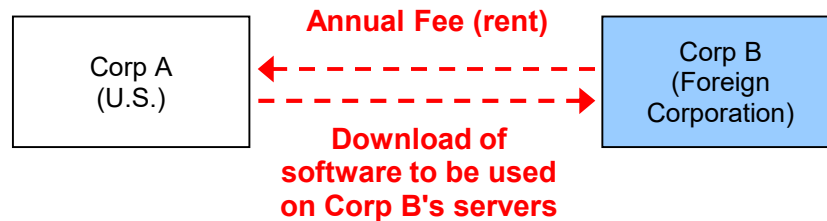


**Prop. Reg. 1.861-19(d),
Example 5**

**Downloaded Software Not a
Cloud Transaction**

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This is not a cloud transaction. Corp B does not obtain a right to on-demand access to Corp A's network.

Corp A provides software for download to Corp B that enables Corp B to create a scalable, shared pool of computing resources over Corp B's own network for use by Corp B's employees. Corp B downloads the software, which runs solely on Corp B's servers. Corp A provides Corp B with free updates for download as they become available. Corp B pays Corp A an annual fee, and, upon termination of the arrangement, an electronic lock is activated that prevents Corp B from further using the software.

Under Reg. 1.861-19(b), the download of software for use with Corp B's computer hardware does not constitute on-demand network access by Corp B to Corp A's software. Accordingly, the transaction between Corp A and Corp B is not a cloud transaction described in Reg. 1.861-19(b). Because the transaction involves the transfer of digital content as defined in Reg. 1.861-18(a)(3), it is classified under Reg. 1.861-18.

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