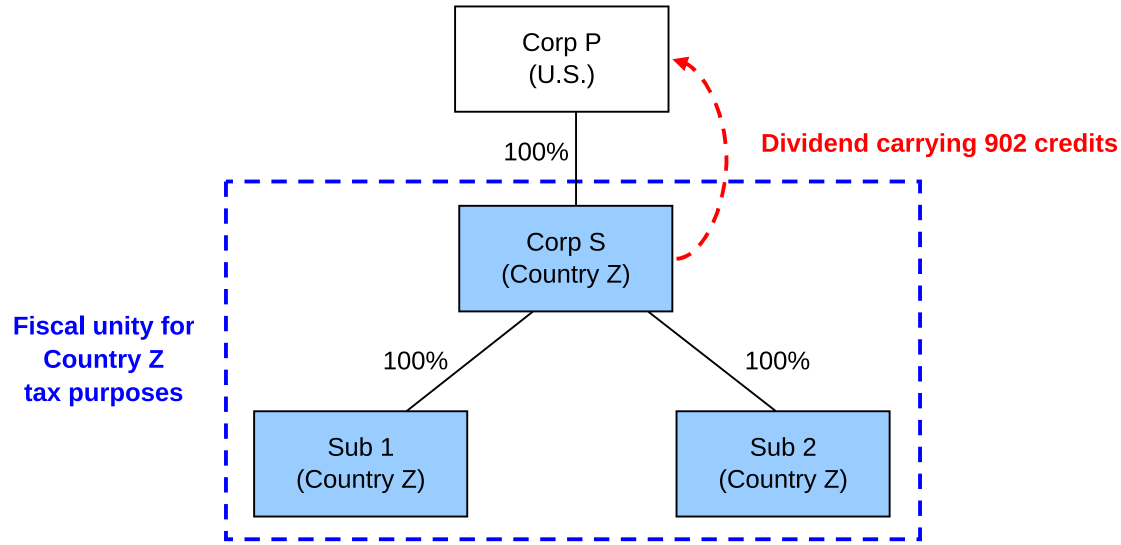
Revenue Ruling 77-209

Section 902 Credits and "Fiscal Unity"



P is a domestic corporation that received dividends during the taxable year from S, a wholly owned foreign country subsidiary of P, incorporated in country Z. S is the owner of several other foreign corporations incorporated in various foreign countries including country Z.

For the fiscal year ending in 1977, S and its country Z subsidiaries file an income tax under the "fiscal unity" provisions of the income tax laws of country Z that permit resident corporations wholly owned by another resident corporation to be taxed as if the subsidiary corporations were merged into the parent corporation. The corporations are considered merged solely for the purposes of the application of the "fiscal unity" provisions. The parent and subsidiary corporations are jointly and severally liable for the tax due by the combination of the corporations, as if they had been assessed themselves. S will actually pay any tax due to country Z.

The issue in the ruling was whether the country Z subsidiaries of S are considered to have paid the country Z income taxes imposed on their income. The determination of who paid the tax is to be made under the criteria established by the laws of the United States rather than by classification under foreign statute. See Biddle v. Commissioner, 302 U.S. 573 (1938).

S and its country Z subsidiaries are jointly and severally liable to country Z for the tax due regardless of the fact that the entire tax liability is paid by S. Thus, S and each of its country Z subsidiaries are considered to have paid that portion of the tax that is attributable to their income. Accordingly, the country Z income taxes paid by S are to be prorated among S and its country Z subsidiaries and treated as if each corporation actually paid the foreign income taxes allocated to it. However, see Proposed Regulation 1.901-2(f).