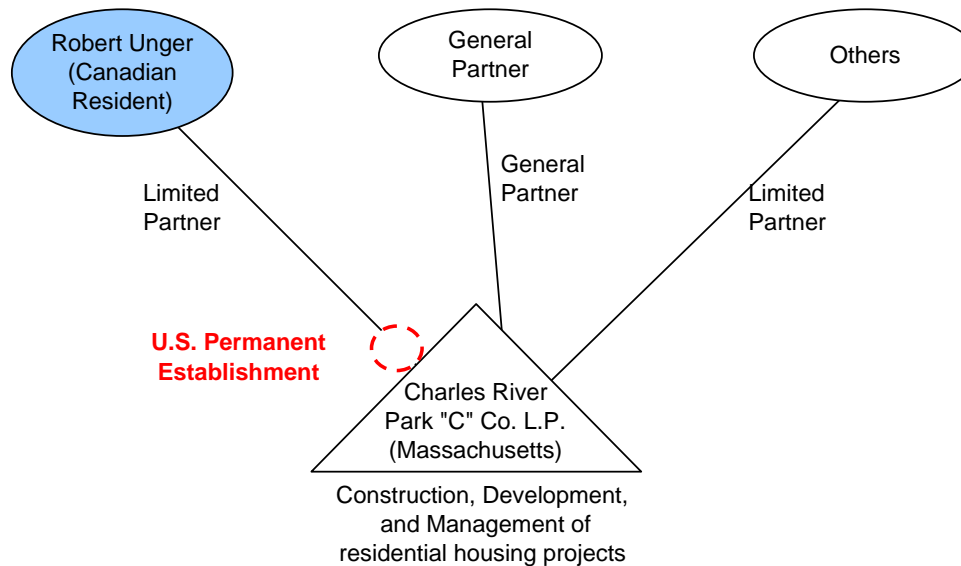


Unger v. Commissioner
936 F.2d 1316 (D.C. Cir. 1991)

**Foreign Limited Partner in U.S.
Partnership had U.S.
Permanent Establishment**

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Robert Unger was a resident of Canada. Unger owned a limited partnership interest in the Charles River Park "C" Company (CRPC), a Massachusetts limited partnership. CRPC's purposes are to construct, develop, and manage residential housing projects within the Commonwealth of Massachusetts. During the year at issue, CRPC sold certain real estate located in Boston, Massachusetts. The long-term capital gain resulting from that sale was distributed among CRPC's seven general partners and 22 limited partners. Unger's distributive share of that sale's gain as a limited partner of CRPC was \$289,260.

The issue was whether Unger's distributive share of CRPC's income was taxable in the United States. Section 871(b)(1) provides that nonresident alien individuals engaging in a trade or business within the United States are taxable in this country on the income effectively connected with the conduct of that trade or business. Section 875(1) provides: "a nonresident alien individual . . . shall be considered as being in a trade or business within the United States if the partnership of which such individual . . . is a member is so engaged" Section 875(1) applies whether the nonresident alien individual is a general or limited partner. See *Vitale v. Commissioner*, 72 T.C. 386 (1979). Thus, Unger is taxable on his distributive share of the gain realized by CRPC unless this income is exempt from taxation under the Convention and Protocol between the United States of America and Canada respecting double taxation. See *de Amodio v. Commissioner*, 34 T.C. 894 (1960), *affd.*, 299 F.2d 623 (3d Cir. 1962). Relying on *Donroy, Ltd. v. United States*, 301 F.2d 200 (9th Cir. 1962), and the aggregate theory of partnership, the court held that Unger had a permanent establishment in the United States.

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