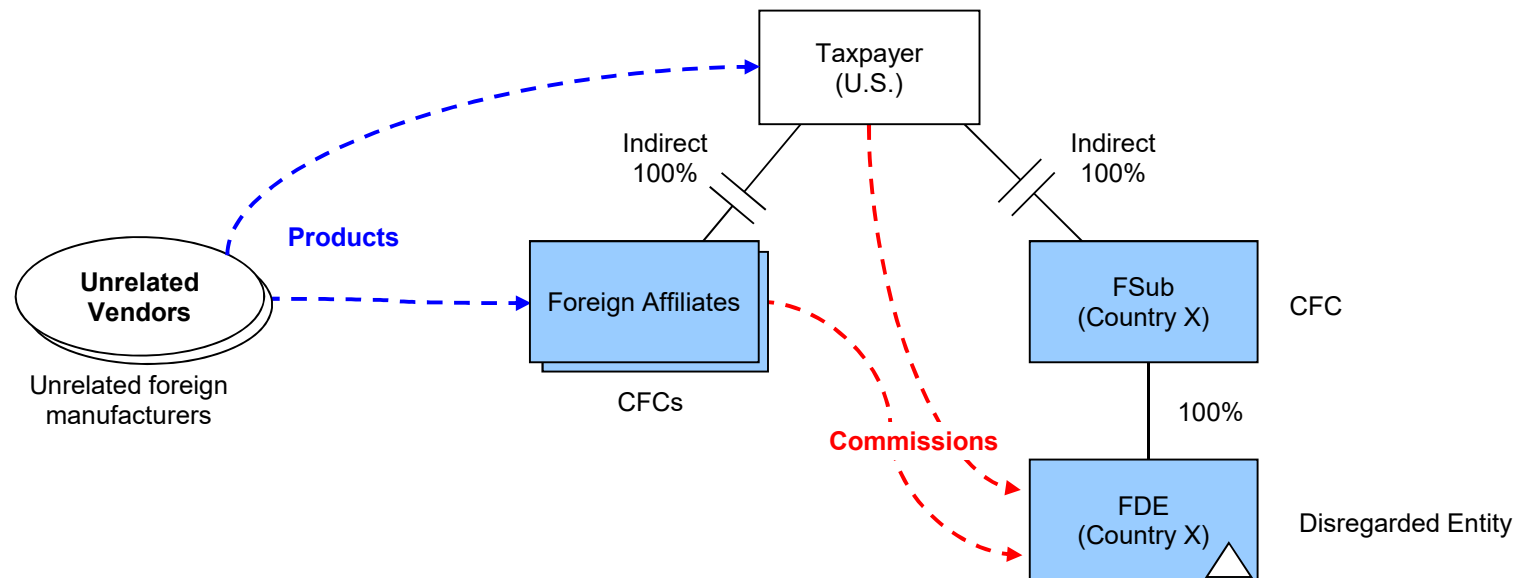


**No Foreign Base Company Sales Income for Commission Income Related to Sales**



FDE is responsible for ensuring that the Products purchased by Taxpayer and Foreign Affiliates from Vendors meet Taxpayer's standard of design, image, quality, vendor compliance, and brand. Taxpayer and Foreign Affiliates pay FDE a commission, based on a percentage of the price of ordered merchandise received by the buyer, for the procurement related activities. The Taxpayer represented that FDE makes a substantial contribution through its employees to the manufacture of Products.

If was represented that Taxpayer will treat the income as foreign base company sales income ("FBCSI") within the meaning of section 954(d), subject to the applicable exceptions in section 954(d) and the regulations thereunder, including §1.954-3(a)(4)(iv), regardless of whether the income could constitute foreign base company services income within the meaning of section 954(e) (without taking into account any exceptions in section 954(e)).

The private letter ruling held that the commissions received were not FBCSI (i.e., the commissions were not subpart F income). In particular, the ruling held:

The private letter ruling held that the commissions received were not subpart F income. In particular, the ruling held: "Based on the \* \* \* representations made, including the representation that FDE makes a substantial contribution through the activities of its employees to the manufacture \* \* \* of Products within the meaning of Treas. Reg. §1.954-3(a)(4)(iv), the income from the payments received by FDE for the performance of procurement related activities in connection with Products is excluded from FBCSI pursuant to Treas. Reg. §1.954-3(a)(4)(i).

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