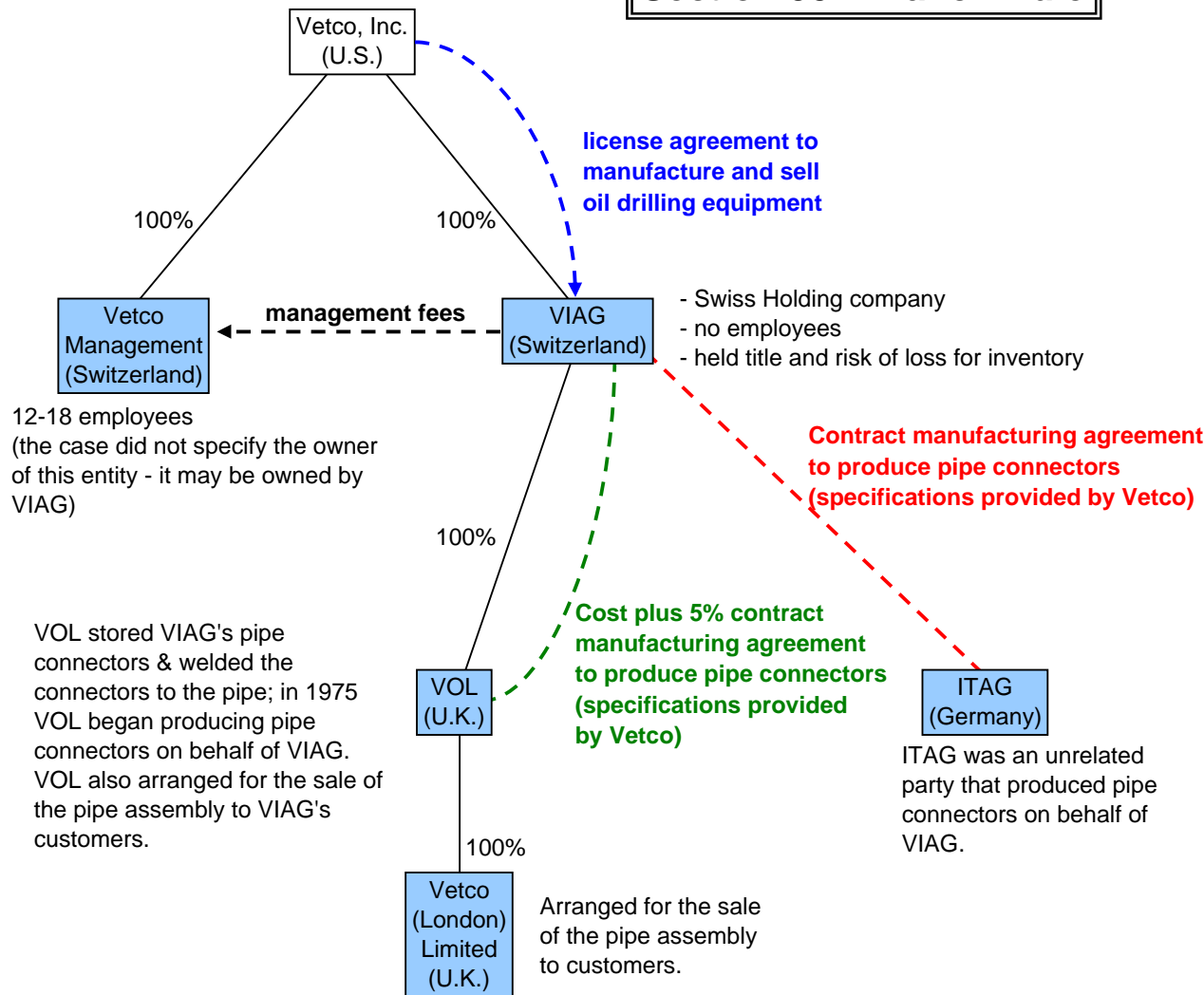


Vetco, Inc. v. Commissioner
95 T.C. 579 (1990)

Section 954 Branch Rule



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The Tax Court stated in Vetco that "Respondent did not argue that section 954(d)(1) by itself applied . . . , and we leave the question of that section's applicability to another day."

The Tax Court held that section 954(d)(2) did not apply to Vetco's facts. However, the Tax Court's statement above leaves one wondering whether the Tax Court thought that section 954(d)(1) might have applied to Vetco.

Section 954(d)(1) provides:
 . . . the term "foreign base company sales income" means . . . profits . . . derived in connection with . . . the sale of personal property . . . on behalf of a related person, . . . where . . . the property . . . is manufactured . . . outside the country . . . of which the controlled foreign corporation is created . . . , and . . . the property is sold for use . . . outside such foreign country [Profits related to purchases on behalf of a related party are also FBCSI].

Is it possible that VIAG was acting on behalf of VOL, rather than VOL acting on behalf of VIAG?

VIAG (1) had the license to produce the connectors, (2) held title to the connectors, and (3) held inventory risk of loss. These factors favor VIAG as the principal and VOL as the agent.

On the other hand, VIAG had no employees and performed no activities thru its own employees. VOL produced the connectors, stored the inventory, and arranged for the sale to customers. VIAG's lack of employees and VOL's abundance of activities may tend to indicate that VIAG was acting on behalf of VOL.