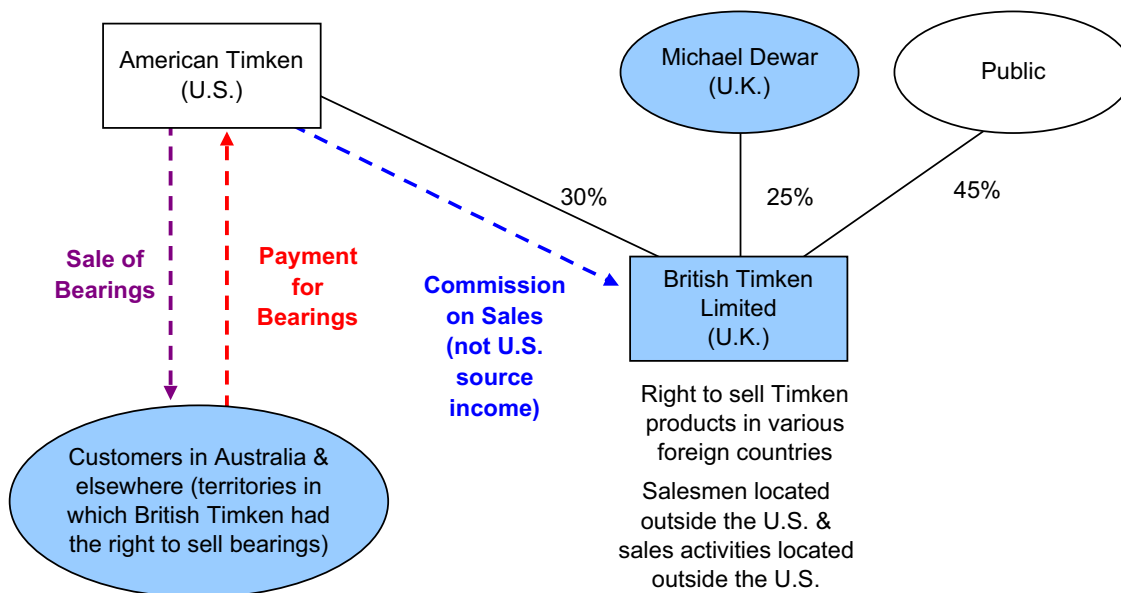


British Timken Ltd. v. Commissioner 12 T.C. 880 (1949)

Sales Commissions Sourced to Location of Sales Activities

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American Timken, a U.S. company, owned 30% of the stock of British Timken, and Dewar, a U.K. citizen and resident, owned 25% of the stock. The remainder was owned by the public. Under a 1928 agreement between British Timken and American Timken, it was provided that either company might accept and execute orders for bearings for ultimate destination in the other company's territory for use for bearing replacement purposes in completed articles of manufacture. The company selling in the territory of the other was obliged to notify that company of the details of the sale and to pay to the other company an amount equal to 10% of the net sales price. In an agreement entered into between British Timken, American Timken, and Societe Francaise Timken in 1938, a similar provision was incorporated providing for the payment of 5% of the net price unless such sales were made through or at the request of the company operating in the territory.



British Timken maintained no office or place of business within the United States and no officer or employee of the petitioner was in the United States during the years 1940 to 1943, inclusive, for the purpose of transacting business with American Timken. British Timken was not engaged in trade or business within the United States in any of the years in question. The principal issue in this case was whether the British Timken, a foreign corporation, during the taxable years 1940 to 1943, inclusive, realized "fixed or determinable annual or periodical" income from sources within the United States within the meaning of section 231(a). There was no purchase within the United States by British Timken and thereafter a sale from British Timken to its customers outside of the United States. Also, American Timken was not the agent of British Timken in the United States.

Although the situs of the sales was within the United States, the court did not find this as determinative of the source of British Timken's income. This was true even though the compensation received was measured by the amount of sales. It was the situs of the activity or property which constitutes the source of the compensation paid and not the situs of the sales by which it is measured that was of critical importance. The court held that whatever British Timken did to warrant the payment to it of the so-called commissions was performed outside of the United States. The court therefore concluded that the amounts received by British Timken from American Timken were from sources without the United States and were not taxable to the British Timken under the provisions of section 231(a).

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