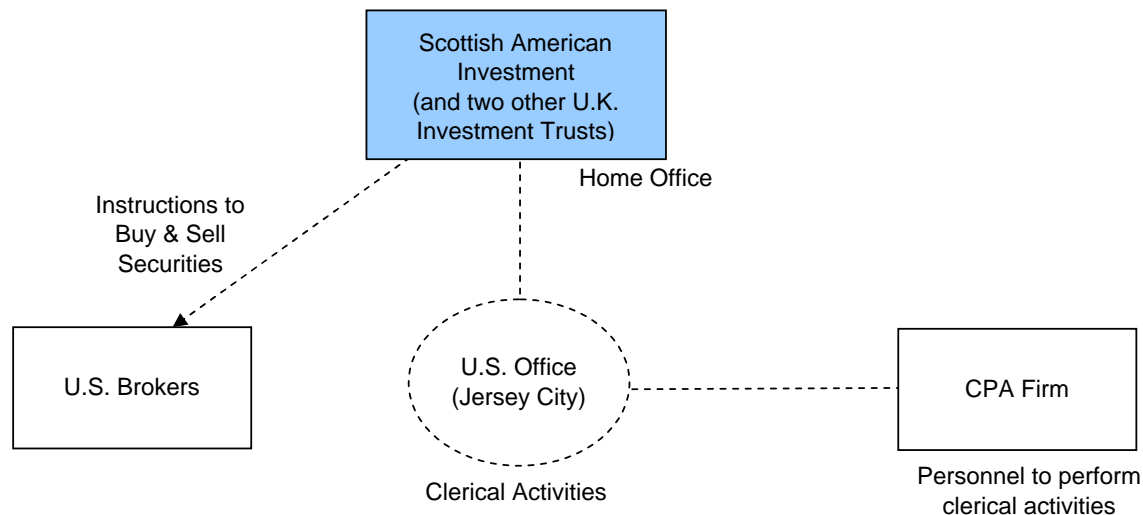


**The Scottish American
Investment Co., Ltd v.
Commissioner
12 T.C. 49 (1949)**

**Investment Activities Did Not Rise
to Level of U.S. Trade or Business**

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Scottish American and two other U.K. investment trusts (the "Investment Trusts") contended that they were resident foreign corporations "engaged in trade or business within the United States." The Investment Trusts were engaged in the business of investing the funds of their security holders for the primary purpose of deriving income from investments. The U.S. office of the Investment Trusts consisted of a large room, with space leased by each Investment Trust. On the outside door the Investment Trust names appeared, as they did also in the Jersey City telephone directory. From the inception, the American office was managed by a member of an accounting firm, who was appointed assistant secretary of each of the Investment Trusts.

One of the principal purposes for the establishment of the American office was "to gain certain tax advantages"; and the American office's activities were, according to a realistic appraisal of the evidentiary facts, confined to routine and clerical functions performed by the banks prior to 1936. The Investment Trusts described the following activities of the business of an investment trust: (1) the investment of funds, (2) the collection of income, (3) the exercise of voting rights, (4) the maintenance of records, (5) the obtaining of information, and (6) miscellaneous activities such as the preparation of tax returns. The Investment Trusts conceded that the determination of investment policies was made in Scotland. All decisions as to purchases and sales of securities were made by the home offices, and all orders were sent directly from Scotland to resident brokers in the United States. The Jersey City office was advised of these transactions so that it would make the proper entries on its books. No consequential transactions were effected through or by the direction of the Jersey City office. It functioned primarily as a clerical department performing a number of useful routine and incidental services for petitioners.

The Tax Court stated:

In cases such as these, it is a matter of degree, based both upon a quantitative and qualitative analysis of the services performed, as to where the line of demarcation should be drawn. It is not so much the volume of the activities of the Jersey City office, although volume of activities may, in some cases, be a factor, but rather their character and the purpose for which the office is established that we believe are determinative. . . . We are not convinced that the services of this local office, quantitatively extensive and useful as they may have been, approached that quality which is necessary in order that petitioners can be characterized as having engaged in business in the United States during the years involved

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