U.S. - Luxembourg Income Tax Treaty
U.S. Treasury Technical Explanation
Article 1, Paragraph 2

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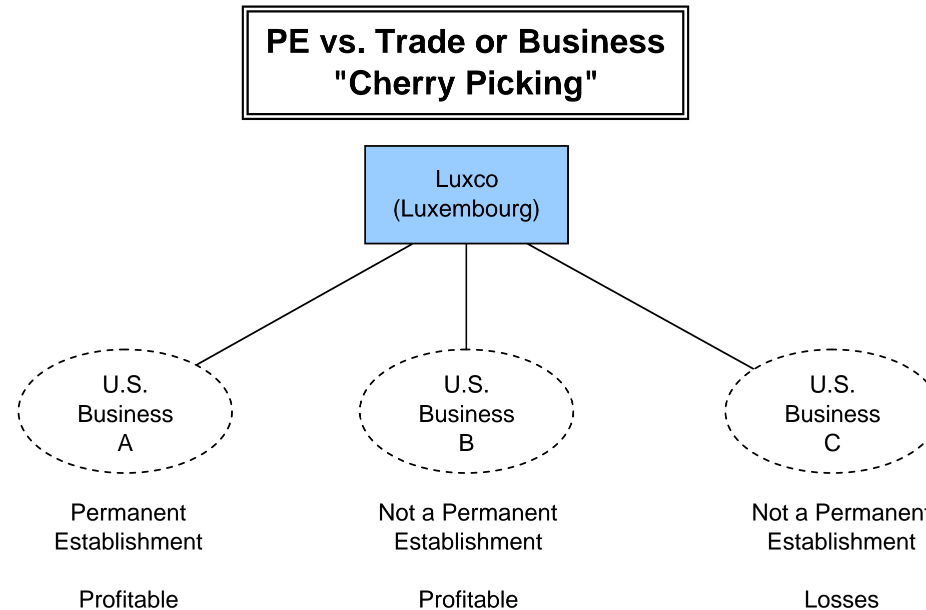

Assume a corporation that is a resident of Luxembourg and has three separate businesses ("A", "B", and "C") in the United States. Business A is a profitable permanent establishment and Businesses B & C are trades or business that would earn taxable income under the Code, but that do not meet the permanent establishment threshold tests of the Treaty. Business B is profitable and the Business C incurs a loss. Under the Treaty, the income of Business A (the permanent establishment) is taxable, and both the profit and loss of the other two businesses are ignored. Under the Code, all three would be taxable. The loss of Business C would offset the profits of Businesses A & B. The taxpayer may not invoke the Treaty to exclude the profits of the profitable trade or business and invoke the Code to claim the loss of the unprofitable trade or business (Business C) against the profit of the permanent establishment (Business A). (See Rev. Rul. 84-17 1984-1 C.B. 308.) However, if the taxpayer invokes the Code for the taxation of all three ventures, he would not be precluding from invoking the Treaty with respect, for example, to any dividend income that is not effectively connected with any of his business activities in the United States. See also NYSBA report on the Model Income Tax Convention, April 17, 2007, for a discussion of "cherry picking" between treaties and the Code.

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