

# Foreign Based Company Services Income



HLB North American Tax Conference



CPAs & BUSINESS ADVISORS



# FBCSI- Substantial Assistance

## Agenda

- Foreign Based Company Income (FBCI) §954
- Foreign Base Company Services Income (FBCSI)  
§954(e)
- Substantial Assistance Notice 2007-13

# Foreign Based Company Income



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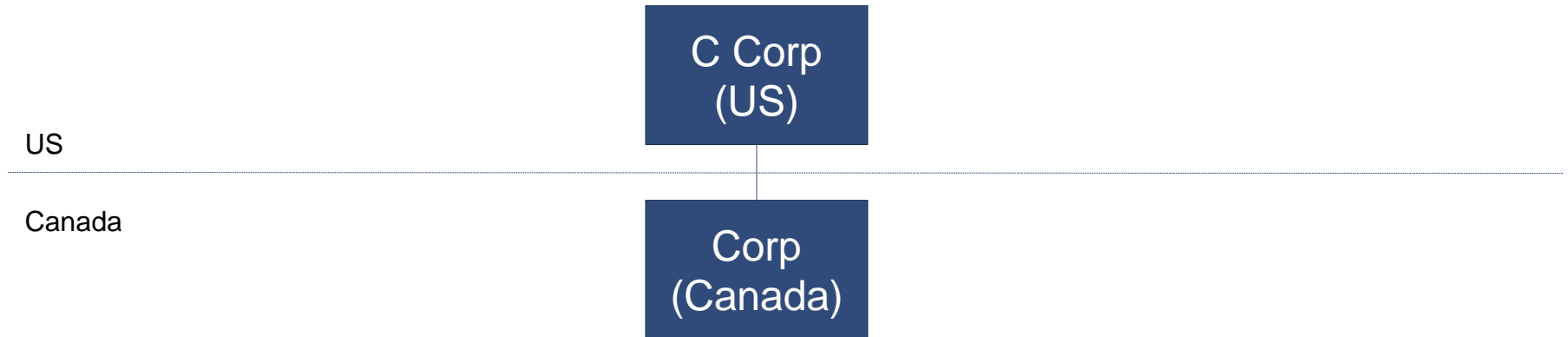
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# Foreign Base Company Income

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- Who: US taxpayers owning foreign subsidiaries
- What: US taxation of foreign subsidiary income
- When: Immediately rather than upon repatriation
- Where: Any foreign country
- Why: Anti-deferral mechanism to prevent abuse where income is highly mobile.

Example: US Corporation sets up Canadian subsidiary to hold a royalty interest



Canada Income:

Royalties: \$1,000



# Foreign Based Company Income: Computation

Gross Foreign Base Company Income

- De Minimis Rules

+ Full-Inclusion Rules

- Deductions

- High Foreign Tax Exclusion

Foreign Base Company Income



# Foreign Based Company Income: Special Rules

- **De Minimis Rules** §954(b)(3)(A)
  - No FBCI, if FBCI is <5% of gross income and <\$1M
- **Full-Inclusion Rules** §954(b)(3)(B)
  - All CFC's gross income FBCI, if FBCI is >70% of gross income
- **Deductions** §954(b)(5)
  - Reduces FBCI by deductions allocated to the income
- **High Foreign Tax Exclusion** §954(b)(4)
  - FBCI does not include any item of income received by the CFC subject to an effective rate of income tax imposed by a foreign country >90% of the maximum rate of tax imposed on corporations



# Foreign Based Company Income: Categories

- Four categories of income derived by a CFC
  - Foreign personal holding company income
  - Foreign base company sales income
  - **Foreign base company services income**
  - Foreign base company oil-related income



# Foreign Base Company Services Income §954(e)



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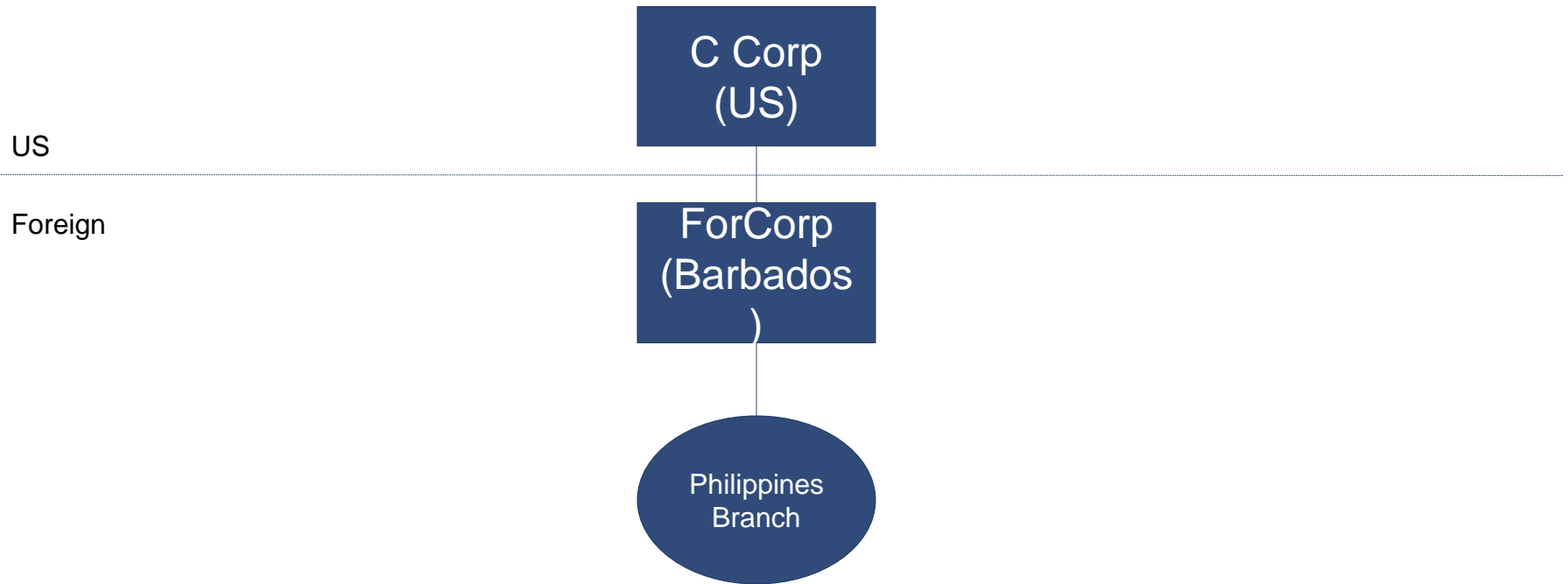
# FBCI- Services Income

- Income derived in connection with the performance of technical, managerial, engineering, architectural, scientific, skilled, industrial, commercial, or like services which:
  1. The services are performed for or on behalf of a related person, **and**
  2. The services are performed outside of the country under the laws of which the corporation is created or organized
- May be in the form of compensation, commissions, fees or other income



# FBCSvl – Example 1

Example: US Corporation sets up Barbados subsidiary with a branch in the Philippines. Philippines branch provides call center services to customers of US Corporation.

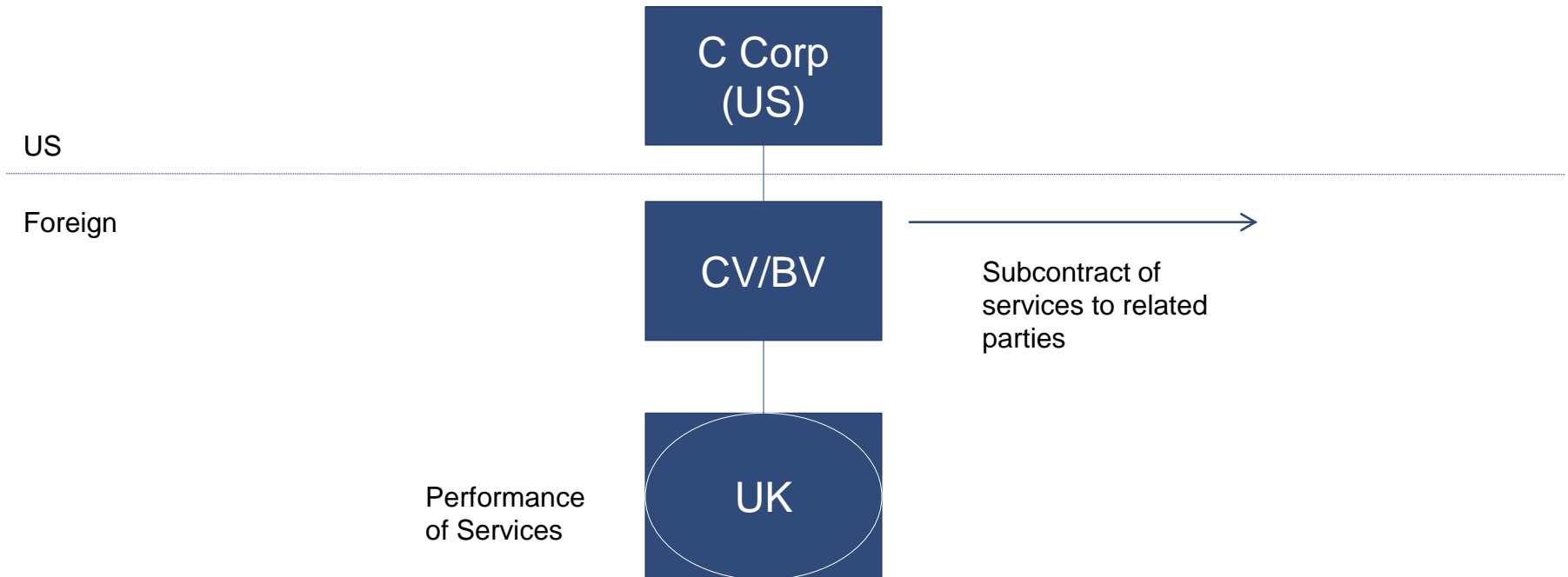


Result: Services of PH Branch provided “for or on behalf of” US Corporation, outside of Barbados which is deemed to be their country of incorporation. Therefore, FBCSvl.



# FBCSvI – Example 2

Example: US engineering company sets up CV/BV Dutch structure with UK Ltd company subsidiary. A “check the box” election is made to treat the UK as a branch of the BV. The BV enters into agreements to subcontract engineering services to related parties. Services are provided by UK.



Result: All of the services subcontracted by the BV are FBCSvI because they are performed in the UK, outside the country of incorporation (NL).



# FBCI- Services Income

- Exceptions:
  - Income from services directly relating to the sale or exchange by the corporation of property manufactured, produced, grown or extracted by the corporation
  - Income from services directly relating to an offer or effort to sell or exchange property manufactured, produced, grown or extracted by the corporation
  - Exempt insurance income and active financing



# FBCI- Services Income

- Services performed for, or on behalf of, related person
  1. CFC received services or financial benefit from related person
  2. CFC preforms services in which the related party is obligated to preform
    - Excludes guarantees of performance
  3. CFC performs services as a condition or material term of a sale of property by related person
  4. CFC preforms services in which **substantial assistance** is contributed by related person

# Substantial Assistance IRS Notice 2007-13



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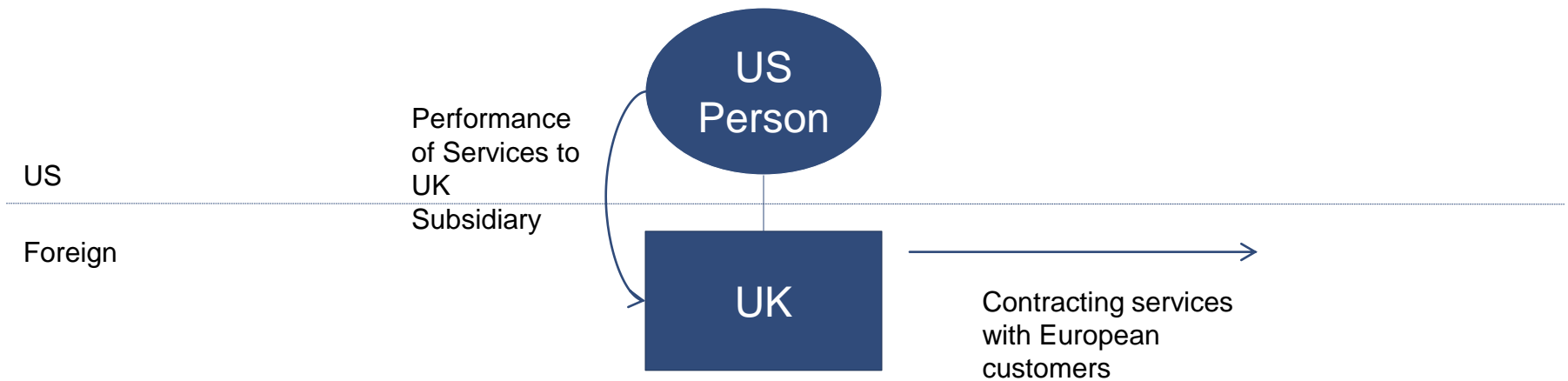
# FBCSI- Substantial Assistance

- Assistance is substantial if the cost of the assistance rendered, directly or indirectly, by a US person equals or exceeds 80% of the total cost to the CFC of the services performed
- In general, assistance includes direction, supervision, services, know-how, financial assistance, equipment, materials, and supplies
- Employees, officers and directors of the CFC who are employees, officers or directors of a related US person are considered employees, officers or directors solely of the related US person
- Regulations apply to taxable years beginning on or after January 1, 2007



# ➤➤➤ FBCSvI – Substantial Assistance Example

Example: US person sets up a UK subsidiary to manage consulting services contracts with European clients. US person provides 85% of the services.



Result: All of the services performed by the US person outside of the UK will be considered FBCSvI.



# Contact info



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# Thank you!



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