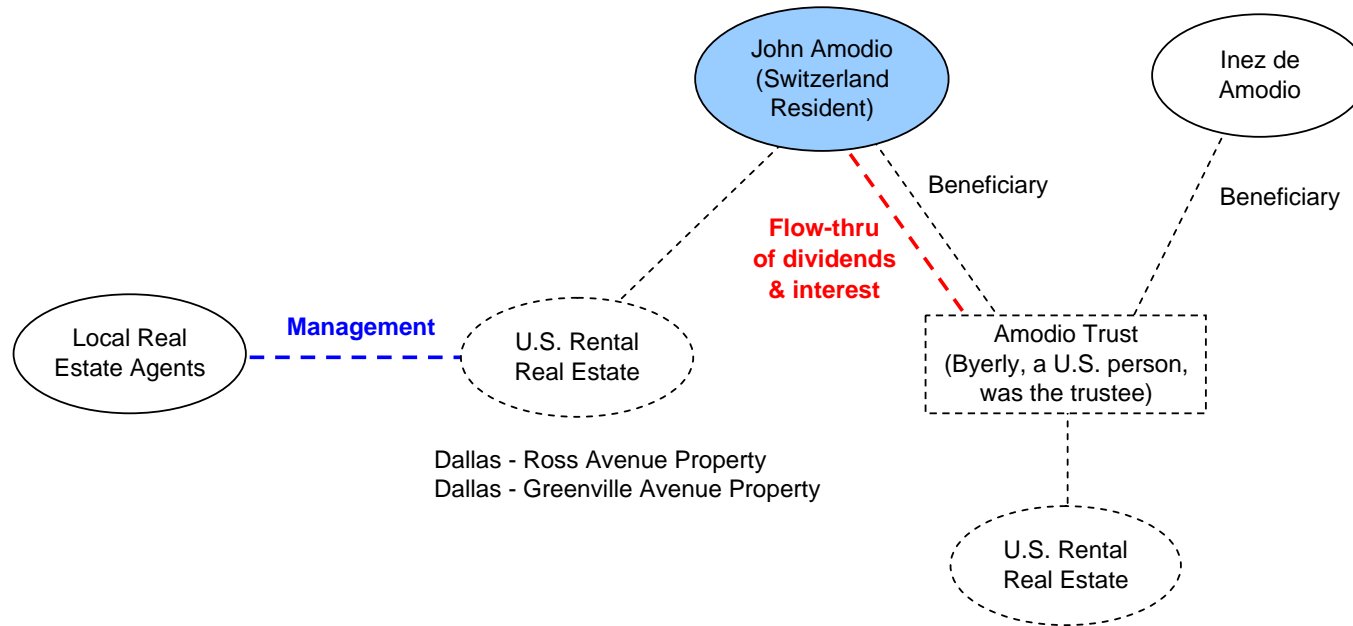


**De Amodio v. Commissioner
34 T.C. 894 (1960)**

**U.S. Rental Properties Were
A U.S. Trade or Business but
not a Permanent Establishment**

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John Amodio ("Amodio"), a resident of Switzerland, owned U.S. rental real property which was managed and operated through local real estate agents. The local real estate agents "negotiated or renewed leases, arranged for repairs, collected rents, paid taxes and assessments, and remitted net proceeds." The court held that such activities "were beyond the scope of mere ownership of property and receipt of income. They were considerable, continuous, and regular . . . Such activities . . . constitute engaging in business in the United States. Amodio is taxable as a nonresident alien engaged in trade or business in the United States." Amodio was not treated as a Swiss enterprise because he had no business activity in Switzerland.

In analyzing whether Amodio would qualify for the reduced treaty withholding tax rate on dividends and interest from the Amodio Trust, the court had to analyze whether Amodio had a "permanent establishment" in the U.S. The court said that the term permanent establishment "implies the existence of an office, staffed and capable or carrying on business from day to day, or a plant or facilities equipped to carry on the ordinary routine of business activity." The court continued that "In our opinion the real properties owned by Amodio or of which he was a co-owner through the trust cannot be regarded as a 'permanent establishment' within the meaning of the convention. . . . The Convention indicates . . . that carrying on business dealings through a broker or independent agent acting in the ordinary course of his business as such does not amount to having a permanent establishment."

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